EVIDENCE—(*Contd.*)

Tenure—Incidents of.

———Evidence of—Tenure different with different incidents—Incidents of— Evidence of — Admissibility. *See* DIGWAR—MINERALS—RIGHT TO—EVIDENCE OF.
(1912) 39 I. A. 133 (141) = 39 C. 696.

Thakbust Map.

———*See* THAKBUST MAP.

Thakbust Proceeding.

———*See* THAKBUST PROCEEDING.

Thak Khasra.

———*See* THAK KHASRA.

Thak Map.

———*See* THAK MAP.

Title.

———*See* TITLE—EVIDENCE OF.

Transaction.

———Evidence given long after date of—Contemporaneous statements made without any notice for misrepresenting facts—Preference of latter to former. *See* EVIDENCE—WITNESSES—EVIDENCE OF—TRANSACTION.
(1928) 55 M. L. J. 88 (94).

———*Nature of — Evidence — Contemporaneous written statements of parties—Value of.*

The best evidence of what was understood by the parties to be the nature of the transaction between them is that afforded by their written statements made at the time (91-2). (*Sir James W. Colvile.*) PALLIKELAGATHA MARCAR *v.* SIGG. (1880) 7 I. A. 83 = 2 M. 239 (249) = 3 Suth. 742 = 4 Sar. 131.

———*Parties engaged in—Evidence of—Disregarding of —Propriety of.*

In cases relating to the nature and effect of a sale the persons engaged in the transaction—and notably the vendors and the vendees—are necessarily essential witnesses, and, in the absence of contradiction, to disregard their testimony because they were interested parties, is to carry the vigilance, with which the Court ought always to regard interested testimony beyond all reasonable and trustworthy limits. (*Lord Buckmaster.*) IDRIS *v.* MRS. JANE SKINNER. (1918) 82 P. R. 1919.

Witnesses.

———*See also* EVIDENCE—HINDU TESTIMONY, NATIVE TESTIMONY AND ORAL EVIDENCE.

———*Account books—Witness who kept — Evidence of, after refreshing memory from books—Rejection of—Propriety.*

In a case in which the question was whether, as alleged by the defendant, he paid to the plaintiff the rent due under a lease for particular fuslis, the defendant offered evidence of payments by his servants who made them, and by the books they kept. The District Judge rejected all this evidence in a summary manner.

Held that, though the District Judge was right in holding that the books were not by themselves sufficient, he was in error in thinking that the assertions of payment by the servant were vitiated because the witness had refreshed his memory from the books (20). (*Lord Hobhouse.*) RAMESWAR KOER *v.* BHARAT PERSHAD SAHI.
(1899) 4 C. W. N. 18.

———*Aged witnesses—Evidence of, on old matters not concerning them—Value of.*

Though oral evidence was given at the trial, it was given by persons of advanced age, whose memory as regards old matters which did not much concern them, is not altogether to be relied upon (357). (*Lord Phillimore.*) HARIGIR KISANGIR GOSAVI *v.* BHARATHI VISHNU BHARATHI GOSAVI. (1925) 22 L. W. 355 = (1925) M. W. N. 414 = 21 N. L. R. 127 = 88 I. C. 343 = A. I. R. 1925 P.C. 127.

EVIDENCE—(*Contd.*)

Witnesses—(*Contd.*)

———Appeal — Examination in — Cross-examination — Opportunity to opposite party for—Necessity—Court—Examination by. *See* EVIDENCE—WITNESSES—EXAMINATION OF—APPEAL. (1922) 17 L. W. 481 (493)

———*Arbitrator selected by parties for settling their disputes—Credibility of.*

If any witness is to receive credit in India, there can be none entitled to higher credit than those whom the parties have selected to settle their disputes, and to whose position and respectability they have therefore both borne practical testimony (860). RUNJEET RAM PANDEY *v.* GOBURDHUN RAM PANDEY. (1873) 2 Suth. 857 = 20 W. R. 25.

———Attestor of deed without knowledge of its execution or believing it to be forgery—Witness an—Credibility of. *See* HINDU LAW — WILL — FORGERY—EVIDENCE—ATTESTING WITNESS. (1871) 14 M. I. A. 67 (78-9).

———*Bias in—Inference of—Propriety—Conditions.*

Bias in a witness may be inferred from his being found to misstate facts, from his telling monstrous or improbable stories, or showing malicious temper against one of the parties. To infer bias from the fact that the witness's evidence tells strongly against the opposite party is to beg the question in dispute (43). (*Sir Robert Collier.*) RUN BAHADUR SINGH *v.* LUCHOO KOER.
(1884) 12 I. A. 23 = 11 C. 301 (315) = 4 Sar. 602.

———Contradiction material on material points—Effect of, on other parts of his evidence. *See* AGREEMENT—ORAL AGREEMENT—PROOF OF. (1891) 18 I A. 78 (98) = 18 C. 573 (602-3).

———*Conversation which took place long ago—Evidence as to—Value of.*

However respectable these gentlemen may be and whatever may be their claims to attention, it would be dangerous to rely upon the recollection of witnesses as to conversations which took place twenty years back (109). (*Lord Macnaghten.*) KADER MOIDEEN *v.* NEPEAN.
(1894) 21 I. A. 96 = 21 C. 882 (896) = 6 Sar. 453.

———*Credibility of—Probabilities of case—Consideration of— Necessity.*

In this case a passage in the judgment of the trial Judge was as follows :—" A great deal has been said about the balance of probabilities. But this is not a case to be decided upon probabilities. The defendant is in possession; and is not to be ousted in the absence of good evidence. This is not a case in which the court must say it believes one side rather than the other. It disbelieves the plaintiff's evidence; and that is quite enough. That it disbelieves most of the defendant's evidence is nothing to the point."

On objection taken to the authority of the judgment founded upon the observations in the aforesaid passage, their Lordships observed as follows :—" It must be admitted that the passage is ambiguous. If it means only that where a case has been manifestly proved to be false, it is unnecessary to weigh general probabilities, the observation is a mere truism, since it is obviously idle to inquire whether it was likely a man should do that which it has been demonstrated he never did. On the other hand, if it imports that the Judge refused to weigh the probabilities of the case, because he believed one set of witnesses rather than the other, it would support the objection taken, *viz.*, that in forming his belief he had excluded from his consideration that which ought to have entered into it (175-6). (*Sir James W. Colvile.*) SRI RAGHUNADHA *v.* SRI BROZOKISHORO. (1876) 3 I. A. 154 = 1 M. 69 = 25 W. R. 291 = 3 Sar. 583 = 3 Suth. 263.

———Credibility of—Trial Judge's finding of fact based on—Interference in appeal with. *See* APPEAL—EVIDENCE

EVIDENCE -(*Contd.*)

Witnesses—(*Contd.*)

—WITNESSES — CREDIBILITY OF — TRIAL JUDGE'S FINDING OF FACT BASED ON.

———Credibility of—Trial Judge's opinion as to—Weight due to. *See* APPEAL—EVIDENCE—WITNESSES—CREDIBILITY OF—TRIAL JUDGE'S OPINION AS TO.

———*Credibility of—Witness proving too much—Effect.*

The observation that the evidence of a witness proves too much is not rebutted by the suggestion that it cannot be supposed that the witness was suborned, for, if he was possessed of common shrewdness, he would not have overdone the thing and thus have given rise to such an objection (125).

That is a very tender argument before a Court, and too doubtful to justify the Court in placing any considerable reliance upon it, for we find, happily for the ends of justice, that men do fall into these inconsistencies, and by means thereof the fraudulent character of the evidence becomes apparent (125-6). (*Lord Brougham.*) SOORIAH ROW *v.* COTAGHERY BOOCHIAH. **(1838) 2 M. I. A. 113 = 5 W. R. 127 = 1 Suth. 91 = 1 Sar. 159.**

———Cross-examination of. *See* CROSS-EXAMINATION.

———*Dead witness—Character and reputation of—Evidence of—Admissibility.*

In a case in which the question was as to the genuineness of a registered will, the Subordinate Judge rejected the evidence of persons who identified the executant in the Registration Office on the ground that the general reputation of character which those persons enjoyed tended to throw a cloud of doubt upon the *bona fides* of the transaction, *held*, that such evidence of the general reputation of the character of those persons (who were dead) ought not to have been admitted at all. (*Sir Ford North.*) GANGAMORJI DEBI *v.* TROILUCKHYA NATH CHOWDHRY. **(1905) 33 I. A. 60 = 33 C. 537 (543-4) = 3 C. L. J. 349 = 10 C. W. N. 522 = 8 Bom. L. R. 375 = 1 M. L. T. 131 = 9 Sar. 46 = 16 M. L. J. 161.**

———*Discrepancy between—Suspicion from—Propriety—Delay between date of transaction and date on which question is raised.*

There is some discrepancy between the witnesses. That circumstance is by no means suspicious because of the delay between the date of the transaction and the date of the respective trials (87). (*Lord Atkin.*) RUHULLA *v.* HASSANALLI DEGUMIA. **(1928) 32 C. W. N. 929 = I. L. T. 40 B. 113 = 110 I. C. 200 = 28 L. W. 595 = 48 C. L. J. 412 = 5 O. W. N. 1138 = A. I. R. 1928 P. C. 303 = 55 M. L. J. 84 (87).**

———Error common of—Things not known to witnesses—Non-existence of—Assumption of—Error as to. (*Lord Hobhouse.*) THAKUR NITRPAL SINGH *v.* THAKUR JAI SINGH PAL. **(1896) 23 I. A. 147 = 19 A. 1 (16) = 7 Sar. 49.**

———*Evasion of subpœnas by—Effect of, on his credibility.*

Though the witness is a pleader, his persistent attempt to evade his obligation to give evidence does not inspire confidence in him as a witness (703). (*Sir Lawrence Jenkins.*) BAIKUNTHA NATH CHATTORAJ *v.* PRASANNAMOYI DEBYA. **(1922) 27 C. W. N. 797 = 9 O. & A. L. R. 501 = 72 I. C. 286 = A. I. R. 1922 P. C. 409 = 44 M. L. J. 699 (703).**

———*Events which occurred long before—Inability to explain—Effect of, on value of his evidence.*

The Subordinate Judge declined to believe the evidence of an attesting witness to a will, because there was some doubt as to an apparent alteration in the date of his attestation of the will, and the explanation he gave was not clear. *Held* that, in view of the fact the event had happened 31 years before, the witness's inability to explain was not wonderful, and that the reasons for not giving weight

EVIDENCE -(*Contd.*)

Witnesses—(*Contd.*)

to the evidence of the witness were quite insufficient. (*Sir Ford North.*) GANGAMORJI DEBI *v.* TROILUCKHYA NATH CHOWDHRY. **(1905) 33 I. A. 60 = 33 C. 537 (543) = 3 C. L. J. 349 = 10 C. W. N. 522 = 8 Bom. L. R. 375 = 1 M. L. T. 131 = 9 Sar. 46 = 16 M. L. J. 161.**

———Evidence of—Acceptance in part of, and rejection of rest—Permissibility. *See* PRACTICE—PLEADINGS—ADMISSION IN—CONDITION—ADMISSION WITH. **(1915) 42 I. A. 103 (109) = 39 B. 399 (409).**

———*Evidence of—Caution in accepting—Applicability of observation to case of genuine evidence also.*

The evidence of the witnesses may be open to the observation, which is often applicable to evidence undoubtedly genuine, that the testimony of some witnesses ought to be received with greater caution than that of others (16). (*Lord Watson.*) CHOTEYNARAIN SINGH *v.* MUSSAMAT RATAN KOER. **(1894) 22 I.A. 12 = 22 C. 519 (524) = 6 Sar. 564**

———Evidence of—Discrediting of, by means of entries in account books years old—Books not kept by witness. *See* EVIDENCE ACT, S. 34—ACCOUNT BOOKS—BOOKS YEARS OLD. **(1924) 21 L.W. 183 (189).**

———Evidence of—Discrediting of, on strength of circumstantial evidence—Propriety of. *See* EVIDENCE—CIRCUMSTANTIAL EVIDENCE. **(1922) 17 L. W. 481 (483).**

———*Evidence of—Monotonous nature of, in India.*

The acts which are said to have constituted the adoption are described by all the witnesses in almost the same words (no unusual circumstance with Indian witnesses). (*Lord Chelmsford.*) TAYAMMAUL *v.* SASHACHALLA NAIKER. **(1865) 10 M. I. A. 429 (431) = 2 Sar. 139.**

———*Evidence of—Rejection in appeal of — Evidence accepted by Court below— Rejection of—Decision of case based on probabilities and on conduct of parties—Propriety.*

But if there be found, even in a native case, positive credible testimony unimpeached, and credited by a Judge competent to judge of the credit due to witnesses, it would seem to be equivalent to a total disregard of native testimony, to say, despite of this positive testimony, we will put all evidence aside, and act alone on the probabilities of the stories and the inference from the conduct of the parties. (187-8). (*Sir Richard Kindersley.*) WISE *v.* SUNDULOONISA CHOWDRANEE. **(1867) 11 M. I. A. 177 (187-8) = 7 W. R. (P. C.) 13 = 1 Suth. 667 = 2 Sar. 249.**

———*Evidence of—Rejection in appeal of— Independent witnesses—Rejection on ground of witnesses not being—Evidence accepted by Court below.*

It is quite true that the witnesses cannot be regarded as independent witnesses. But they do not seem to have been shaken in cross-examination, and the trial Judge accepted their statements. It would be out of the question to reject their evidence on mere suspicion. (*Lord Macnaghten.*) MUSSUMMAT MAQBULLAN *v.* AHMAD HUSAIN. **(1903) 31 I. A. 38 = 26 A. 108 (116) = 8 C. W. N. 241 = 6 Bom. L. R. 233 = 8 Sar. 583.**

———*Evidence of—Rejection in appeal of—Part rejected by Court below—Rejection of whole on ground of—Propriety.*

The rejection of certain specific statements of a witness is not necessarily a ground for disbelieving the whole of his evidence; nor is the fact that a Judge has not acted on certain portions of his evidence which may be due to caution on the part of the Judge or inaccuracy on the part of the witness. (*Lord Robertson.*) DEBI PERSHAD CHOWDHRY *v.* RANI RADHA CHOWDHRAIN. **(1904) 31 I. A. 160 (167) = 32 C. 84 (95) = 9 C. W. N. 161 = 8 Sar. 708,**

EVIDENCE—(*Contd.*)

Witnesses—(*Contd.*)

———*Evidence of—Rejection in appeal of—Propriety—Discrepancy in record of evidence—Rejection on ground of—Discrepancy not put to witness.*

It is dangerous for a court of appeal to reject an important and respectable witness who has been believed by the court who heard his evidence on some supposed discrepancy in the record of it which did not occur to that court and which if his attention had been called to it he might have been able easily to explain (45). (*Sir Robert Collier.*) RUN BAHADUR SINGH *v.* LACHOO KOOER.

(1884) 12 I. A. 23 = 11 C. 301 (316) = 4 Sar. 602.

———Evidence of—Rejection in appeal of—Youth of witnesses—Rejection on ground of—Evidence accepted by trial Judge. *See* EVIDENCE—WITNESSES—YOUTH OF.

(1923) 45 M. L. J. 242 (245).

———*Evidence of—Transaction—Evidence given long after date of—Contemporaneous statements made without any motive for misrepresenting facts—Preference of latter to former.*

Allowance must be made for the lubricity of testimony depending upon recollection extending back for long periods, and such evidence is always far less reliable than contemporaneous statements made without any possible motive for misrepresenting the facts. (*Lord Salvesen.*) SADIQ ALI KHAN *v.* JAI KISHORI.

(1928) 47 C. L. J. 628 = 26 A. L. J. 685 = 32 C. W. N. 874 = 5 O. W. N. 547 = 28 L. W. 17 = 109 I. C. 387 (2) = 30 Bom. L. R. 1346 = A. I. R. 1928 P. C. 152 = 55 M. L. J. 88 (94).

———Examination of — Cross-examination —Opportunity for—Necessity—Court—Examination by. *See* CROSS-EXAMINATION.

(1922) 17 L. W. 481 (493).

———*Examination of—Failure—Adverse inference in appeal from—Propriety—No such point made in Court below.*

Where comment was made in the judgment of the Court of Appeal on the fact that plaintiff did not examine his mother in a case in which no question was raised at the trial as to her absence, their Lordships observed that the comment was not justified, because, if any point had been made in the trial Court about her absence, an explanation might possibly have been offered. (*Lord Phillimore.*) BANWARI LAL *v.* MAHESH. (1918) 45 I. A. 284 (287-8) = 41 A. 63 (67) = 21 O. C. 228 = 23 C. W. N. 577 = 49 I. C. 540 = (1919) M. W. N. 490.

———*Examination of—Material witness—Examination of—Necessity of—Insistence upon, even at late stage—Court's duty.*

Though the application to examine *F* may possibly have been rightly refused in the first instance, having regard to the time at which it was made, their Lordships cannot but regret that after the case had progressed, and every one saw, as they must have seen, that it was vital to obtain her evidence, the Subordinate Judge did not announce to the parties that he was then ready to give permission to have her evidence taken, and did not impress upon the respondents that as they sought to have declared void the solemn deed this lady had entered into, and on the faith of which she had obtained the appellant's money, it was their duty to examine her to explain the circumstances under which she entered into it. That was not done, however. The defendants did not again apply, and the case proceeded to drag slowly on without the evidence of the witness who knew all about the facts, and whose evidence would probably have put an end to the controversy one way or another in a few hours (236). (*Lord Atkinson.*) SADIK HUSAIN KHAN *v.* HASHIM ALI KHAN. (1916) 43 I.A. 212 = 38 A. 627 (663) = (1916) 2 M. W. N. 577 = 21 M. L. T. 40 = 6 L. W. 378 = 21 C. W. N. 133 =

EVIDENCE—(*Contd.*)

Witnesses—(*Contd.*)

25 C. L. J. 363 = 14 A. L. J. 1248 = 18 Bom. L. R. 1037 = 19 O. C. 192 = 1 Pat. L. W. 157 = 36 I. C. 104 = 31 M. L. J. 607.

———*Examination of—Oath—Witnesses of high rank—Examination of, without oath.*

Their Lordships trust that the Judges will use the necessary means for having witnesses of high rank, who would object to taking an oath, examined without oath according to the regulations now in force upon that subject, and having the interrogatories so framed as to elicit the truth from them without offending their dignity. (*Lord Brougham.*) SRI SUNKER BHARTI SWAMI *v.* SIDHA LINGA CHARANTI. (1843) 3 M. I. A. 198 = 6 W. R. (P. C.) 39 = 1 Suth. 142 (147) = 1 Sar. 266.

———*Examination of—Opposite party—Examination in absence of—Irregularity—Objection to—Force of.*

In the course of the proceedings before the Zillah Court in India, it appears that a witness, the sole surviving attesting witness to the instrument in question, was examined for the plaintiff without the presence of any vakeel, or agent on behalf of the defendant, and in the absence of the defendant himself. Other evidence was also given; but this particular evidence was certainly very material evidence in respect of the plaintiff's demand. The objection which was suggested in the petition to the Sudder Dewanny Court, and which has also been urged before us, was that such examination could not regularly or properly have taken place.

Their Lordships are of opinion that that objection, if taken in the right time and in the right place, would (to what extent may be questioned, perhaps) be an objection which ought to prevail with respect to the evidence to which it was applied (247). (*Sir William H. Maule.*) RAJAH BOMMARAUZE BAHADUR *v.* RANGASAMY MUDALY. (1855) 6 M.I.A. 232 = 1 Sar. 536.

———Examination of—Party — Opponent—Examination by—Forcing of—Practice of—Propriety. *See* EVIDENCE—PARTY—OPPONENT—EXAMINATION BY.

———*Examination of—Party responsible for—Ignorance of Indian litigants as to.*

It is contrary to all experience in Indian cases to presume that suitors in India have any knowledge who is the proper witness of plaintiff or defendant. (*Dr. Lushington.*) BUNWAREE LAL *v.* MAHARAJAH HETNARAIN SINGH. (1858) 7 M.I.A. 148 (163) = 4 W.R. 128 = 1 Suth. 307 = 1 Sar. 610.

———*Examination of—Refusal by Court below to allow—Interference with—Application for examination made in midst of hearing.*

The only other objection, which was made to the decree, is, that there was a refusal to examine witnesses, the examination having been prayed for at the time the hearing was going on. Now, certainly, it does seem as extravagant an application as ever was made to any Court, to ask, in the midst of the hearing, that there should be a permission to examine witnesses, those witnesses having been ascertained long before; *subpœnas* having been issued to compel them to come in and give their evidence; those *subpœnas* not having been served, because they were then about to leave the place, but they might have been served immediately afterwards, and certainly it is not an application that ought to have been made to the Court (402-3). (*Lord Langdale.*) RAM MUNI DIBIAH *v.* PRAN KISHEN DAS. (1848) 4 M.I.A. 392 = 7 W.R. (P.C.) 66 = 1 Suth. 207 = 1 Sar. 369.

———*Examination of — Some of witnesses—Refusal to examine, on the ground that their evidence will be same as that of witnesses already examined—Propriety.*

EVIDENCE—(*Contd.*)

Witnesses—(*Contd.*)

In a case in which the defendants tendered 58 witnesses in support of their case, the trial judge examined 30 of them, and refused to permit the remaining witnesses to be examined on the ground that their evidence would go only to prove the same facts deposed to by the 30 witnesses already examined. Those facts, if proved, would, however, have put an end to the plaintiff's case. The trial judge decided in favour of the plaintiff, and his decision was affirmed on an appeal.

On appeal to the Privy Council by the defendants, *held* that the rejection of the evidence of the remaining witnesses for the defendants was wholly irregular, and detrimental to justice. (*Lord Brougham.*) JESWANT SINGHJEE *v.* JET SINGJEE. **(1841) 2 M.I.A. 424 = 6 W.R. 46 = 1 Suth. 150 = 1 Sar. 213.**

———*False case—Witness speaking to—Evidence of—Value of.*

Where it is conclusively shown that witnesses have come to prove a false case—a case false in its material particulars—much reliance cannot be placed upon their evidence as to any particular questions in the cause. KHAJAH HABEEB OOLLAH *v.* KHAJAH GONHUR ALLY KHAN. **(1872) 18 W.R. 523 = 5 Sar. 699 (700).**

———*False evidence in part knowingly given by—Credibility of witness in case of—Effect on.*

The parol testimony for the respendents is open to the observation, that nearly all their witnesses depose, either to the execution of the deed of gift alleged to have been executed by the deceased, or to conversations with the deceased, in which an intention to make the gift is expressed. Now that deed is palpably a mere fabrication (429-30). (*Mr. Pemberton Leigh.*) HURADHUN MOOKERJIA *v.* MUTHORANATH MOOKERJIA. **(1849) 4 M. I. A. 414 = 7 W.R. P.C. 71 = 1 Suth. 213 = 1 Sar. 375.**

———The appeal arose out of a suit brought by the plaintiff claiming dower which, she alleged, was settled upon her at the time of her alleged marriage with *B*, against the wife of *B* and two of his sons by that wife. The suit necessarily involved the consideration of the question of marriage, and, accordingly, two issues were settled, one raising the question whether the plaintiff had been married to *B*, and the other, raising the question whether the amount of dower which she claimed was really agreed upon at the time of the alleged marriage.

The witnesses who said that they were present at a marriage stated that some sixteen or seventeen years before the death of *B* a contract of marriage was openly made between *B* and the plaintiff, and that, at the time of that marriage, it was agreed that he should give her a sum of Rs. 10,000 as deferred dower. The marriage and the agreement for the dower formed one transaction.

The trial Judge came to the conclusion that the witnesses who were called to prove the marriage and agreement were entirely unworthy of credit. He therefore found both the issues against the plaintiff and dismissed the suit.

On appeal the High Court concurred with the trial Judge in his opinion of the credibility of the witnesses, so far as they sought to prove the agreement for dower; but they nevertheless reversed his finding on the issue as to marriage and held the marriage proved.

Held, that, if the witnesses were disbelieved as to the dower, it was a necessary consequence, in good sense, that they should be disbelieved as to what they said about the fact of the marriage, and that the finding of the High Court as to the fact of the marriage could not be sustained on the direct evidence.

EVIDENCE—(*Contd.*)

Witnesses—(*Contd.*)

It may be that a witness may say that which is untrue upon some particular fact in the case, and you cannot disbelieve him as to the whole of what he states. But here is one transaction. The marriage and the agreement for dower are so blended together that it is impossible to rely upon witnesses as to one part of the transaction who were discredited as to the other. SHOJANT ALI KHAN *v.* MUSSUMUT MUKDHOOM JAN. **(1872) 8 M. J. 185.**

———If a witness has made false statements on important matters of fact which it is impossible that she could not recollect, her testimony on other matters in favour of herself is attended with great suspicion. (*Lord Hobhouse.*) HARANUND ROY CHETLANGIA *v* RAM GOPAL CHATLANGIA. **(1899) 27 I. A. 1 (7) = 27 C. 639 (646) = 4 C. W. N. 429 = 2 Bom. L. R. 562 = 7 Sar. 648.**

———*Forgery—Witness party to—Credibility of.*

No weight whatever ought to be given to the evidence of a witness who himself comes and says, not only that certain deeds were forged, but that he himself had been a party to the making of them. (507). KALI CHANDRA CHOWDHRY *v.* SHIBCHUNDRA. **(1870) 6 B. L. R. 501 = 15 W. R. 12 = 2 Sar. 621 = 2 Suth. 383.**

———*Fraud—Wiiness party to a great—Credibility of.*

It is obvious that credit could not be given to witnesses, who confess their participation in a great fraud, unless their testimony was corroborated (249). (*Sir Montague E. Smith.*) BURRALALL OPENDRONATH SAHEE DEO *v.* COURT OF WARDS. **(1879) Bald. 235 = 3 I. J. 376.**

———*Government Official—Evidence of, highly improbable—Rejection of, on that sole ground.*

In this case an important issue was whether plaintiff was the married wife of a Sudra Zemindar whose property she was claiming on behalf of her son as his issue. The defendants denied the factum and validity of the marriage, and attempted to prove by evidence that plaintiff had been a dancing-girl to lay foundation for rendering the marriage invalid, even if the ceremony had been gone through. Among the witnesses called by them on the issue was one *A* a Government Official, who deposed to the plaintiff having actually appeared and danced before him at a particular village 18 or 19 years before the date of his deposition when he went on circuit to the village with his master. From the details the witness gave as to plaintiff's name, parentage, and appearance from the above circumstance alone and from other circumstances appearing in his evidence, it was clear that his story was an utterly improbable one. Their Lordships observed that, though, as a Government official, the witness was *prima facie* entitled to credit as an independent and respectable person, his story, when scrutinised, appeared to bear a strong resemblance to those admissions which the wants of a case often produced.

Such testimony is very common; it is posslble in a given case that it may be true, but it is of so dangerous a nature and presents so few claims to be believed, that evidence of the kind is little regarded, even though the witness deposing to it be in no other way discredited than as one deposing to evidence on which a Court cannot rely. (*Lord Justice James.*) RAMAMANI AMMAL *v.* KULANTHAI NATCHIAR. **(1871) 14 M. I. A. 346 (363-5) = 17 W. R. 1 = 2 Suth. 493 = 2 Sar. 736.**

———*High rank—Witnesses of—Evidence of—Admissibility and value of—Interrogatories—Evidence given on—Cross-Examination—Refusal of witness to submit to.*

It ought to be observed, with regard to the question as to interrogatories to persons of high rank, that even if the objection is not done away, which is most properly made on the ground of those persons refusing cross-examination,—for example, refusing to give the grounds of their knowledge

EVIDENCE—(*Contd.*)

Witnesses—(*Contd.*)

of the *causee scientioe*, as they say in Scotland,—still you may take the evidence, and it would be a strong argument upon its weight, a strong argument to show that it is of no weight, that they were not cross-examined. (*Lord Brougham.*) SRI SUNKER BHARTI SWAMI *v.* SIDHA LINGAYAH CHARANTI. **(1843) 3 M. I. A. 198 = 6 W. R. (P. C.) 39 = 1 Suth. 142 (147) = 1 Sar. 266.**

———*Indebtedness of, to party in whose favour evidence is given—Effect of, on his credibility.*

This witness appears to be a person in a very respectable position in life ; a person likely to be called upon by the testator to take the part which he did in the completion of the will. The only objection suggested to him is, that he appears to be indebted to the appellant in a bond for Rs. 500, payable by instalments, a circumstance which cannot weigh much, if anything, against his evidence (104). (*Lord Kingsdown.*) NANA NURAIN RAO *v.* HUREE PUNTH BHAO. **(1862) 9 M. I. A. 96 = 1 Sar. 843 = Marsh. 436.**

———*Indian witnesses—Common character of.*

There is not a single witness produced on that side except the witnesses of the character so common in the Indian Courts, *viz.*, male menial servants, dependants, and Ryots living in the neighbourhood, who are all obviously persons less likely to have the circumstances deposed to within their knowledge, and to be far less trustworthy, than the members of the family who might have been produced (528). (*Sir James Colvile.*) BABOO BODHNARAIN SINGH *v.* BABOO OMRAO SINGH.
(1870) 13 M. I. A. 519 = 15 W. R. P. C. 1 = 6 B. L. R. 509 = 2 Suth. 371 = 2 Sar. 607.

———*Interested witnesses— Rejection of evidence on ground of witnesses being--Propriety—Sale—Question as to—Vendors and vendees—Evidence of—Rejection of.*

Where the question was whether in the matter of a purchase or a sale certain persons represented the whole of the village in the matter, *held* that in such cases the persons engaged in the transaction—and notably the vendors and the vendees—were necessarily essential witnesses, and that in the absence of contradiction to disregard their testimony because they were interested parties would be to carry the vigilance, with which the Court ought always to regard interested testimony, beyond all reasonable and trustworthy limits (725). (*Lord Buckmaster.*) IDRIS *v.* MRS. JANE SKINNER. **(1918) 56 I. C. 723 = 82 P. R. 1919 = 45 P. W. R. 1919.**

———Interest of, in litigation—Effect of, on credibility of witness. *See* EVIDENCE—WITNESS———PARTY TO OR ETC. **(1835) 5 W. R. (P. C.) 102.**

———Judge acquainted with—Character and credibility of witnesses—Remarks upon—Propriety. *See* JUDGE—PERSONAL KNOWLEDGE—IMPORTATION INTO JUDGMENT OF—WHAT AMOUNTS TO. **(1858) 7 M. I. A. 169 (203).**

———*Lapse of time—Evidence given after long--Evidence as full and perfect as if incident occurred very recently—Effect of, on credibility of witnesses.*

The witnesses saw everything there was to see. After the lapse of fifteen years they remembered everything they saw as if it had occurred yesterday. The learned Judges of the High Court, not perhaps without reason, distrust eyes so observant and memories so retentive (524). (*Lord Macnaghten.*) GOSSAIN DALMIR PURI *v.* MOONSHI GOPI NATH. **(1893) Bald. 521.**

———Litigation—Interest of witness in—Effect. *See* EVIDENCE—WITNESS—PARTY TO OR ETC.
(1835) 5 W. R. (P. C.) 102.

EVIDENCE—(*Contd.*)

Witnesses—(*Contd.*)

———Material witness—Examination of—Necessity of—Insistence upon, even at late stage—Court's duty. *See* EVIDENCE—WITNESS — EXAMINATION OF — MATERIAL WITNESS. **(1916) 43 I. A. 212 (236) = 38 A. 627 (663).**

———Native witnesses—Time— Inaccuracy as to, usual. *See* EVIDENCE—WITNESSES--TIME.
(1872) 14 M. I. A. 412 (421).

———Negative evidence of—Value of. *See* EVIDENCE—WITNESSES—ERROR COMMON OF.
(1896) 23 I. A. 147 = 19 A. 1 (16).

———Occurrences most striking in their nature and most likely to endure in the memory—Evidence as to—Contradiction as regards—Effect of, on other parts of their evidence. *See* AGREEMENT—ORAL AGREEMENT,
(1891) 18 I. A. 78 (98) = 18 C. 573 (602-3).

———Party—Examination as witness. *See* EVIDENCE—PARTY.

———Party—Opponent— Examination by—Forcing of—Practice of—Propriety. *See* EVIDENCE—PARTY—OPPONENT—EXAMINATION BY.

———*Party's own evidence—Witnesses improving upon and contradicting—Credibility of.*

Where in a case in which the party (alienee from a Hindu widow) himself having an imperfect recollection of the transaction (alienation), and having stated that he paid the money to the vendor personally, a servant comes forward, after the decision of the case by the Court of First Instance and the Court of Appeal, to make out an elaborate proof of payment of debts to a third party, the least that can be said of evidence so given, is that it is wholly untrustworthy. (*Sir James Colvile.*) RAJ LUKHEE DABEA *v.* GOKOOL CHUNDER CHOWDHRY.
(1869) 13 M. I. A. 209 (227-8) = 12 W R. (P. C.) 47 = 3 B. L. R. P. C. 57 = 2 Suth. 275 = 2 Sar. 518.

———*Party to or mixed up in suit—Witness being—Credibility of—Effect on.*

With respect to *A*, whose evidenee has been so much relied upon, it is to be observed that the situation in which he stands, if compared with the testimony of other witnesses, does not appear to place him in a very favourable situation. He is a party to the cause, and may have had a very considerable interest in supporting the case of the appellant. He was so mixed up in the suit that we cannot say he was a person who can be supposed to have no feeling upon the subject, and at least he is not entitled to be placed in that high position that entitles him to give evidence to put down the testimony of all the other witnesses. (*Mr. Justice Bosanquet.*) HOMABAEE *v.* PUNJEABHAEE DOSABHAEE.
(1835) 5 W. R. 102 P. C. = 1 Suth. 28 (35) = 1 Sar. 68.

———Perjury—Summary proceeding against witness for. *See* CONTEMPT OF COURT—WITNESS—PERJURY.
(1909) 19 M. L. J. 324.

———*Persons present in court but not cited as—Answers of, to questions put by court, not challenged—Adverse inference from.*

In a case in which the question was whether the husband of the respondent had been legally adopted by *P*, the husband of the appellant, the appellant examined the family purohit, who deposed that the obsequies of *P*, had been performed, not by the husband of the respondent, but by *P's* brother. *P's* brother had not been called, but he was in Court when the purohit was giving his evidence. The trial Judge, seeing him there, asked him whether it was true as stated that he

EVIDENCE—(*Contd.*)

Witnesses—(*Contd.*)

had performed the obsequies (which could only have been allowable if the respondent's husband was not the adopted son) and he answered that he did. No attempt was made by those appearing for the respondent to challenge his statement, or to have him ordered into the witness-box for cross-examination.

Held, that the trial Judge was right in commenting upon this circumstance (602). (*Viscount Haldane.*) GANNABHATTULA VENKAMMA *v.* GANNABHATTULA VENKATARATNAMMA. **(1919) 10 L W. 599 = 23 C. W. N. 961 = (1919) M. W. N. 544 = 27 M. L. T. 107.**

———*Portion of testimony not believed—Rejection of whole on ground of.*

Their Lordships are by no means sure that the Commissioner was not too sweeping in his condemnation of these witnesses, because even if some discrepancies appear in their evidence as to the fact of the marriage, it may still be that they were speaking the truth when they said they were present at the ceremony of marriage. It is too common for witnesses in India to become partisans of the party for whom they are called, exaggerate facts, and adding incidents to transactions which really took place. But it is not always safe to disregard their evidence altogether because in some respects they may have said that which is not believed (15). (*Sir Montague E. Smith.*) NAWAB MUHAMMAD AZMAT ALI KHAN *v.* MUSSUMAT LALLI BEGUM. **(1881) 9 I. A. 8 = 8 C. 422 = 4 Sar. 310 = 17 P. R. 1882 (Civil).**

——*Prevarication by—Effect.*

It appears strange that any legal practitioner could suppose that clumsy, stupid and transparent prevarication such as this witness indulged in could impose upon any legal tribunal worthy of the name, much less upon one of the ability and distinction of the High Court of Calcutta. (*Lord Atkinson.*) SATISH CHANDRA CHATTERJI *v.* KUMAR SATISH KANTHA ROY. **(1923) 73 I. C. 391 = 33 M. L. T. 325 (P. C.) = A. I. R. 1923 P. C. 73 = 45 M. L. J. 363 (375-6).**

——*Professional witness—Mere giving evidence in other cases—Distinction.*

It is no doubt a legitimate objection to a man's credit that he is a professional witness; but to state broadly and generally that a witness has given evidence in other cases, and therefore, becomes unworthy of credit, can only tend to increase that indisposition of respectable persons to come into Court as witnesses, which is one of the social evils of India. LALL BEHAREE LALL *v.* MUSSUMAT GOPEE BEEBEE. **(1872) 18 W. R. 285 = 5 Sar. 706 (707) = 2 Suth. 714.**

———*Relationship to party of—Witness assisting party in litigation—Witnesses connected with, by blood or service—Effect.*

The relationship of a class of witnesses should be considered only with the ordinary caution with which testimony is sifted where sympathy with one side is to be taken for granted, and should not be treated as making them interested or unreliable witnesses.

The fact that one of such persons besides being a relative was assisting the plaintiff in the case, and that the other witnesses were connected with this person by blood or service, is not necessarily a sufficient ground for discrediting their evidence, (*Lord Robertson.*) DEBI PERSHAD CHOWDHRY *v.* RANI RADHA CHOWDHRAIN. **(1904) 31 I. A. 160 (167) = 32 C. 84 (94-5) = 9 C. W. N. 161 = 8 Sar. 708.**

———*Reputation or high standing of—Not an element of ssupicion.*

EVIDENCE—(*Contd.*)

Witnesses—(*Contd.*)

Their Lordships cannot approve of the idea that in India the law would make the possession of reputation or high standing an element of suspicion. If it were so, then the result in India would be to import *pro tanto* a disqualification and disability into the position of reputable men (153). (*Lord Shaw.*) BAL GANGADHAR TILAK *v.* SHRINIVAS PANDIT. **(1915) 42 I. A. 135 = 39 B. 441 (469) = 17 Bom. L. R. 527 = 19 C. W. N. 729 = 22 C. L. J. 1 = 13 A. L. J. 570 = 18 M. L. T. 1 = (1915) M. W. N. 554 = 2 L. W. 611 = 29 I. C. 639 = 29 M. L. J. 34.**

———*Riches and truth—No fixed relation between.*

There is no fixed relation between the gains of usury and truth. (*Lord Atkinson.*) LAL KUNWAR *v.* CHIRANJI LAL. **(1909) 37 I. A. 1 (10-1) = 32 A. 104 (115) = 7 M. L. T. 57 = 11 C. L. J. 172 = 14 C. W. N. 285 = 12 Bom. L. R. 244 = 5 I. C. 249 = 20 M. L. J. 182.**

———*Servants—Birth of child—Evidence on.*

In such a matter as the birth of a child in the house servants are persons having means of knowledge; and to pass over their evidence, not otherwise impeached, as worth nothing is somewhat too sweeping (126). (*Lord Hobhouse.*) GURUSAMI PILLAI *v.* SIVAKAMI AMMAL. **(1895) 22 I. A. 119 = 18 M. 347 (356) = 6 Sar. 610 = 5 M. L. J. 106.**

———*Servants and dependants of a great man—Evidence of, in his favour in nearly same words, if not in selfsame words—Value of, in Indian cases.*

Against all this testimony there is nothing, except that which unfortunately we know to be of very little value in Indian cases, the depositions of a great many persons, servants and dependants upon a great man, all of whom, in nearly the same words (as respects the two classes of witnesses it is in the selfsame words), speak to some facts which are contradicted by those whose testimony appears much less open to imputation (215-6). (*Mr. Pemberton Leigh.*) NAWAB AMIN-OOD-DOWLAH *v.* SYUD ROSHUN ALI KHAN. **(1851) 5 M. I. A. 199 = 1 Suth. 229 = 1 Sar. 419.**

———*Servants of party or co-sharers in same interest with him—Evidence of—Value of.*

Where the High Court disregarded the evidence of the plaintiff's witnesses with the remark that they were tenants or servants of the plaintiff or of co-sharers in the same interest, *held*, that though such considerations might be important enough when there was contradiction, a vacillation, or a nice balance of evidence, or some violent improbability about the story that was told, they could not be relied upon as themselves supplying reasons for disbelief. (*Lord Hobhouse.*) CASPERSZ *v.* KISHORI LAL ROY CHOWDHRI. **(1896) 23 C. 922 (931) = 1 C. W. N. 12 = 7 Sar. 31.**

———Some of—Refusal to examine, on ground that their evidence will be same as that of witnesses already examined —Propriety. *See* EVIDENCE—WITNESSES—EXAMINATION OF—SOME OF WITNESSES. **(1841) 2 M. I. A. 424.**

———*Standing and respectability—Witnesses of—Perjury by—Proof clear and cogent of—Necessity.*

The witnesses are perons of standing and respectability, unconnected with the Rajah (the genuineness of whose will was in question) and his household, and having no interest in the issue of this litigation; and, in the opinion of their Lordships, nothing short of clear and cogent proof can justify the imputation that, after the death of the Rajah, they deliberately consented to perjure themselves in order to set up a will they knew to have been forged by his servants (20). (*Lord Watson.*) CHOTEYNARAIN SINGH *v.* RATAN KOER. **(1894) 22 I. A. 12 = 22 C. 519 (527-8) = 6 Sar. 564.**

EVIDENCE—(*Contd.*)

Witnesses—(*Contd.*)

———*Station in life of—Objection based on—Reference by them to other persons not one of whom examined by opposite party—Effect.*

It is said that the appellant's witnesses who depose to the facts, constituting the adoption, are for the most part in low station of life, and likely to be influenced by the appellant ; but it is sufficient to state, in answer, that these witnesses depose to the presence, on the principal occasions to which they refer, of many other individuals whom they name, any one of whom might have been called by the respondents, and yet not one single witness is examined for that purpose (428). (*Mr. Pemberton Leigh.*) HURADHUN MOOKERJIA *v.* MUTHORANATH MOOKERJIA.
(1849) 4 M.I.A. 414 = 7 W. R. (P. C.) 71 = 1 Suth. 213 = 1 Sar. 375.

———Status of—Rejection of evidence on ground of—Permissibility. *See* HINDU LAW—WILL—EXECUTION—ATTESTORS TO. (1924) 19 L.W. 699 (702).

———Substantial person—Meaning of. *See* BENGAL REGULATIONS—PUTNI TALUQS REGULATION VIII OF 1819—S. 8, Cl. (2)—WORDS—" SUBSTANTIAL PERSON". (1874) 2 I.A. 71 (79-80).

———*Suspicion as regards—Concurrence of testimony of many witnesses—Effect.*

The concurrence of testimony of many intelligent witnesses, without circumstantial variety, where the facts are very few and simple, and all would be naturally attentive observers of the scene, furnishes no ground for suspicion (549). (*Lord Chelmsford.*) NEELKISTO DEB BURMONO *v.* BEERCHUNDER THAKOOR. (1869) 12 M.I.A. 523 = 12 W. R. (P. C.) 21 = 3 B.L.R. P. C. 13 = 2 Suth 243 = 2 Sar. 523.

———Time—Inaccuracy as to—Usual with native witnesses. (*Sir James W. Colvile.*) MUSST. ANUNDOO KOONWUR *v.* KHEDOO LAL.
(1872) 14 M. I. A. 412 (421) = 18 W. R. 69 = 2 Suth. 591 = 3 Sar. 50.

———*Tutored evidence—Effect.*

If the evidence showed some sign of drilling or tutoring in the mode of narration, that, however improper, would not constitute a sufficient reason for discreediting evidence of many trustworthy witnesses, since the evidence of witnesses to a true story is too often subject in native Courts to such kind of manipulation (549-50). (*Lord Chelmsford.*) NEELKISTO DEB BURMONO *v.* BEERCHUNDER THAKOOR. (1869) 12 M.I.A. 523 = 12 W. R. (P. C.) 21 = 3 B.L.R. P.C. 13 = 2 Suth 243 = 2 Sar. 523.

———*Tutored witnesses—Witnesses intending to speak truth—Evidence of—Distinction in nature of.*

Three of the attesting witnesses to the will give the same account of the transaction, not as we too often find in these cases, all in the same words, not, indeed, concurring in all the minute particulars of what passed, but with that agreement in substance and that variation in unimportant details which are usually found in witnesses intending to speak the truth, and not tutored to tell a particular story (104). (*Lord Kingsdown.*) NANA NURAIN RAO *v.* HUREE PUNTH BHAO. (1862) 9 M.I.A. 96 = 1 Sar. 843 = Marsh. 436.

———Youth of—Rejection of evidence in appeal on ground of—Propriety—Evidence accepted by trial Judge—Rejection held not proper—Witness a boy of 12 or 13 years. (*Lord Wrenbury.*) BANUBAI FRAMJI COMMISSARIAT *v.* MANILAL JAGALDAS. (1923) 18 L. W. 148 = A. I. R. 1923 P. C. 62 = (1923) M. W. N. 580 = L. R. 4 P. C. 147 = 45 M.L.J. 242 (245).

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———Admissibility of evidence after—Condition. *See* EVIDENCE ACT—PRIOR LAW. (1879) 7 I.A. 63 (70) = 5 C. 744 (754).

———*Prior law—Effect on—Admissibility of evidence after Act—Condition.*

The Indian Evidence Act has repealed all rules of evidence not contained in any statute or Regulations, and a document to be admissible in evidence must be shown to come under some provision of the Indian Evidence Act (70). (*Sir Montague Smith.*) RANI LAKRAJ KUAR *v.* BABOO MAHPAL SINGH. (1879) 7 I. A. 63 = 5 C. 744 (754) = 6 C.L.R. 593 = 4 Sar. 94 = 3 Suth. 704 = R. & J's No. 61 (Oudh).

———**S. 13**—Criminal Procedure Code, S. 145—Order under—Admissibility in evidence of—Purpose and extent of. *See* CRIMINAL PROCEDURE CODE—S. 145—ORDER UNDER—ADMISSIBILITY IN EVIDENCE OF.
(1901) 29 I. A. 24 (33-4) = 29 C. 187 (198).

———Criminal Procedure Code, S. 145—Order under—Reports accompanying, but not referred to in—Admissibility. *See* CRIMINAL PROCEDURE CODE OF 1898—S. 145—ORDR UNDER—REPORTS, ETC.
(1901) 29 I. A. 24 (33-4) = 29 C. 187 (198).

———**Ss. 13 and 21**—Boundary dispute—Grantee from *A* and Government—Dispute between—Grant from *A* ancient—Statement of boundaries in — Admissibility against Government. *See* BOUNDARY DISPUTE—EVIDENCE—GRANTEE FROM *A* AND GOVERNMENT.
(1872) 14 M. I. A. 453 (462).

———**S.21**—Admission. *See* ADMISSION.

———**S. 21**—*Executor—Legatee—Purchase by executor in name of—Investment of legacy—Purchase if by way of—Evidence of—Solicitors employed by executor for purposes of purchase—Evidence of—Admissibility.*

In a case in which the question was whether a purchase made by an executrix in the name of a legatee was by way of an investment of the legacy payable to the legatee or not, *held* that the evidence of solicitors employed by the executrix to investigate the title to the property purchased and to carry the purchase through as to the object of the purchase was admissible in evidence.

The contention that the evidence of the solicitors was hearsay and irrelevant in itself and inadmissible under S. 21 of the Evidence Act was over-ruled. (*Viscount Sumner.*) HARIRAM *v.* MADAN GOPAL. (1928) 33 C. W. N. 493 = 49 C. L. J. 335 = 27 A. L. J. 406 = 114 I. C. 565 = I. R. (1929) P. C. 77 = (1929) M. W. N. 422 = 31 Bom. L. R. 710 = A. I. R. 1929 P.C. 77 = 57 M. L. J. 581.

———**Ss. 21 and 13**—Boundary dispute between grantee from *A* and Government—Evidence—Grant from *A* ancient—Statement of boundaries in—Admissibility against Government. *See* BOUNDARY DISPUTE — EVIDENCE — GRANTEE FROM *A* ETC. (1872) 14 M. I. A. 453 (462).

———**S. 24**—*Confession by accused — Admissibility—English law.*

It has long been established as a positive rule of English criminal law that no statement by an accused is admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement, in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority. This rule is merely a rule of policy (996-7). (*Lord Sumner.*) IBRAHIM *v.* EMPEROR.
(1914) 1 L. W. 989 = 18 C. W. N. 705 = 23 I. C. 678 = 15 Cr. L. J. 326 = (1914) A. C. 599 = 4 Cr. L. R. 225 = 3 Con. L. R. 187.

EVIDENCE ACT (I OF 1872)—(*Contd.*)

——**Ss. 24 and 25**—*Confession to person in authority—Admissibility—English law—Questions put by person in authority—Statements in answer as to.*

The ground of objection to the admissibility of the statement of an accused person, *viz.*, that the statement was preceded by and made in answer to a question and that the question was put by a person in authority and the answer was given by a man in his custody, in so far as it is a ground at all, is a more modern one. With the growth of a Police force of the modern type, the point has frequently arisen in England, whether, if a Policeman questions a prisoner in his custody at all, the prisoner's answers are evidence against him apart altogether from fear of prejudice or hope of advantage inspired by a person in authority. Logically these objections all go to the weight and not to the admissibility of the evidence. What a person having knowledge about the matter in issue says of it, is itself relevant to the issue as evidence against him. That he made the statement under circumstances of hope, fear, interest or otherwise strictly goes only to its weight. Even the rule which excludes evidence of statements made by a prisoner, when they are induced by hope held out, or fear inspired by a person in authority, is a rule of policy (997).

The English law on the point is still unsettled. Many judges, in their discretion, exclude such evidence, for they fear that nothing less than the exclusion ot all such statements can prevent improper questioning of prisoners by removing the inducement to resort to it. Others, less tender to the prisoner or more mindful of the balance of decided authority, would admit such statements, nor would the Court of Criminal appeal quash the conviction thereafter obtained, if no substantial miscarriage of justice had occurred (1000). (*Lord Sumner.*) IBRAHIM *v.* EMPEROR.

(1914) 1 L. W. 989 = 18 C. W. N. 705 = 23 I. C. 678 = 15 Cr. L. J. 326 = (1914) A. C. 599 = 4 Cr. L. R. 225 = 3 Con. L. R. 187.

——**S. 32**—*Will of, and written statement filed by deceased person—Statements in—Admissibility of — Deceased interested in dispute and taking position against party against whom evidence sought to be used.*

On an issue as to whether a Hindu family was on a particular date a joint Hindu family or not, *held* that statements in the will of a deceased person and in a written statement filed by him to the effect that the family then ceased to be joint were inadmissibie against the plaintiff because the deceased was interested in the disputes and was at the time taking a position adverse to the plaintiff. (*Sir John Edge.*) HARI BAKSH *v.* BALU LAL. **(1924) 51 I. A. 163 = 5 L. 92 = 5 L. R. P. C. 113 = 28 C. W. N. 958 = (1924) M. W. N. 650 = 20 L. W. 460 = 26 Bom. L. R. 1108 = 83 I. C. 418 = A.I.R. 1924 P.C.126 = 22 A.L. J, 254 = 34 M. L. T. 70 = 47 M.L. J. 938 (943).**

——**S. 32 (2)**—Age—Evidence of. *See* EVIDENCE—AGE.

——Birth—Date of—Evidence of. *See* (1) EVIDENCE—AGE AND (2) EVIDENCE—BIRTH.

——Death—Date of—Evidence of. *See* EVIDENCE—DEATH—DATE OF.

——Mahomedan Law—Dower—Amount of, fixed at time of marriage—Evidence of—Kazi's register of marriages—Entry as to amount in—Admissibility and value of. *See* MAHOMEDAN LAW—DOWER—AMOUNT OF—EVIDENCE—MARRIAGE—AMOUNT FIXED AT TIME OF—KAZI'S REGISTER ETC.

——Pedigree. *See* EVIDENCE—PEDIGREE.

——**S. 32 (3)**—Statement against interest—Benami—Question as to—Admission by alleged real owner that purchase was for benefit of benamidar—Admissibility. *See* HINDU LAW—SELF-ACQUISITION — THROWING INTO COMMON STOCK—EVIDENCE.

(1917) 44 I. A. 201 = 40 A. 15.

——Statement against interest—Legitimacy — Cousin—Admission by, that his cousins were his co-heirs—Admissibility and value of. *See* LEGITIMACY—COUSIN.

(1903) 30 I.A. 94 (105) = 25 A. 236 (248).

——**S. 32 (4)**—*Family custom—Deceased person—Statements of, after dispute arose—Evidence of—Admissibility.*

Evidence, oral or documentary, as to statements of a deceased person as to the custom in a family is not admissible if it appears that such statements were made after a controversy as to the custom had arisen (284). (*Sir John Edge.*) EKRADESHWAR SINGH *v.* JANESHWARI BAHUSAIN. **(1914) 41 I. A. 275 = 42 C. 582 (601) = (1914) M. W. N. 807 = 16 M. L. T. 382 = 1 L. W. 863 = 18 C. W. N. 1249 = 12 A. L.J. 1217 = 17 Bom.L.R. 18 = 21 C. L. J. 9 = 25 I. C. 417 = 27 M. L. J. 373.**

——**S. 32 (4) and 49**—Family custom—Deceased members of family- Statements of—Evidence of—Admissibility. *See* EVIDENCE ACT—SS. 49 AND 32.

(1885) 12 I. A. 72 (86) = 11 C. 463 (481).

——**S. 32 (5)**—Age—Evidence of—Family record of date of birth—Entry by father in—Admissibility. *See* STRAITS SETTLEMENTS EVIDENCE ORDINANCE—S. 32 (5). **(1916) 43 I. A. 256 (261-263).**

——**S. 32 (5) and (6)**—Relationship. *See* RELATIONSHIP—EVIDENCE.

——**S. 32, sub-S. (5) and Ss. 49, 60**—*Family custom—Evidence—Opinion of living witness—Admissibility—Conditions—Opinion based on hearsay—Repetition of hearsay—Distinction.*

It is admissible evidence for a living witness to state his opinion on the existence of a family custom and to state as the grounds of that opinion information derived from deceased persons, and the weight of the evidence would depend upon the position and character of the witness and of the persons on whose statements he has formed his opinion. But it must be expression of independent opinion based on hearsay and not mere repretition of hearsay (251-2). (*Lord Davey.*) GARUDADHWAJA PARSHAD SINGH *v.* SAPARANDHWAJA PARSHAD SINGH.

(1900) 27 I. A. 238 = 23 A. 37 (52) = 5 C. W. N. 33 = 2 Bom. L. R. 831 = 7 Sar. 724 = 10 M. L. J. 267.

——**S. 32 (6)**—Pedigree. *See* EVIDENCE—PEDIGREE.

——**S. 33**—Criminal Case—Admission to Magistrate in—Note in his judgment as to—Admissibility in civil suit. *See* EVIDENCE—CRIMINAL CASE.

——Criminal Case—Deposition in — Admissibility in subsequent civil suit. *See* EVIDENCE—CRIMINAL CASE.

——Mahomedan Law—Dower—Suit against husband's heirs for—Evidence—Depositions in prior suit between husband and wife—Admissibility—Conditions. *See* MAHOMEDAN LAW—DOWER. **(1921) 25 C.W.N. 866 (872).**

——Revenue Officials—Proceedings before—Evidence in or information obtained at—Admissibility in civil suit. *See* EVIDENCE—COLLECTOR.

——**S. 34**— (*See also* ACCOUNT BOOKS).

——*Account Books—Admissibility of, as corroborative evidence—Books regularly kept in course of business—Proof of—Clerk who kept them—Omission to examine.*

It is unnecessary to consider whether the accounts might not have been treated as properly before the commissioner by way of corroborative evidence—Whether, as was argued, it was not sufficient to show that they were accounts regularly kept in the course of business, although the clerk who

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made particular items, and who might have been called, was not called to verify those items (361). (*Sir Jomes W. Colvile.*) WATSON *v.* AGA MEHEDEE SHERAZEE.
(1874) 1 I. A. 346 = 3 Sar. 384.

———*Account Books—Admissibility of, on behalf of party keeping them.*

The appellant has not chosen to bring forward any accounts in his own behalf. Such a thing can be done in India, under S. 34 of the Evidence Act (198). (*Sir Arthur Hobhouse.*) BAIJNATH SAHAY *v.* RUGHONATH PERSHAD SINGH. **(1882) 12 C.L.R. 186 = 4 Sar. 372 = Bald. 437.**

———To prove the genuineness of the hoondies sued on, the plaintiff relied mainly on his own books of account and the evidence connected with them. The accounts were of such a nature that unless they were forged the hoondies must be genuine.

Held that the Sub-Judge erred in brushing aside the account books with the remark that "an account-book is nothing ; it is one's own private affair, and he may prepare it as he likes." (9).

There may be accounts to which the description of the Sub-Judge would apply. Other accounts may be so kept, and may so tally with external circumstances, as to carry conviction that they are true. S. 34 of the Evidence Act, therefore, enacts that entries in books of account regularly kept in the course of business shall be relevant evidence though not sufficient of themselves to charge any person with liability (9). (*Lord Hobhouse.*) TEWARI JASWANT SINGH *v.* LALA SHEO NARAIN LAL. **(1893) 21 I.A. 6 = 16 A. 157 (161) = 6 Sar. 404.**

———*Account books—Books regularly kept in courss of business — Admissibility of—Purpose of — Refreshing memory of witness—Corroborative evidence of his testimony.*

Books of account regularly kept in the course of business may under the Evidence Act, be appealed to, not only for the purpose of refreshing the memory of a witness, but also as corroborative evidence of the story which he tells (46). (*Lord Davey.*) BHOY HONG KONG *v.* RAMANATHAN CHETTY. **(1902) 29 I. A. 43 = 29 C. 334 (338) = 6 C. W. N. 401 = 4 Bom. L. R. 378 = 8 Sar. 253.**

———*Account Books—Books regularly kept in course of business within meaning of Section—What are.*

"Books of account regularly kept in the course of business" in S. 34 of the Evidence Act are not confined to books entered up from day to day, or from hour to hour, as transactions take place. The time of making the entries may affect the value of them, but should not, if not made from day to day or from hour to hour, make them entirely irrelevant.

If the view that the words in S. 34, "books of account regularly kept in the course of business" are confined to books entered up from day to day, or from hour to hour, as transactions take place, were correct, merchants' and bankers' books regularly kept would in many cases be excluded from being used as corroborative evidence. (*Sir Richard Couch.*) DEPUTY COMMISSIONER OF BARA BANKI *v.* MUNSHI RAM PARSHAD. **(1899) 26 I. A. 254 (260 1) = 27 C. 118 (125) = 4 C. W. N. 147 = 7 Sar. 586.**

———*Account Books—Entry in— Absence of—Inference from—Propriety.*

S. 34 of the Evidence Act applies to entries in books of account, but no inference can be drawn from the absence of an entry relating to any particular matter. (*Per Lord Robertson, in course of argument.*) RAM PERSHAD SINGH *v.* LAKHPATI KOER. **(1902) 30 I. A. 1 = 30 C. 231 (247) = 7 C. W. N. 162 = 5 Bom. L.R. 103 = 8 Sar. 380.**

———*Account Books—Evidentiary value of—Books or sheets of books referring only to a particular transaction with a particular debtor—Books recording that transaction in common with other transactions in ordinary course of business and at appropriate dates—Distinction.*

It is impossible to give the same credit to books, or rather sheets of books, which refer only to a particular transaction with a particular debtor as to books which record that transaction in common with other transactions in the ordinary course of business and at the appropriate dates. (*Lord Davey.*) BHOY HONG KONG *v.* RAMANATHAN CHETTY. **(1902) 29 I. A. 43 (49) = 29 C. 334 (341-2) = 6 C. W. N. 401 = 4 Bom. L. R. 378 = 8 Sar. 253.**

———*Accounts Books—Evidentiary value of—Some of entries proved to be bogus—Effect.*

Account books are sufficiently discredited if a certain number of entries therein are proved to be bogus by independent evidence which precludes the possibility of error or accident. (*Lord Sinha.*) SETH MAGANMAL *v.* DARBARILAL CHOWDHURY. **(1928) 24 N. L. R. 40 = 30 Bom. L. R. 296 = 5 O. W. N. 226 = 107 I. C. 113 = 47 C. L. J. 222 = 27 L. W. 523 = I. L. T. 40 C. 124 = A. I. R 1928 P. C. 39 = 54 M. L. J. 208.**

———Account books—Net profits as shown in employer's —Commission to agent based on—Correctness of profits shown in books—Agent if bound to accept. *See* PRINCIPAL AND AGENT—AGENT—COMMISSION PAYABLE TO.
(1927) 53 M. L. J. 278.

———*Books years old—Entries in—Discrediting of testimony of witness who has not kept the books by means of.*

A difficulty arises if a case is made to rest upon bare items in account books, some 16 years old and not kept by the party, whose testimony it is proposed by their means to discredit. S. 34 of the Evidence Act, which makes entries in these books relevant, provides at the same time for a limit upon their evidential value (189). (*Lord Phillimore.*) DEBI RAI *v.* PAHLAD DAS. **(1924) 21 L. W. 183 = A. I. R. 1925 P. C. 38 = 86 I. C. 251 = 6 L. R. P. C. 92.**

———*Creditor's books called for by debtor—Admission of books* in toto *in case of—Necessity.*

The suit was on a debt bond which recited that a portion of the amount for which it was executed was an old debt, and that the other portion was a new debt contracted at the time of the bond. The defendant, who denied that the latter amount was advanced at the time of the bond, called for the plaintiff's books of account. When produced, those books showed the whole transaction between the parties, and that the new debt was advanced at the time of the bond.

The Sub-Judge allowed the items proved by the account books, wherever they were corroborated, but disallowed them where they were not. The High Court, on the other hand, held that the books must be admitted *in toto*.

Held, that the High Court were entirely right (146).

The principle on which the Sub-Judge acted would have been correct if the plaintiff had relied upon his own books as proving his debt. But he did not do so. He relied upon the bond executed by the defendant, and unless that is displaced there is no answer to the suit. The defendant sought her defence in the books of the plaintiff. She called for the books and extracted her defence out of them, and it would be a monstrous thing if the party were allowed to call for the books of the plaintiff, and extract from them just such items as proved matters of defence on her part, and were not to allow those items which make in favour of the plaintiff (146). (*Lord Hobhouse.*) MUSSAMAT RAJESWARI KUAR *v.* RAI BALKRISHAN. **(1887) 14 I. A. 142 = 9 A. 713 (718-9) = 5 Sar. 80.**

———Debt—Evidence of—Accounts books of creditor not *per se* sufficient. *See* DEBT—EVIDENCE OF—CREDITOR'S ACCOUNT BOOKS NOT BY THEMSELVES SUFFICIENT.

EVIDENCE ACT (I OF 1872), S. 34—(*Contd.*)

———Debt—Payment of—Evidence of—Debtor's account books not *per se* sufficient. *See* DEBT—PAYMENT OF—EVIDENCE OF. **(1875) 23 W. R. 390.**

———Plaintiff's books called for by defendant—Admission of books *in toto* in case of—Necessity. *See* EVIDENCE ACT—S. 34—CREDITOR'S BOOKS CALLED FOR BY DEBTOR. **(1887) 14 I. A. 142 (146) = 9 A. 713 (718-9).**

———**S. 35**—Court of Wards—Manager of—Report of, stating lady to be wife of ward and recommending allowance to her—Value of, on issue as to her marriage with ward. *See* MAHOMEADAN LAW—MARRIAGE—EVIDENCE—COURT OF WARDS ETC. **(1844) 3 M. I. A. 295 (320-1).**

———Impartible Estate. Holder deceased of—Relationship of plaintiff to—Status of family of plaintiff and of deceased—Evidence—Return made by a former holder to Collector of District pursuant to requisition by Government—Authenticated copy of—Admissibility. *See* HINDU LAW—IMPARTIBLE ESTATE—POLLIEM—POLIGAR—RELATIONSHIP TO DECEASED. **(1861) 9 M. I. A. 66 (91-2).**

———Impartible or partible estate—Evidence—Official reports—Admissibility and value of—Facts stated therein—Opinious stated therein—Historical narrative given in—Distinction. *See* HINDU LAW—IMPARTIBLE OR PARTIBLE ESTATE—EVIDENCE—OFFICIAL REPORTS. **(1927) 55 I. A. 45 = 55 C. 403.**

———Inheritance—Custom of—Kanungoes—Declarations of—Village records—Entries made in, by officer charged with that duty—Admissibility of—Value of, *See* HINDU LAW—INHERITANCE—CUSTOM OF—EVIDENCE—KANUNGOES. **(1909) 36 I. A. 125 = 31 A. 457 (474-5).**

———Inheritance—Custom of—Statement as to, in Wajib-ul-arz made under Reg. VII of 1822—Admissibility—Opinion or finding of Settlement Officer not appearing on face of record *See* WAJIB-UL-ARZ—INHERITANCE—CUSTOM OF—STATEMENT AS TO. **(1879) 7 I. A. 63 (70-1) = 5 C. 744 (753-4).**

———Mad. Reg. VII of 1817—Ss. 10 and 11—Collector's reports under—Authority of—Value of. *See* MADRAS ENDOWMENTS AND ESCHEATS REG. VII OF 1817—SS. 10 and 11—COLLECTOR'S REPORTS UNDER. **(1874) 1 I. A. 209 (238-9).**

———Mahomedan Law—Dower—Amount of, fixed at marriage—Evidence—Kazi present at marriage—Register kept by, containing entry as to amount. *See* MAHOMEDAN LAW—DOWER—AMOUNT OF EVIDENCE. **(1921) 25 C. W. N. 866 (872-3).**

———*Official document—Part of, in excess of official duty—Admissibility of.*

It may be possible that in the case of an official document within the meaning of S. 35 of the Evidence Act, if it could be shown that any particular part of it was in excess of the official duty by reason of which it came into existence, that part might not be admissible in evidence. (*Lord Parker.*) RAJ KISHORE DEO *v.* BANI MAHTO.
(1917) 22 C. W. N. 439 = 47 I. C. 1 = 23 M. L. T. 382 = 20 Bom. L. R. 712 = 28 C. L. J. 1 = (1918) M. W. N. 305 = 12 Bur. L. T. 88.

———*Official document—Register of Minhaidari Villages if an—Admissibility in evidence.*

The question was as to the nature of the respondents' holding. The document under which their predecessors in title originally held, and which created the holding, was admittedly lost, and the only question was whether a certain register of Minhaidari Villages, as evidence of the contents, was or was not properly admitted in evidence. It appeared

EVIDENCE ACT (I OF 1872), S. 35—(*Contd.*)

from the document that a survey of the villages in which the suit property was situated was made and that a number of particulars were recorded regarding the villages and the tenants. It further appeared that one of the objects for which the inquiry was conducted by the Revenue Officer was to record the tenancies and the particulars of the tenancies.

Held, that the register was an official document, and was admissible in evidence under S. 35 of the Evidence Act. (*Lord Parker*). RAJ KISHORE DEO *v.* BANI MAHTO.
(1917) 22 C. W. N. 439 = 47 I. C. 1 = 23 M. L. T. 382 = 20 Bom. L. R. 712 = 28 C. L. J. 1 = (1918) M. W. N. 305 = 12 Bur. L. T. 88.

———Official reports—Admissibility and value of—Facts stated therein—Opinions stated therein—Historical narrative given in—Distinction. *See* HINDU LAW—IMPARTIBLE OR PARTIBLE ESTATE — EVIDENCE — OFFICIAL REPORTS. **(1927) 55 I. A. 45 = 55 C. 403.**

———*Revenue records—Entry of family in, as Khayyat Mohal—Weight due to—Proof of correctness of entry—Necessity.*

The appellate Court found that in the Revenue Records, the plaintiffs' family had been shown, since 1852, as holding land, their caste being described as Khayyat Mohal—and there were, in evidence, extracts from the settlement records of the district in question for 1853, in which the grand-uncle and grandfather of the plaintiff were put down, as owners of 25 ghumaons of land, in the village of *S*, their quaum being mentioned in khayyat (Mahomedan) and *got* as Mohal. Similar entries were to be found, in relation to the Settlement of 1882. It was admitted by the appellate Court that if those records truly described the plaintiffs' family as Mohals, it would prove the plaintiffs' right in the action; but they attempted to dispose of that evidence, by saying "there is no proof that whoever first caused this entry to be made had any real title to the use of the term Mohal."

Held, that evidence of that character, taken from public records, for a series of years since 1852 and recorded in accordance with the requirements of the law, could not in a pedigree case be disregarded for the reason stated by the appellate Court (302-3).

No evidence is given and no suggestion is made that such entries were false, or that there was any existing reason, why deliberately false entries should have been made. In such a case as the present, statements in public documents are receivable to prove the facts stated on the general grounds that they were made by the authorised agents of the public, in the course of official duty and respecting facts, which were of public interest, or required to be recorded, for the benefit of the community. In many cases, indeed, in nearly all cases, after a lapse of years, it would be impossible to give evidence that the statements contained in such documents were in fact true, and it is for this reason that such an exception is made to the rule of hearsay evidence (303). (*Lord Carson.*) GHULAM RASULKHAN *v.* SECRETARY OF STATE FOR INDIA. **(1925) 22 L. W. 299 = 86 I. C. 654 = 23 A. L. J. 639 = 30 C. W. N. 101 = 26 P. L. R. 390 = 6 L. 269.**

———**S. 36**—Survey Map. *See* SURVEY MAP.

———**S. 43**—Judgment not *inter partes*—Admissibility in evidence of. *See* JUDGMENT—JUDGMENT NOT *inter partes*.

———**S. 45**—Age—Doctor's certificate as to—Admissibility. *See* EVIDENCE—AGE—DOCTOR'S CERTIFICATE AS TO. **(1916) 43 I. A. 256 (260).**

———**S. 48**—Inheritance—Custom of—Statement as to, in Wajib-ul-arz made under Regulation VII of 1822—Admissi-

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bility--Opinion or finding of Settlement Officer not appearing on face of record. *See* WAJIB-UL-ARZ—INHERITANCE —CUSTOM OF—STATEMENT AS TO.

(1879) 7 I. A. 63 (70-1) = 5 C. 744 (753-4).

——**S. 48, Expl.**—*Considerable class of persons—Bhale Sultan Clan of Sultanpur if a—Origin of Clan.*

The Bhale Sultan Clan appear to have derived their name, some three centuries ago, from their warlike exploits in the service of the Emperors of Delhi. They are now settled in considerable numbers in the district of Sultanpur in Oudh, in several villages, in which they constitute the bulk of the population. In the language of the Evidence Act, S. 48, they form a "considerable class of persons." (*Sir Andrew Scoble.*) BAJRANGI SINGH *v.* MANOKARNIKA BAKSH SINGH. (1907) 35 I. A. 1 (9) = 30 A. 1 (14-5) = 12 C.W. N. 74 = 9 Bom. L. R. 1348 = 6 C. L. J. 766 = 3 M. L. T. 1 = 5 A. L. J. 1 = 11 O. C. 78 = 17 M. L. J. 605.

——**Ss. 49 and 32**—*Family custom ancient—Evidence—Deceased members of family—Statements of—Evidence of—Admissibility.*

In a case in which the question was whether adoption was prohibited by the custom of the family to which the plaintiff belonged, the High Court put out of their consideration, on the ground that it was hearsay evidence, all the statements as to custom made by deceased members of the family to which the witnesses deposed. They referred to S. 32 of the Evidence Act, but not to S. 49.

Held, that the latter section was applicable, and that where an ancient family usage was to be proved the statements of deceased members of the family were relevant facts (86). (*Sir Richard Couch.*) FANINDRA DEB RAIKAT *v.* RAJESWAR DASS. (1885) 12 I. A. 72 = 11 C. 463 (481) = 4 Sar. 610.

——**Ss. 49, 60 and 32 (5)**—Family custom—Opinion of living witness as to—Admissibility—Conditions. *See* EVIDENCE ACT, S. 32 (5) AND SS. 49, 60.

(1900) 27 I. A. 238 (251-2) = 23 A. 37 (52).

——**S. 57, Cl. (15)**—*Dominion of British Crown—Territories under—Judicial notice of.*

Semble.—That the province of Oudh was not, when first annexed to British India, or at any subsequent specified date, annexed to the Presidency of Fort William, is one of those historical facts of which the Courts in India are bound, under the Evidence Act, 1872, to take judicial notice (124). (*Sir James Colvile.*) DORAB ALLY KHAN *v.* ABDOOL AZEEZ. (1878) 5 I. A. 116 = 3 C. 806 (811) = 2 C. L. R. 529 = 3 Suth. 520 = 3 Sar. 818.

——**Ss. 60, 49 and 32 (5)**—Family custom—Opinion of living witness as to—Admissibility—Conditions. *See* EVIDENCE ACT, SS. 32 (5) AND 49, 60.

(1900) 27 I. A. 238 (251-2) = 23 A. 37 (52).

——**S. 63**—Secondary evidence. *See* EVIDENCE—DOCUMENT—SECONDARY EVIDENCE OF CONTENTS OF.

——**S. 63 (5)**—Oral evidence of contents of a person who had not himself read document but who had merely heard it read out by others—Admissibility of. *See* EVIDENCE—DOCUMENT—SECONDARY EVIDENCE OF CONTENTS OF —ORAL EVIDENCE OF CONTENTS OF PERSON, ETC.

(1926) 54 I. A. 61 (64-5) = 5 Rang. 18.

——**S. 65**—Secondary evidence. *See* EVIDENCE—DOCUMENT—SECONDARY EVIDENCE OF CONTENTS OF.

——**S. 65 (e)**—Public document—Authenticated copy of —Admissibility of. *See* EVIDENCE — DOCUMENT — SECONDARY EVIDENCE OF CONTENTS OF — PUBLIC DOCUMENT—AUTHENTICATED COPY OF.

(1861) 9 M. I. A. 66 (90).

EVIDENCE ACT (I OF 1872)—(*Contd.*)

——**Ss. 65, 66 and 86**—Foreign judicial record—Proof of —Uncertified copy—Official of that Court—Evidence of, as to what took place before him and of uncertified copy--Admissibility. *See* EVIDENCE ACT, SS. 86, 65, 66.

(1897) 27 I. A. 1 (7-9) = 27 C. 639 (647-9).

——**S. 70**—*Mortgage deed not duly attested—Admission of execution of—Validity of deed in case of.*

The words of S. 70 of the Evidence Act apply only to a document duly attested.

Where the Court below held that a mortgage deed, which had not been duly attested, was good as against the executant, a purdanashin lady, because she admitted that she had signed it, *held*, reversing the Court below, that the mortgage deed was void as not being duly executed and attested (366). (*Lord Darling.*) HIRA BIBI *v.* RAM HARI LAL.

(1925) 52 I. A. 362 = 5 P. 58 = 23 A. L. J. 815 = 2 O. W. N. 641 = 6 P. L. T. 575 = 27 Bom. L. R. 1144 = 42 C. L. J. 148 = 22 L. W. 373 = 1925 M. W. N. 728 = 3 P. L. R. 296 = 30 C. W. N. 364 = 89 I.C. 659 = A. I. R. 1925 P. C. 203 = 49 M. L. J. 240.

——**S. 73**—*Document written to dictation before Court by person whose handwriting is in question—Value of, for purposes of comparison of signature.*

The question was whether the suit hoondies were really drawn by the defendant or were forgeries, as pleaded by him.

Before the Sub-Judge no comparison of undoubted handwriting with the disputed handwriting was made. What was done was this: The judge made an officer of the Court read out one of the hoondies while the defendant sat in Court and wrote it from dictation; he then referred the documents to two pleaders for comparison; they reported that the papers were not in one and the same hand; the judge agreed with them, and so decided against the genuineness of the hoondies in suit.

Held, that it was obvious that such a test as that would at best be hardly adequate; and that it might be actually misleading, because the defendant would have a motive for disguising his hand (8-9). (*Lord Hobhouse.*) TEWARI JASWANT SINGH *v.* LALA SHEO NARAIN.

(1893) 21 I.A. 6 = 16 A. 157 (161) = 6 Sar. 404.

S. 74—Public document.

——Authority to adopt not a. (*Sir Barnes Peacock.*) KRISHNA KISHORI CHOWDHRANI *v.* KISHORI LAL ROY.

(1887) 14 I. A. 71 (74-5) = 14 C. 486 (491) = 5 Sar. 13.

——*Certified copy of—Copy in custody of Courts if and when a—Admissibility of.*

The question was whether a copy of an agreement dated 4—1—1835 between two brothers, *G* and *B*, was rightly admitted in evidence. The copy was found in a box which was in the custody of the Court of Wards. It purported upon the face of it to be a copy certified by the record-keeper. It was certified by *T*, record-keeper, and it was compared by *K*, assistant, and *A* copyist; and referring to certain purwanahs (assumed to be genuine) it would appear that the agreement of which the copy was put in was one which arose in this way: Purwanahs were issued from the office of the Collector, one, being the earliest of them, of the 14th of October, 1834, in which this was stated:—"It appears from the petition of *G* that he, being displeased with his brother *B*, prays for the entry of his own name in respect of the estate"; and then further there seemed to be a report from *A*, the father of the brothers; and there followed a purwanah of the 12th of November, 1834, which ran in this way:—'I perused your report dated 13—10—1834, enclosed on the petition of *G*, purporting that you have effected an adjustment between your sons *B* and *G* in the

EVIDENCE ACT (I OF 1872),—(*Contd.*)

S. 74—Public Document—(*Contd.*)

following manner." And then the manner was related. Then again there was a further paper signed "H.L. Collector."—As *A* and *B* have carried out the Court's order, the Court has been pleased and satisfied. The papers may be deposited. And there was a further order of H. L. :— "Entered in Diary No. 72. Let it be filed with the record." So that was a document executed in pursuance of an order from the Court, and directed to be filed upon the records of the Court. It was certified by the record-keeper, and appeared to have been compared by copyists.

Held, that under the circumstances that was a document purporting to be a copy of a public record certified by the officer who had the custody of it ; and that under those circumstances it would be admissible in evidence, and should be taken notice of by the Courts in India (457-8). (*Sir Robert P. Collier.*) RANI BADAM KUNWAR *v.* COLLECTOR OF BIJNOR. **(1882) Bald. 455.**

———*Official record—Board of Revenue—Copy of letter written by Collector to Secretary of land revenue settlement division and filed with—If an official record—Official copy of that copy—Admissibility in evidence—Ss. 77 and 78 of Act.*

In 1802, two new zemindaries were carved by the Government out of the ancient zemindary of Nuzvid, of which the zemindary of Nuzvid newly constituted was granted under a sunnud, dated 8th of December, 1802, to *R*, and the other, Nidadavolu, was granted to his elder brother *V*. The question arose whether, on the proper construction of the sunnud of 8th December, 1802, the newly constituted zemindary of Nuzvid was subject to the same rule as regards impartibility and inheritance as that to which the entire ancient zemindary was subject. Their Lordships were of opinion that, in considering the effect of the sunnud, reference might be had to a letter of the then Collector of the District to the Secretary of the land revenue settlement division, dated the 25th of July, 1802, in which he submitted a plan for the division of the ancient zemindary of Nuzvid and offered an opinion as to the respective claims of *V* and of *R*, preparatory to the introduction of the permanent settlement.

Held, that the copy of the letter filed with the Board of Revenue was an official record, and that the official copy of that copy was under the circumstances admissible in evidence (49). (*Sir Barnes Peacock.*) RAJA VENKATA NARASIMHA APPA RAO BAHADUR *v.* RAJA NARAYYA APPA RAO BAHADUR. **(1879) 7 I. A. 38 = 4 Sar. 81 = 2 M. 128 (135-6) = 6 C. L. R. 152 = 3 Suth. 725.**

———Pymash accounts if and when a. *See* PYMASH ACCOUNTS—ADMISSIBILITY IN EVIDENCE.

(1881) 8 I. A. 143 (150) = 3 M. 384 (392).

———*Secondary evidence of—Certified copy — Other evidence—Admissibility.*

In the case of a document which is a public document within the meaning of S. 74 of the Evidence Act, no secondary evidence would be admissible except a certified copy (75). (*Sir Barnes Peacock.*) KRISHNA KISHORI CHOWDHRANI *v.* KISHORI LAL ROY. **(1887) 14 I.A. 71 = 14 C. 486 (491) = 5 Sar. 13.**

——**S. 76**—*Certified copy within the meaning of.*

A copy of a document is a certified copy within the meaning of S. 76 when there is in it a certificate of a public officer that it is a true copy of a document contained in the office (75). (*Sir Barnes Peacock.*) KRISHNA KISHORI CHOWDHRANI *v.* KISHORI LAL ROY.

(1887) 14 I.A. 71 = 14 C. 486 (491) = 5 Sar. 13.

——**Ss. 77 and 78**—Board of Revenue—Copy of letter written by Collector to Secretary of land revenue settlement division and filed with—Official copy of — Admissibility in evidence. *See* EVIDENCE ACT, S. 74—PUBLIC DOCUMENT—SECONDARY EVIDENCE OF, ADMISSIBLE—OFFICIAL RECORD. **(1879) 7 I. A. 38 (49) = 2 M. 128 (135-6).**

EVIDENCE ACT (I OF 1872), Ss. 77 and 78—(*Contd.*)

——**Ss. 86, 65 and 66**—*Foreign judicial record—Proof of—Uncertified copy—Official of that Court — Evidence as to what took place before him and of uncertified copy — Admissibility.*

S. 86 of the Evidence Act which says that, if a copy of a foreign judicial record purports to be certified in a given way, the Court may presume it to be genuine and accurate, does not exclude other proof.

An official in the Sikhur Court, examined as a witness, spoke of a litigation there between *R* and *C*, and said that in his presence the evidence of *C* was taken by the Judge of that Court, and that in his presence the suit was adjudicated and the order passed. He (the official in the Sikhur Court) put in a document which he swore was a copy of *C's* deposition, and was in the handwriting of one of the Court amla. It was indorsed, "copy corresponding with the original," which was in the handwriting and bore the signature of the Sheristadar of that Court.

The High Court excluded all the Sikhur proceedings on the ground that they were not proved according to the mode mentioned in S. 86 of the Evidence Act. On appeal, *held*, that the assertion of the official in the Sikhur Court that *R* sued *C*, and that *C* gave evidence before the Judge in his presence, was primary evidence of the matters ; that his proof of the Sikhur records was secondary evidence ; and that by Ss. 65 and 66 of the Evidence Act secondary evidence might be given of public documents, which the Sikhur records were, without notice to the adverse party, when, as in the case before their Lordships, the person in possesion of the document was out of the reach of or not subject to the process of the Court. (*Lord Hobhouse.*) HARANUND ROY CHETLANGIA *v.* RAM GOPAL CHETLANGIA.

(1899) 27 I. A. 1 (7-9) = 27 C. 639 (647-9) = 4 C. W. N. 429 = 2 Bom. L.R. 562 = 7 Sar. 648.

——**S. 90** — *Ancient document produced from proper custody—Authenticity of—Presumption.*

Legal presumption is in favour of the authenticity of ancient documents coming from the proper custody. (*Lord Watson.*) BHAIYA ARDAWAN SINGH *v.* UDEY PARTAB SINGH. **(1896) 23 I. A. 64 = 23 C. 838 (849) = 7 Sar. 24 = 6 M. L. J. 79.**

———*Copy (of lost deed) more than 30 years old and produced from proper custody—Signatures authenticating—Genuineness of—Presumption.*

In a case in which the construction of a grant was in question, the respondent's case was that the original grant was lost. The appellants tendered in evidence a copy thereof, which was more than 30 years old, and was produced from proper custody, and which bore an endorsement by the then predecessors of the respondents that the document was a copy of the original.

Held, that the document being over 30 years old, and having been produced from proper custody, the Court might, under S. 90 of the Evidence Act, presume the signatures authenticating the copy to be genuine. (*Lord Atkin.*) SEETHAYYA *v.* SUBRAMANIA SOMAYAJULU.

(1929) 52 M. 453 = 27 L. W. 804 = 33 C.W.N. 578 = A.I.R. 1929 P. C. 115 = 56 M. L. J. 730 (735).

———*Discretion under—P. C.'s interference with.*

Their Lordships would always be extremely slow to overrule the discretion exercised by a learned judge under S. 90 of the Evidence Act, and this is not a case in which they would be disposed to do so. (*Lord Davey.*) MUSAMMAT SHAFIQ-UN-NISA *v.* KHAN BAHADUR RAJA SHABAN

EVIDENCE ACT (I OF 1872), S. 90—(*Contd.*)

ALI KHAN. (1904) 31 I. A. 217 (219-221) = 26 A. 581 (587) = 6 Bom. L. R. 750 = 9 C.W.N. 105 = 7 O. C. 290 = 8 Sar. 674.

———*Merasee tenure—Document intended to operate as a —Genuineness of — Presumption — Possession following upon document—Proof of—Necessity.*

Where a document, which is not proved because of its great age and of there being no witnesses to prove it, is put forward as a document intended to operate as a merasee tenure, it is necessary, in order to establish its authenticity, to show that it was accompanied by possession. BISHESHUR BHUTTACHARJBE *v.* GEORGE HENRY LAMB.
(1873) 21 W. R. 22 = 4 Sar. 798 = 2 Suth. 919.

———*Proof formal of document—Insistence on—Discretion as to—Propriety.*

In the case of a document more than thirty years old and produced from proper custody, the court may, under S. 90 of the Evidence Act, presume its genuineness without proof, that is, it may either regard its genuineness as proved, unless and until it is disproved, or may call for proof of it.

Held that, in the circumstances of the case, the Courts below rightly exercised the discretion which was vested in them by S. 90 by not admitting a document to evidence without formal proof, although it was more than 30 years old, and purported to come from the proper custody. (*Lord Davey.*) MUSSUMAT SHAFIQ-UN-NISSA *v.* SHABAN ALI KHAN. (1904) 31 I. A. 217 (219-21) = 26 A. 581 (586-7) = 6 Bom. L. R. 750 = 9 C.W.N. 105 = 7 O. C. 290 = 8 Sar. 674.

———**S. 90, Explanation.** *See also* DEED—CUSTODY PROPER OF.

———*Claimant under document—Custody of—If proper custody.*

With regard to the argument as to the custody of the bond, it is sufficient to state that the bond was produced in the usual manner by the persons who claimed title under the provisions of it, and who therefore were entitled to the possession of it; so that the bond must be deemed to have come from the proper custody (86). DEVAJI GAVAJI *v.* GODABHAI GODBHAI. (1869) 2 B. L. R. 85 (P. C.) = 11 W. R. 35 = 2 Suth. 208.

———*Proper custody—What is—Proof of.*

It is said that there is no proof of these papers; they are all of a date which excludes the possibility of direct proof; but they are proved by the production itself to come from the possession of the plaintiff, and the want of formal proof that they were found in his muniment—room cannot be regarded as of any importance in a suit of this description (332). (*Lord Kingsdown.*) VENKATASWARA YETTIAPAH NAICKER *v.* ALAGOO MOOTTOO SERVAGAREN.
(1861) 8 M. I. A. 327 = 4 W. R. 73 = 1 Suth. 440 = 1 Sar. 788.

———*Title-deeds—Proper custody of.*

There is nothing to show why the owner of lands should not in Malabar as well as in England keep all documents of title (153). (*Sir Arthur Hobhouse.*) VENKATESWARA IYAN *v.* SHEKHARI VARMA. (1881) 8 I A. 143 = 3 M. 384 (395) = 4 Sar. 259.

———**S. 91**—Contract—Construction of—Evidence. *See* CONTRACT—CONSTRUCTION OF—EVIDENCE.

———*Contract—Contemporaneous verbal agreement as to terms of—Evidence of—Admissibility.*

Quære, whether evidence of a contemporaneous verbal agreement as to the terms of a contract reduced to writing is admissible in evidence under S. 91 of the Evidence Act. (*Lord Davey.*) MAUNG SHWE OH *v.* MAUNG TUN GYAW. (1904) 31 I. A. 188 = 32 C. 96 (106) = 9 C. W. N. 147 = 8 Sar. 704.

EVIDENCE ACT (I OF 1872), S. 91—(*Contd.*)

———Deed — Construction of—Evidence. *See* DEED—CONSTRUCTION OF—EVIDENCE.

———Document—Secondary evidence of contents of. *See* EVIDENCE—DOCUMENT—SECONDARY EVIDENCE OF—CONTENTS OF.

———Grant—Construction of—Evidence. *See* GRANT—CONSTRUCTION OF—EVIDENCE.

———**S. 92**—*Construction—English Court of Chancery—Decisions of—Applicability.*

The cases in the English Court of Chancery which were referred to by the learned Judges in the High Court (for the position that evidence dehors a document is admissible to prove the intention of the parties to it) have not, in the opinion of their Lordships, any application to the law of India as laid down in the Acts of the Indian Legislature (65). (*Lord Davey.*) BALKISHEN DAS *v.* LEGGE.
(1899) 27 I. A. 58 = 22 A. 149 (159) = 4 C. W. N. 153 = 2 Bom. L. R. 523 = 7 Sar. 601.

———*Agreement completed bargain or merely provisional arrangement—Question as to—Oral evidence of what took place at the time—Admissibility.*

Whether an agreement is a completed bargain or merely a provisional arrangement depends on the intention of the parties as deducible from the language used by the parties on the occasion when the negotiations take a concrete shape (30). Oral evidence of what actually took place on the occasion when the parties entered into the agreement is inadmissible under S. 92 of the Evidence Act (28-9). (*Mr. Ameer Ali.*) HARICHAND MANCHARAM *v.* GOVIND LUXMAN GOKHALE. (1922) 50 I. A. 25 = 47 B. 335 (339-40) = 32 M. L. T. 175 = 28 C. W. N. 73 = 17 L. W. 572 = 37 C. L. J. 440 = 25 Bom. L. R. 531 = A. I. R. 1923 P. C. 47 = 71 I. C. 763 = 44 M. L. J. 608.

———Arbitration—Reference to—Court's order of—Explanation or variation of—Evidence—Subsequent facts or events—Extrinsic evidence of—Admissibility. *See* ARBITRATION—REFERENCE TO—COURT'S ORDER OF.
(1922) 31 M. L. T. 238 (245) (P.C.).

———Consideration. *See also* (1) ADMISSION—CONSIDERATION AND (2) DEED—CONSIDERATION FOR.

———*Consideration—Admission in deed of receipt of—Oral evidence to contradict—Admissibility.*

Notwithstanding an admission in a sale-deed that the consideration has been received, it is open to the vendor to prove that no consideration has been actually paid. S. 92 of the Evidence Act does not say that no statement of fact in a written instrument may be contradicted by oral evidence, but that the terms of the contract may not be varied. It is competent to the vendor without infringing any provision of the Act to prove a collateral agreement that the purchase-money should remain in the vendee's hands for certain purposes (97). (*Lord Davey.*) SAH LAL CHAND *v.* INDARJIT. (1900) 27 I. A. 93 = 22 A. 370 (375-6) = 4 C. W. N. 485 = 2 Bom L. R. 553 = 7 Sar. 702.

———*Consideration admitted in deed to have been received —Variation of—Evidence for purpose of—Admissibility.*

It is open to a mortgagor to deny that the money, the receipt of which is formally acknowledged under his hand and seal, was advanced, and to cut it down to a nominal sum or nothing (559). (*Lord Justice James.*) RAM SURUN SINGH *v.* MUSSAMAT PRAN PEARY.
(1870) 13 M. I. A. 551 = 15 W. R. (P. C.) 14 = 2 Suth. 386 = 2 Sar. 620.

———Contract—Construction of—Evidence. *See* CONTRACT—CONSTRUCTION OF—EVIDENCE.

———Deed—Construction of—Evidence. *See* under DEED—CONSTRUCTION OF—EVIDENCE.

EVIDENCE ACT (I OF 1872), S. 92—(*Contd.*)

———*Deed—Nature real of transaction embodied in—Intention of parties—Acts and conduct of parties—Evidence of—Admissibility.*

Under S. 92 of the Evidence Act, oral evidence is not admissible for the purpose of ascertaining the intention of parties to written documents, and the cases in the English Court of Chancery of which *Lincoln* v. *Wright* may be taken as the type have not any application to the law of India as laid down in the Acts of the Indian Legislature. Whenever therefore a question arises as to the nature of a transaction embodied in a document or documents, the case must be decided on a consideration of the contents of the documents themselves with such extrinsic evidence of surrounding circumstances as may be required to show in what manner the language of the document is related to existing facts. Evidence relating to the acts and conduct of the parties as distinguished from oral evidence and conversations constituting in themselves some agreement between them is equally inadmissible in such cases. (*Lord Shaw.*) MAUNG KYIN *v.* MA SHWE LA. **(1917) 44 I. A. 236 = 45 C. 320 = 6 L. W. 777 = 22 C. W. N. 257 = (1918) M. W. N. 300 = 20 Bom. L. R. 278 = 27 C. L. J. 175 = 23 M. L. T. 36 = 3 Pat. L. W. 185 = 15 A. L. J. 825 = 9 L. B. R. 114 = 42 I. C. 642 = 33 M. L. J. 648.**

———*Deed—Person not party to, or representative of party to—Rights of—Evidence as to—Admissibility.*

The language of S. 92 in terms applies and applies alone "as between the parties to an instrument or their representatives in interest." Whenever accordingly evidence is tendered as to a transaction with a third party, it is not governed by the section or by the rule of evidence which it contains, and in such a case accordingly the ordinary rules of equity and good conscience come into play unhampered by the statutory restrictions. (*Lord Shaw.*) MAUNG KYIN *v.* MA SHWE LA. **(1917) 44 I. A. 236 = 45 C. 320 = 6 L. W. 777 = 22 C. W. N. 257 = (1918) M. W. N. 300 = 20 Bom. L. R. 278 = 27 C. L. J. 175 = 23 M. L. T. 36 = 3 P. L. W. 185 = 15 A. L. J. 825 = 9 L. B. R. 114 = 42 I. C. 642 = 33 M. L. J. 648.**

———Deed—Property conveyed by—Identification of—Antecedent documents and maps—Admissibility of. *See* EVIDENCE ACT, S. 96—SETTLEMENT DEED.
(1925) 48 M. L. J. 611 (614).

———Deed—Terms of—Contradiction or variation of—Antecedent documents and maps—Admissibility of. *See* EVIDENCE ACT, S. 96—SETTLEMENT DEED.
(1925) 48 M. L. J. 611 (614).

———*Deed—Terms of—Contradiction or variation of—Evidence for purpose of—Admissibility—Rule—Exception—Real nature of transaction—Evidence to show—Admissibility.*

The rules of evidence and the law of estoppel forbid any addition to, or variation from, deeds or written contracts. The law, however, furnishes exceptions to its own salutory protection; one of which is, when one party, for the advancement of justice, is permitted to remove the blind which hides the real transaction; as, for instance, in cases of fraud, illegality, and redemption, in such cases the maxim applies, that a man cannot both affirm and disaffirm the same transaction, show its true nature for his own relief, and insist on its apparent character to prejudice his adversary (185-6). (*Lord Chelmsford.*) SHAH MUKHUN LALL *v.* BABOO SREE KISHEN SINGH. **(1868) 12 M. I. A. 157 = 11 W. R. (P. C.) 19 = 2 B. L. R. (P. C.) 44 = 2 Suth. 190 = 2 Sar. 403.**

———*Deed—Terms of—Contradiction or variation of—Oral evidence for purpose of—Admissibility.*

In the case of wager contracts upon the price that Patna opium would fetch at the next Government sale at Calcutta, *Quaere*, whether the additional qualification, that the first Government sale should be a sale subject to the same conditions as were then imposed, could be imported into the contract by parol (125). (*Mr. Baron Parke.*) DOOLUBDASS PETTAMBERDASS *v.* RAMLOLL THACKOORSEYDOSS. **(1850) 5 M. I. A. 109 = 7 Moo. P. C. 239 = Perry, O. C. 232 = 1 Sar. 403.**

———*Deed—Terms of—Contradiction or variation of—Preliminary negotiations—Previous conversations—Reference to—Permissibility.*

It is no more permissible in India than it is in this country to contradict or vary the express and unambiguous terms of a written instrument by reference to preliminary negotiations or previous conversations. The Evidence Act is clear on the point. (*Lord Macnaghten.*) ABDULLAH KHAN *v.* BASHARAT HUSAIN. **(1912) 40 I. A. 31 = 35 A. 48 (55) = 13 M. L. T. 182 = (1913) M. W. N. 131 = 17 C. W. N. 233 = 17 C. L. J. 312 = 15 Bom. L. R. 432 = 17 I. C. 737 = 25 M. L. J. 91.**

———Where a mortgagor contended that the real intention of the parties as to their rights under the mortgage deed were to be gathered, not from the mortgage deed, but from negotiations and conversations alleged to have taken place before the mortgage was executed, *held*, that reference to such negotiations and conversations for the purpose of contradicting or varying the terms of the written deed was prohibited by the Evidence Act. (*Lord Macnaghten.*, ABDULLAH KHAN *v.* BASHARAT HUSAIN.
(1912) 40 I. A. 31 = 35 A. 48 (55) = 13 M. L. T. 182 = (1913) M. W. N. 131 = 17 C. W. N. 233 = 17 C. L. J. 312 = 15 Bom. L. R. 432 = 17 I. C. 737 = 25 M. L. J. 91.

———Grant—Construction of—Evidence. *See* GRANT—CONSTRUCTION OF—EVIDENCE.

———Lease deed registered—Agreement unregistered between lessor and lessee collateral to—Admissibility. *See* LEASE—AGREEMENT BETWEEN LESSOR AND LESSEE, ETC. **(1902) 29 I. A. 138 (145-6) = 25 M. 603 (611).**

———Mortgage by conditional sale—Sale with covenant for re-purchase—Issue as to—Evidence admissible on. *See* for all cases under DEED—CONSTRUCTION OF—MORTGAGE BY CONDITIONAL SALE.

———*Promissory note—Liability under—Ceasing of, on a certain date—Oral agreement as to—Admissibility in evidence of.*

Where in a suit upon a promissory note, the defendant admits execution of the note, but pleads a verbal agreement between the parties by which his liability on the note was to cease on a particular date, the averment will be one of a verbal contract contradicting the written contract, and will be inadmissible under S. 92 of the Evidence Act (107). (*Lord Shaw.*) MOTABHOY MULLA ESSABHOY *v.* MULJI HARIDAS. **(1915) 42 I. A. 103 = 39 B. 399 (407) = 17 M. L. T. 402 = (1915) M. W. N. 522 = 19 C. W. N. 713 = 21 C. L. J. 507 = 17 Bom. L. R. 460 = 2 L. W. 524 = 13 A. L. J. 529 = 29 I. C. 223 = 28 M. L. J. 589.**

———*Sale-deed—Evidence that it should operate merely as a gift deed—Admissibility of.*

In this case, the High Court held that S. 92 of the Evidence Act precluded oral evidence from being given for the purpose of showing that a deed of sale was in reality intended by the executant to be a deed of gift. They observed:—"The question before us is not one, in regard to the admissibility of evidence to show that a recital of fact in a conveyance or contract is erroneous, but of evidence to vary a deed the language of which is plain and unambigous."

EVIDENCE ACT (I OF 1872), S. 92—(*Contd.*)

On appeal their Lordships held that the judgment of the High Court could not be sustained. (*Lord Macnaghten.*) HANIF-UN-NISA *v.* FAIZ-UN-NISA. **(1911) 38 I. A. 85 = 33 A. 340 = (1911) 2 M. W. N. 370 = 15 C. W. N. 521 = 13 C. L. J. 510 = 8 A. L. J. 373 = 13 Bom. L. R. 391 = 10 M. L. T. 23 = 11 I. C. 398 = 21 M. L. J. 1126.**

———*Sale-deed—Evidence that to knowledge of vendee property sold belonged to a third party, that vendor was only mortgagee thereof, and that sale was intended to operate only as transfer of that mortgage—Admissibility—Proviso—Effect.*

Equity forbids a person to deal with an estate which he knows that he holds in security as if he held it in property. Where, therefore, *A* purported to make an absolute conveyance in favour of *B* of property which really belonged to *C* and in which he had only the interest of a mortgagee under a mortgage created by *C*, *held*, in a suit for possession of the property by *B*, evidence was admissible to show that, to the knowledge of *B*, *C* was the real owner of the property and *A* had only a mortgage thereof from *C*, and that the deed of conveyance was intended to operate only as a transfer of that mortgage.

If S. 92 of the Evidence Act applied, proviso 1 would seem to be in point, because it would be a fraud to insist upon a claim to property arising under such a transaction, the claimant knowing that the true owner had never parted with it. But S. 92 does not apply, because the evidence, the admissibility of which is in question, is evidence going to show what were the rights of a third person, namely, *C* in the property. If a purchaser for onerous consideration and without notice had been the grantee under a deed of absolute conveyance, a totally different set of considerations would have arisen. In the present case, however, both grantor and grantee were dealing with the property of an owner who was a third person, who was not in the language of the statute either a party to the instrument or a representative in interest of a party to the instrument. The evidence led as to that third party's rights is admissible, and, if admissible, is most relevant. (*Lord Shaw.*) MAUNG KYIN *v.* MA SHWE LA. **(1917) 44 I. A. 236 = 45 C. 320 = 6 L. W. 777 = 22 C. W N. 257 = (1918) M. W. N. 300 = 20 Bom. L. R. 278 = 27 C. L. J. 175 = 23 M. L. T. 36 = 3 Pat. L. W. 185 = 15 A. L. J. 825 = 9 L. B. R. 114 = 42 I. C. 642 = 33 M. L J. 648.**

———*Sale-deed—Fraudulent dealing by, with property of third person—Vendee's knowledge of—Evidence of—Admissibility.*

S. 92 of the Evidence Act is applicable to an instrument "as between the parties to any such instrument or their representatives in interest; but it does not prevent proof of a fraudulent dealing with a third person's property, or proof of notice that the property purporting to be absolutely conveyed in fact belonged to a third person who was not a party to the conveyance" (153-4). (*Lord Robson.*) MAUNG KYIN *v.* MA SHWE LA. **(1911) 38 I. A. 146 = 38 C. 892 (904-5) = 15 C. W. N. 958 = 10 M. L. T. 103 = (1911) 2 M. W. N. 30 = 14 C. L. J. 276 = 13 Bom. L. R. 797 = 8 A. L. J. 1184 = 4 Bur. L.T. 273 = 12 I. C. 39 = 21 M. L. J. 1105.**

———*Sale-deed—Intention that it should operate only as transfer of mortgage—Evidence of—Admissibility.*

The action was brought to recover possession of certain parcels of land. The respondents (plaintiffs) claimed under certain deeds which purported to be absolute conveyances, but which the appellants (defendants) contended were meant to be, and had always in fact been, treated by all the parties concerned as mortgages only. The appellants' case was that the respondents knew that the property belonged to a third person, and that they (appellants) were merely mortgagees thereof, so that the deeds under which the respondents claimed were in truth mere transfers of mortgages, and not absolute conveyances.

EVIDENCE ACT (I OF 1872), S. 92—(*Contd.*)

In support of their case, the appellants tendered evidence relating to the acts and conduct of the parties as distinguished from evidence of oral statements and conversations constituting in themselves some agreement between them. Its object was to show that whatever the terms of the documents might be, none of the parties had acted on them as effecting an absolute sale, but that through a long course of mutual dealings materially affecting their respective positions they had always treated the business between them as one of loan secured by mortgage (153).

The evidence tendered by the appellants was excluded by the Courts below under S. 92 of the Evidence Act.

On appeal, their Lordships, without expressing any opinion on the construction or application of S. 92 of the Evidence Act in relation to the deeds in question, *held* that the rejected evidence should be heard, subject to any objections the respondents might be advised to take (154).

The case for the appellants disclosed a charge of fraud against the respondents in relation to matters antecedent to the deeds in question, on which much of the evidence tendered would certainly be material. Thus it is said that the respondents took absolute conveyances of property from the appellants with notice that they in fact belonged to a third person, namely, the alleged mortgagor to the appellants. If this be so, S. 92, even if construed according to the respondents' contention, will not avail them (153). The evidence of the third person, the alleged mortgagor to the appellants, is of course material and necessary on this point (154). (*Lord Robson.*) MAUNG KYIN *v.* MA SHWE LA. **(1911) 38 I.A. 146 = 38 C. 892 (904-5) = 15 C.W.N. 958 = 10 M.L.T. 103 = (1911) 2 M. W. N. 30 = 14 C. L. J. 276 = 13 Bom. L. R. 797 = 8 A.L.J. 1184 = 4 Bur. L.T. 273 = 12 I.C. 39 = 21 M.L.J. 1105.**

———Sale-deed—Purchasers under— Joint tenancy between—Severance of—Course of dealing leading to inference of—Parol evidence of—Admissibility. *See* STRAITS SETTLEMENTS EVIDENCE ORDINANCE, S. 92.

(1928) 56 I.A. 112 (115-6) = 56 M. L. J. 643.

———**S. 92, Proviso 2**—*Interest—Compound interest—Implied contract for—What amounts to—Evidence of—Admissibility.*

The fact that *A* had not objected to a charge of compound interest in accounts which for several years he had annually received from *B* affords sufficient evidence of a promise by him to pay interest in that manner (23).

The defendants, under the name of D.J. & Co., carried on business, their bankers were the plaintiff bank, and the suit was brought (in 1915) by the bank to recover from the defendants a balance due by them to the bank and interest on that balance.

For several years, at least from 1906, the bank had allowed the defendants' firm to overdraw their account. The practice was that annually on December 1, the defendants, in the name of their firm and individually, signed a letter in a printed form addressed to and given to the bank, and in accordance with those letters the bank allowed the defendants' firm to overdraw their account.

The bank invariably struck a balance of its customer's accounts on the last day of each month, and charged interest on the amount of that balance. The interest so charged was added to the monthly balance, and the resultant balance, which included the interest, was carried forward to the debit of the customer as the balance due on the 1st of the following month. The pass-book of the defendants with the bank showed clearly that that was the

EVIDENCE ACT (I OF 1872), S. 92, Prov. 2—(*Contd.*)

way in which interest was computed and charged in their account with the bank. The defendants never, until August 1, 1914, raised any objection to that principle of charging them compound interest or to compound interest being charged by the bank on their overdrafts.

Held, that the defendants must be deemed to have impliedly agreed to pay compound interest with monthly rests, and that S. 92 of the Evidence Act did not prevent the bank from proving that agreement (23). (*Sir John Edge.*) HARIDAS RANCHORDAS *v.* MERCANTILE BANK OF INDIA, LTD. **(1919) 47 I.A. 17 = 44 B. 474 = 27 M.L.T. 255 = 12 L.W. 356 = (1920) M.W.N. 312 = 18 A.L.J. 359 = 22 Bom. L.R. 545 = 55 I.C. 522 = 38 M.L.J. 387.**

———*Pro-note—Liability under—Satisfaction of—Oral agreement as to—Admissibility in evidence of—Proof of—Onus—Quantum.*

Under Proviso 2 to S. 92 of the Evidence Act, the maker of a promissory note may, in a suit upon the note, set up a separate oral agreement as to any matter on which the document is silent and which is not inconsistent with its terms. Such oral agreement must be clearly proved, and the onus of doing so lies on the party setting it up. He must substantively prove such agreement (108).

M, the plaintiff-respondent, sued the defendant-appellant on a promissory note given jointly by the defendant and one *H* for Rs. 50,000. Before July, 1907, *M* had made advances to *H* amounting in all to 4 lakhs of rupees. The advances were partially but not wholly covered by security. In July, 1907, *H* applied for a further advance of a lakh and a half in order to pay off the defendant a debt of that amount due to him. *M* agreed to make the loan in three equal instalments. Two of these instalments were paid and the money handed on by *H* to the defendant, and the third instalment fell to be paid on January 30, 1908. At the end of December, 1907, the defendant was in want of money. He accordingly applied to *H* to ask if the balance of the debt, namely, Rs. 50,000, could be paid immediately. *H* then approached *M*, who consented to prepay his instalment on the ensuing January 30 on being given a joint promissory note by *H* and the defendant. The suit note was accordingly executed by the defendant and *H* on December 23, 1907, and the money was handed to the defendant.

In defence to the suit, the defendant alleged that at the time the suit note was made it was orally agreed between the parties that upon January 30, 1908, the Rs. 50,000 agreed by *M* to be advanced to *H* should be held as made by the money paid under the note, and that the liability upon the note should be satisfied by a fresh note to be given to *M* by *H*.

Held, that the oral agreement pleaded was one in terms of proviso 2 to S. 92, and that it was accordingly admissible in evidence (107-8). (*Lord Dunedin.*) MOTABHOY MULLA ESSABHOY *v.* MULJI HARIDAS.

(1915) 42 I.A. 103 = 39 B. 399 (407-8) = 17 M.L.T. 402 = (1915) M.W.N. 522 = 19 C.W.N. 713 = 21 C.L.J. 507 = 17 Bom. L.R. 460 = 2 L.W. 524 = 13 A.L.J. 529 = 29 I.C. 223 = 28 M.L.J. 589.

———**S. 95**—*Sale-deed—Area conveyed under—Conflict as to, between body and schedule of deed—Extrinsic evidence to explain—Admissibility.*

In a suit to enforce specific performance of a contract for the sale of immoveable property, the question was whether the contract was on the basis of area per square yard. The statements as to the circumstances leading up to the execution of the agreement were conflicting and there was considerable difficulty in reconciling the different

EVIDENCE ACT (I OF 1872), S. 95—(*Contd.*)

statements in the agreement itself regarding the property sold. The trial judge therefore admitted extrinsic evidence to explain the facts.

Held, that extrinsic evidence was rightly admitted to explain the facts.

It is obvious that without such explanation it would have been impossible to reconcile the statement in the body of the agreement on which the plaintiffs rested their case, with the recital in the schedule on which the defendant relied as amounting to an assurance in respect of the area that was intended to be conveyed to him, and which he in fact purported to buy. (*Mr. Ameer Ali.*) HUSSONALLY SULLEMANJI *v.* TRIBHOWANDAS MANGALDAS NATHUBHAI. **(1920) 25 C.W.N. 385 (395) = L.R. 2 A. (P.C.) 11 = (1920) M.W.N. 726 = 61 I. C. 361 = 3 U. P. L. R. (P.C.) 1.**

———**S. 96**—*Settlement deed—Property conveyed by—Identification of—Antecedent documents and maps—Admissibility of.*

On an issue as to whether certain alluvial accretions formed part of the land in respect of which a settlement had been made, antecedent documents and maps are admissible in evidence solely for the purpose of identifying the thing demised. They are not admissible for the purpose of contradicting the terms of the settlement made. (*Lord Shaw.*) TILAKDHARI SINGH *v.* MAHARAJAH KESHO PRASAD SINGH. **(1925) 26 P. L. R. 257 = 6 Pat. L. T. 349 = 3 Pat. L. R. 114 = 41 C. L. J. 386 = 27 Bom. L. R. 819 = A. I. R. 1925 P. C. 122 = (1925) M. W. N. 403 = 88 I. C. 103 = 48 M. L. J. 611 (614).**

———**S. 106**—Ship—Loss of goods by fire—Damages for, on ground of alleged negligence—Suit for—Onus on plaintiff in—Duty imposed on shipowner by section—Effect of. *See* SHIP (SHIPPING)—LOSS OF GOODS—FIRE.

(1917) 8 L. W. 4 (7-8).

———**S. 108**—*Hindu law—Person who has travelled to foreign country and not heard of for twelve years—Presumption of death of.*

If no intelligence is received during twelve years, concerning the existence of a man who has travelled to a foreign country, the presumption of Hindu law is that he is dead (414-5). (*Sir James W. Colvile*) MUSSUMAT ANUNDEE KOONWUR *v.* KHEDOO LAL.

(1872) 14 M. I. A. 412 = 18 W.R. 69 = 2 Suth. 591 = 3 Sar. 50.

———Mahomedan law—Heir missing—Date of death of—Evidence—Award dividing inheritance among heirs—Reservation of share in, to missing heir and his children—Effect. *See* ARBITRATION—AWARD—MAHOMEDAN LAW. **(1905) 32 I.A. 177 (180) = 33 C. 173 (178-9).**

———*Mahomedan law—Inheritance—Grandson's claim to share in grandfather's property—Death of father—Date of—Presumption—Onus of proof.*

Appellant sued to recover a share in the estate of his paternal grandfather, *M*, his claim being as heir of his father *A*, who was the eldest son of *M*. *M* died in 1884, and *A* was alleged to be dead at the date of suit. The question, however, was whether *A* had survived his father, or had predeceased him.

The plaint alleged that *A* left Rangoon (the place of the parties) in or about the year 1870 as a mendicant or fakir, and had not since that date returned to Rangoon; that the plaintiff last heard of him in or about the year 1886 or 1887, when he was reported to be in Bangkok, Siam; that he had not since been heard of, and, according to the presumption of law, his death took place about 1894. The appellant would not, under the Mahomedan law, be entitled to a share unless his father survived his grandfather,

EVIDENCE ACT (I OF 1872), S. 108—(*Contd.*)

Held that, under S. 108 of the Evidence Act, the burden was on the appellant to establish that his father survived his own father *M* (179). (*Sir Andrew Scoble.*) MOOLLA CASSIM *bin* MOOLLA AHMED *v.* MOOLLA ABDUL RAHIM. **(1905) 32 I. A. 177 = 33 C. 173 (178-9) = 2 C. L. J. 236 = 10 C. W. N. 33 = 7 Bom.L.R. 892 = 2 A.L.J. 798 = 4 L. B. R. 77 = 8 Sar. 893 = 15 M. L. J. 317.**

———*Person not heard of for more than 7 years—Date of death of—Presumption.*

The question whether a suit instituted in 1916 was barred by limitation or not depended upon the date of the death of *B*. From the evidence it appeared that *B* was last heard of in 1895, and was not heard of subsequently.

Held, that on those facts there was no presumption as to *B* being dead either in 1902 or 1904, and that the only presumption was that when the suit was instituted in 1916 *B* was no longer alive (31).

There is no presumption at all as to when *B* died. That, like any other fact, is a matter of proof (31). It is constantly assumed that where the period of disappearance exceeds seven years, death, which may not be presumed at any time during the period of seven years, may be presumed to have taken place at its close. This, of course, is not so. The presumption is the same if the period exceeds seven years. The period is one and continuous, though it may be divisible into three or even four periods of seven years. Probably the true rule would be less liable to be missed, and would itself be stated more accurately, if, instead of speaking of a person who had not been heard of for seven years, it described the period of disappearance as one "of not less than seven years" (32). (*Lord Blanesburgh.*) LAL CHAND MARWARI *v.* RAMRUP GIR. **(1925) 53 I.A. 24 = 5 P. 312 = 24 A.L.J. 105 = (1926) M.W.N. 203 = 7 P. L. T. 163 = 3 O.W.N. 335 = 43 C.L.J. 249 = 28 Bom.L.R. 855 = 30 C.W.N. 721 = A. I. R. 1926 P. C. 9 = 93 I. C. 280 = 50 M. L. J. 289.**

———**S. 111**—*Mortgagee—Active confidence—Position of—Evidence.*

J, a money-lender, entered into a series of transactions with a Hindu widow, in order to assist her with funds to carry on a suit she had brought to establish her right to succeed to her husband's estate. The widow, who was successful, subsequently transferred the estate to her grandsons. The latter executed several mortgage bonds in *J's* favour, the consideration being expressed to be prior charges in *J's* favour and a fresh advance. In a suit by *J* to enforce the mortgage bonds, *held* that, whatever might be the nature of the relations between *J* and the widow while he was dealing with her in the course of her litigation, there was no sufficient evidence of any relation of active confidence between *J* and his mortgagors within the meaning of S. 111 of the Evidence Act, at the dates of the mortgage bonds, so as to throw on *J* the burden of proof of the good faith of the mortgage transactions (51). (*Sir Arthur Wilson.*) CHAUDHRI THAKUR DAS *v.* CHAUDHRI JAIRAJ SINGH. **(1903) 31 I.A. 46 = 26 A. 130 (135) = 8 C.W.N. 569 = 8 Sar. 607.**

S. 112—Presumption under—Rebuttal of, by proof of non-access.

———*Onus of.*

The appellant claimed to be the son of the deceased *U* by his wife *T*. The marriage of *U* and *T* was proved. She was married when quite a child, but she went to her husband's house and lived with him shortly before he died, 5 or 6 or 10 or 12 days before his death. *U* died from the effects of a carbuncle in his back, from which he had been suffering for sometime. The appellant was born within less than 280 days from the day of *U's* death.

EVIDENCE ACT (I OF 1872)—(*Contd.*)

S. 112—Presumption under—Rebuttal of, by proof of non-access—(*Contd.*)

Held that, under S. 112 of the Evidence Act, there was a presumption of the appellant's legitimacy, and that the onus was on the respondent of rebutting that presumption by proof of non-access of the deceased and his wife during the period when the appellant must have been begotten. (*Lord Lindley.*) NARENDRA NATH PAHARI *v.* RAM GOBIND PAHARI. **(1901) 29 I.A. 17 = 29 C. 111 (125) = 6 C. W. N. 146 = 4 Bom. L.R. 243 = 8 Sar. 186.**

———*Onus of.*

Where a widow gave birth to a child 223 days after the death of her husband, *held*, in a suit brought by his reversionary heirs for a declaration that the child was not his child, that the presumption under S. 112 of the Evidence Act, was in favour of its legitimacy, that the onus of proving that it was not legitimate was on the plaintiffs, and that the presumption was not rebutted in the absence of reliable evidence of non-access. (*Sir Andrew Scoble.*) TIRLOK NATH SHUKUL *v.* MUSAMMAT LACHHMIN KUNWARI. **(1903) 30 I.A. 152 = 25 A. 403 = 7 C. W. N. 617 = 5 Bom. L. R. 474 = 8 Sar. 481.**

———*Quantum.*

Where, in proof of non-access of the deceased and his wife, all that could be relied upon was the fact that the deceased died from the effects of a carbuncle from which he had been suffering for perhaps a fortnight, and no witness was called to say that the deceased could not have had connection with his wife at any time when she was living with him, *held*, that non-access had not been proved, and that there was no legal presumption to warrant the court in deciding that it had been. (*Lord Lindley.*) NARENDRA NATH PAHARI *v.* RAM GOBIND PAHARI. **(1901) 29 I. A. 17 = 29 C. 111 (125) = 6 C. W. N. 146 = 4 Bom. L. R. 243 = 8 Sar. 186.**

———**S. 113**—*Cession of British territory to Native State—Notification in Gazette as to—Effect—Legality of cession—Inquiry into—Permissibility.*

The Governor-General in Council being precluded by the Act 24 & 25 Vict., c. 67, S. 22, from legislating directly as to the Sovereignty or dominion of the crown over any part of its territories in India, or as to the allegiance of British subjects, could not, by any legislative act, purporting to make a notification in a Government Gazette conclusive evidence of a cession of territory, exclude inquiry as to the nature and lawfulness of that cession (152-3). (*Lord Selbourne.*) DAMODHAR GORDHAN *v.* DEORAM KANJI. **(1876) 3 I. A. 102 = 1 A. C. 322 = 1 B. 367 (461) = 25 W. R. 261 = 3 Sar. 543.**

———**S. 114, Ills. (e) and (f)**—*Collector's office—Accounts kept in—Correctness of—Presumption.*

The Court is entitled to presume, and will presume, under S. 114, illustrations (*e*) and (*f*) of the Evidence Act that books kept in the office of the Collector are correctly kept (252-3). (*Sir John Edge.*) MAHOMED SOLAIMAN *v.* BIRENDRA CHANDRA SINGH. **(1922) 50 I. A. 247 = 50 C. 243 (250) = 32 M. L. T. 115 = 27 C. W. N. 749 = 37 C. L. J. 561 = A. I. R. 1922 P. C. 405 = 74 I. C. 906 = 44 M. L. J. 388.**

S. 114, Ill. (b)—Accomplice—Evidence of—Corroboration of—Necessity.

———By every code of evidence the testimony of a professed accomplice requires to be carefully scrutinised with anxious search for possible corroboration. (*Lord Atkin.*) MACDONALD *v.* FRED LATIMER. **(1928) 29 L. W. 155 = 112 I. C. 375 (2) = I. R. (1929) P. C. 9 = A. I. R. 1929 P. C. 15.**

———*See also* ACCOMPLICE.

———**S. 114, Ill. (d)**—Existing state of things—Presumption should be made in favour of, and not against. (*Lord*

EVIDENCE ACT (I OF 1872), S. 114, Ill. (d)—*(Contd.)*

Phillimore.) SECRETARY OF STATE FOR INDIA *v.* RAJA JYOTI PRASAD SINGH DEO BAHADUR.
(1926) 53 I. A. 100 (119) = 53 C. 533 = 30 C. W. N. 745 = 24 A. L. J. 761 = 94 I. C. 974 = A. I. R. 1926 P. C. 41.

——**S. 114, Ill. (e)**—*Execution sale—Proclamation of—Service of—Regularity of—Presumption as to.*

An execution sale of certain mouzahs was sought to be set aside on the ground that the sale proclamation was not served on all the mouzahs. It appeared that owing to a fire shortly after the sale, the official documents of the Court, including the records of the service of the sale proclamations, were destroyed.

Held, that the burden of disproving the *prima facie* presumption that official acts were rightly carried out rested with the persons who applied to set aside the sale (439-440). *(Lord Buckmaster.)* MADHU SUDAN CHOWDHRI *v.* CHANDRABATI CHOWDHRAIN. **(1917) 6 L. W. 437 = 21 C. W. N. 897 = 42 I. C. 527 = (1917) M. W. N. 518.**

——*Government official—Acts of, in discharge of official duty—Authority valid for—Existence of—Presumption as to.*

It must be presumed that for anything done by a Government official in the purported discharge of his functions some valid authority existed until the contrary is proved, especially in a matter which was repeatedly brought before Government officials and Courts of law within but a short time of the event without once having any doubt cast upon its validity (55). *(Lord Sumner.)* NARAYAN SINGH *v.* NIRANJAN CHAKRAVARTI. **(1923) 51 I. A. 37 = 3 Pat. 183 = A. I. R. 1924 P. C. 5 = 28 C. W. N. 351 = 34 M. L. T. 27 = 79 I. C. 825 = 5 Pat. L. T. 171.**

——*Judgment—Objection dealt with by—Raising of—Presumption as to.*

It ought not to be assumed that the Judge would have come to the conclusion that he had no jurisdiction to determine the question in that suit unless the objection had been raised; the assumption would be the other way (72). *(Sir Robert P. Collier.)* ABEDOONISSA KHATOON *v.* AMEEROONISSA KHATOON. **(1876) 4 I. A. 66 = 2 C. 327 (332-3) = 3 Sar. 677 = 3 Suth. 371.**

——*Official document incomplete—Correctness of parts of, which have disappeared—Presumption as to—Errors in extant parts of document—Effect.*

A document, which was in the form of a certificate of demand required to be signed by the Collector under Act VII of 1880, was, when produced from the Collector's office, in a tattered condition, and that part of the paper upon which the Collector's signature should have been written was wanting. No direct evidence was forthcoming to show that the certificate was ever signed by the Collector in compliance with the requirements of the Act; but the District Judge found, as a matter of fact, that it had been signed, applying the maxim *Omnia rite et solemniter acta*. According to the learned Judge's own shewing, however, the circumstances of the case were not very favourable to the presumption. Of one writing produced, he said: "Like everything else which has come under my cognizance from a road-cess office, it is a most slovenly document." The certificate in question he did not seem to have regarded as an exception from the general rule. He described it as drawn up " in the usual slovenly manner "; and he ascribed the error of inserting the ladies' names as debtors, after mutation in the land register, to " oversight and general slovenliness."

Held that, in the circumstances of the case, it ought not to be presumed that, as originally prepared, the document was completed by the Collector's signature (75).

When the extant parts of an incomplete writing exhibit such traces of careless preparation, their Lordships think it would be straining the maxim too far to presume that the parts which have disappeared must necessarily have been free from error (75). *(Lord Watson.)* MAHOMED ABDOOL HAI *v.* GUJRAJ SAHAI. **(1893) 20 I. A. 70 = 20 C. 826 (832) = 6 Sar. 291.**

EVIDENCE ACT (I OF 1872), S. 114, Ill. (e)—*(Contd.)*

——*Punchayat whose opinion as assessors is taken by court—Adoption by, of rules of evidence not legally permitted—Presumption against.*

Mr. Campbell seems to have entertained the belief that the Panchayat (consisting of Mahomedan gentleman whose opinion, as assessors, was taken by the trial judge) may have been proceeding on some stricter rules of evidence, under the Mahomedan law, than the procedure of the Courts at Lucknow authorised; but there is no proof that such was the case, and it cannot be presumed that any rules of the Mahomedan law of evidence, were adopted by them which they could not legally adopt. The presumption should be in support of the regularity of their course. *(Sir James Colvile.)* ASHRUFOOD DOWLAH AHMAD HOSSEIN *v.* HYDER HOSSEIN KHAN. **(1866) 11 M. I. A. 94 (106) = 7 W. R. (P. C.) 1 = 1 Suth. 659 = 2 Sar. 223 = R. & J.'s No. 5 (Oudh).**

——Wajib-ul-arz *prepared under Regulation VII of 1822—Correctness of—Presumption of.*

When documents are found to be recorded as being properly made up, and when they are found to be acted upon as authentic records, the rule of law is to presume that every thing had been rightly done in their preparation unless the contrary appears (69).

So held in the case of *wajib-ul-arz* or administration papers made under Regulation VII of 1822. *(Sir Montague Smith.)* RANI LEKRAJ KUAR *v.* BABOO MAHPAL SINGH. **(1879) 7 I. A. 63 = 5 C. 744 (752) = 6 C. L. R. 593 = 4 Sar. 94 = 3 Suth. 704 = R. & J.'s No. 61 (Oudh).**

——**S. 114, Ill. (f)**—*Letter properly addressed and posted—Receipt by addressee of—Presumption—Registered letter with acknowledgment—Presumption stronger in case of.*

If a letter properly directed is proved to have been put into the post office, it is presumed that the letter reached its destination at the proper time according to the regular course of business of the post office, and was received by the person to whom it was addressed. That presumption would appear to apply with still greater force to letters which the sender has taken the precaution to register, and is not rebutted, but strengthened, by the fact that a receipt for the letter is produced signed on behalf of the addressee by some person other than the addressee himself (231-2). *(Lord Atkinson.)* HARIHAR BANERJI *v.* RAMSASHI ROY. **(1918) 45 I. A. 222 = 46 C. 458 (482-3) = 23 C. W. N. 77 = 29 C. L. J. 117 = 9 L. W. 148 = 16 A. L. J. 969 = 25 M. L T. 159 = 21 Bom. L. R. 522 = (1919) M. W. N. 471 = 48 I. C. 277 = 35 M. L. J. 707.**

——Registered letter—Delivery to addressee of—Presumption—Acknowledgment signed on behalf of addressee by person not his authorised agent—Effect. *See* LANDLORD AND TENANT—NOTICE TO QUIT—SERVICE BY POST. **(1918) 45 I. A. 222 (230-1) = 46 C. 458 (482-3).**

S. 114 Ill. (g)—Evidence—Non-production of available—Inference adverse from.

——*Account books—Non-production of, even in spite of order for discovery.*

Where it is the business of a party to a suit to produce or account for books of account relevant to an issue, and in spite of an order for discovery made on the party, he neither produces them nor gives any evidence of diligent search and of failure to find the books, even if the fact and date of their destruction cannot be proved, the presumption arises that the contents of the books not accounted for are, as

EVIDENCE ACT (I OF 1872)—(*Contd.*)

S. 114, Ill. (g)—Evidence—Non-production of available—Inference adverse from—(*Contd.*)

regards the issue in dispute, unfavourable to that party. (*Lord Sumner.*) MOTI LAL *v.* KUNDAN LAL.
(1917) 22 M. L. T. 10 = 6 L. W. 92 = 15 A. L. J. 329 = 1 P. L. W. 490 = 19 Bom. L.R. 471 = 21 C. W. N. 929 = 25 C. L. J. 581 = 39 I. C. 964 = (1917) M. W. N. 464 = 32 M. L. J. 468 (473).

———Account books—Non-production of, by party setting up plea of payment. *See* EVIDENCE—PAYMENT—PROOF OF— ACCOUNT BOOKS. **(1865) 10 M. I. A. 386 (397-8).**

———*Documents not forming part of party's case but likely to be useful to his opponent—Non-production of.*

It is open to a litigant to refrain from producing any documents that he considers irrelevant ; if the other litigant is dissatisfied it is for him to apply for an affidavit of documents, and he can obtain inspection and production of all that appears to him in such affidavit to be relevant and proper. If he fails so to do, neither he nor the court at his suggestion is entitled to draw any inference as to the contents of any such documents. It is for the litigant who desires to rely upon the contents of documents to put them in evidence in the usual and proper way ; if he fails to do so no inference in his favour can be drawn as to the contents thereof (206-7).

In a case in which the question was whether a purchase of property by a Hindu taluqdar in the name of his Mahomedan mistress was a benami transaction or was intended to benefit her, the High Court, in deciding that the purchase was intended to benefit the mistress, attached great significance to the non-production (by the opposite party) of the books showing the accounts of the general estate, and drew an inference therefrom adverse to the party alleging that the transaction was only a benami transaction.

Held, that the inference was unwarranted (206).

These books do not necessarily form any part of the plaintiff's case ; it is of course possible that some entries might have appeared therein relating to the property purchased. There is no ground for any inference such as is made in the High Court that the books if produced would have shown rent credited to the mistress or set off against some claim against her. They related to a different property, and the possibility of entries relating to the property purchased therein is very remote, but even if it had been greater, the Court was not entitled to draw any such inferences (206-7). (*Sir George Farwell.*) BILAS KUNWAR *v.* DESRAJ RANJIT SINGH. **(1915) 42 I. A. 202 = 37 A. 557 (566) = 17 Bom. L. R. 1006 = 22 C. L. J. 516 = 13 A. L. J. 991 = (1915) M. W. N. 757 = 18 M. L. T. 248 = 2 L. W. 830 = 30 I. C. 299 = 19 C. W. N. 1207 = 29 M. L. J. 335.**

———*Letter important—Non-production of.*

When an important letter is not produced, and no explanation is given for its non-production, an inference naturally arises, either that the letter, if written, does not contain that which it is represented to contain, and therefore that it would not suit the purpose of the party to produce it, or that no such letter ever existed (15). (*Sir Montague E. Smith.*) DINOMOYI DEBI *v.* ROY LUCHMIPUT SINGH.
(1879) 7 I. A. 8 = 6 C. L. R. 101 = 4 Sar. 112 = 3 Suth. 710 = Bald. 342.

———Material particulars—Witnesses whose evidence will be conclusive upon—Non-examination of—General statements of belief on part of other witnesses—Weight due to. *See* MARRIAGE—EVIDENCE CONCLUSIVE UPON.
(1916) 43 I. A. 73 (82-3) = 43 C. 707.

———Onus of proof—Party not subject to—Undertaking by, to adduce counter-evidence—Omission to do so—Presumption from. *See* ONUS OF PROOF—PARTY NOT SUBJECT TO.
(1838) 2 M. I. A. 113 (124-5).

EVIDENCE ACT (I OF 1872)—(*Contd.*)

S. 114, Ill. (g)—Evidence—Non-production of available—Inference adverse from—(*Contd.*)

———*Party to suit — Non-production by, relying upon abstract doctrine of onus of proof on plaintiff in ejectment.*

In a suit brought against a Zemindar for the recovery of possession of some bighas of agricultural land lying within the ambit of a mauza in the defendant's zemindary, the defendant withheld the best evidence in his possession which would have clearly helped the Court in deciding the case one way or another. In the defendant's failure to produce documents presumably available and probably decisive one way or another if examined, the Judges of the High Court saw a design on the part of the defendant to take advantage of the abstract doctrine of burden of proof upon a plaintiff in ejectment.

Held, agreeing with the High Court, that the excuses made by the defendant for the non-production of the documents in his possession were unsatisfactory and unreliable, and that their non-production was due to the fear that, if produced, they would either establish the plaintiff's claim or would lead to a successful claim, albeit in another suit, which would be more serious for the defendant than that made in the suit out of which the appeal arose.

Observations of Lord Shaw in I. L R. 40 M. 402 at 408-9 referred to and applied. (*Lord Blanesburgh.*) MAHARADHIRAJ SIR RAMESWAR SINGH *v.* BAJIT LAL PATHAK.
(1929) 33 C. W. N. 430 = 27 A. L. J. 261 = 49 C. L. J. 308 = 6 O. W. N. 423 = 114 I. C. 592 = 29 L. W. 501 = A. I. R. 1929 P. C. 95 = 57 M. L. J. 565.

———*Party to suit—Stranger—Distinction.*

Third parties have no responsibility for the conduct of a suit and may therefore refrain from producing important documents in their possession or giving material information, trusting to the abstract doctrine of onus of proof. With regard to the parties to the suit, however, it is an inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the written evidence in their possession which would throw light upon the proposition. In a case in which a party to a suit refrains from producing material documents in his possession the court may presume that the documents if produced would be against him. (*Lord Shaw.*) MURUGESAM PILLAI *v.* MANIKAVASAGA PANDARA SANNIDHI. **(1917) 44 I. A. 98 (103) = 40 M. 402 (408-9) = (1917) M. W. N. 487 = 21 M. L. T. 288 = 15 A. L. J. 281 = 1 Pat. L. W. 457 = 5 L. W. 759 = 21 C. W. N. 761 = 19 Bom. L. R. 456 = 25 C. L. J. 589 = 39 I. C. 659 = 32 M. L. J. 369.**

———*Propriety—Inference to the contrary supported by adequate evidence.*

Their Lordships recognise the value of the presumption indicated in illustration (*g*) to S. 114 of the Evidence Act, and most certainly would throw no doubt on the propriety of its application where it fits the facts ; but it cannot displace a contrary inference supported by adequate evidence, and in this case there is such evidence. (*Sir Lawrence Jenkins.*) DAMISETTI RAMACHANDRUDU *v.* DAMISETTI JANAKIRAMANNA. **(1919) 13 L. W. 293 (296-7) = 63 I. C. 740.**

———Witness—Examination of—Failure — Adverse inference in appeal from—Propriety—No such point made in Court below. *See* EVIDENCE—WITNESSES—EXAMINATION OF—FAILURE—ADVERSE INFERENCE IN APPEAL FROM. **(1918) 45 I. A. 284 (287-8) = 41 A. 63 (67).**

———*Witness—Failure to examine — Inference adverse from—Propriety — Circumstances reasonably justifying belief that he may be examined by opponent—Effect.*

Where a witness, who ought, *prima facie*, to have been called by the appellant, was a relative of the respondents and had left the appellant's service some time previous to the trial, and had been summoned by the respondents, whose conduct suggested that they were going to make her their

EVIDENCE ACT (I OF 1872)—(*Contd.*)

S. 114, Ill. (g)—Evidence—Non-production of available—Inference adverse from—(*Contd.*)

witness, *held*, that it was not unnatural, therefore, that the appellant should have left the respondents to call the witness (964). (*Lord Robson.*) MUSSAMMAT DURGA KUNWAR *v.* MUSAMMAT MATHURA KUNWAR.

(1911) 10 I. C. 963 = 15 C. W. N. 717 (721) = 10 M. L. T. 216.

———*Witness not indispensable—Failure to examine—Inference from—Other evidence sufficient.*

Non-production of material evidence may advantageously be commented upon if there were *insufficient* evidence; but if the evidence on record is sufficient, it could not be said that that witness's testimony was indispensably necessary; and that witness might have been equally called by the other party. (*Dr. Lushington.*) BUNWAREE LAL *v.* MAHARAJAH HETNARAIN SINGH.

(1858) 7 M. I. A. 148 (163-4) = 4 W. R. 128 = 1 Sar. 610 = 1 Suth. 307.

———*Zemindar—Rent — Enhancement of — Suit for — Tenure on which lands held—Evidence showing—Non-production by Zemindar of.*

The respondent brought a suit against the appellants to enhance the rent of certain lands held by the appellants within the respondent's Zemindari, treating the appellants as ryots, having a right of occupancy in the lands at a variable rent. The appellants, on the other hand, contended that they were Shikmi talookdars; that they and their ancestors had become so many years before the Decennial Settlement; and that they held the talook at a fixed rent. It was found as a fact that the tenure of the appellants was a dependent talook, within the meaning of S. 51 of Regulation VIII of 1793. Their Lordships were also of opinion that the respondent had failed to show that the talook was held at a fluctuating rent; or that she was entitled to enhance the rent, which was proved to have been paid at a uniform rate for many years. The respondent rested upon the supposed defects in the appellant's proof, and abstained from giving evidence of the truth of her own case, which evidence she could, if it had been in her favour, have produced. In commenting upon that conduct of the respondent, their Lordships observed as follows:—"If the respondent's case were a true one, she would have had little difficulty in proving it. She does not come into Court as the purchaser at a sale for arrears of revenue, who rests upon a statutory title, with no documents to support it. She derives title from the Zemindar with whom the Decennial Settlement was effected; and she has presumably a right of access to all the records of the Zemindari. Her determination in such circumstances to rest upon the supposed defects in the appellants' proof, and to abstain from giving evidence of the truth of her own case, affords strong grounds for supposing that she had, in fact, no such evidence to give. If such evidence were forthcoming, and she has neglected to give it, she must take the consequences of her own miscarriage" (269). (*Sir James W. Colvile.*) BAMASOONDARY DASSYAH *v.* RADHIKA CHOWDHRAIN.

(1869) 13 M. I. A. 248 = 13 W. R (P. C.) 11 = 4 B. L. R. 8 = 2 Suth. 293 = 2 Sar. 524.

———*Zemindar— Rent of sub-tenure—Enhancement of—Suit for—Road cess returns rendered under Bengal Cess Act of* 1880*—Collection papers—Non-production by defendant of.*

In a suit for enhancement of rent under S. 7 of the Bengal Tenancy Act, 1885, the Zemindar tendered in evidence and relied upon road cess returns rendered under the Bengal Cess Act, 1880. To rebut the presumption raised by those returns, the defendants might have produced, but did not produce, their collection papers.

EVIDENCE ACT (I OF 1872)—(*Contd.*)

S. 114, Ill. (g)—Evidence—Non-production of available—Inference adverse from—(*Contd.*)

Held, that under S. 114 (g) of the Evidence Act, the non-production of the collection papers by the defendants authorised an unfavourable presumption against them (181). (*Sir Andrew Scoble.*) HEM CHUNDER CHOWDHRY *v.* KALI PROSUNNO BHADURI. **(1903) 30 I. A. 177 = 30 C. 1033 (1042-3) = 8 C. W. N. 1 = 8 Sar. 529.**

———*Zemindari — Tenure of lands within — Kabuliyat showing — Non-production by Zemindar of—Patta with tenant not produced by him—Inference in case of.*

Where the question was whether the suit property was, as contended by the defendant, the Maharaja of Chota Nagpore, a mere jagir or tenure resumable on failure of the direct male line of the holder, or, as contended by the plaintiff, an independent estate held by the ancestors of the plaintiff's mortgagor and was incorporated in the Zemindari of the Maharajah of Chota Nagpur, as a *shikmi* or defendant taluk, with its revenue payable through the Maharajah, the non-production by the defendant of the *kabuliyat* executed by the jagirdar in favour of the then Zemindar was commented upon by the plaintiff and by the trial Judge. It was said that the *kabuliyat*, if produced, would disprove the defendant's case, and that it was deliberately withheld by the defendant because it would have supported the plaintiff's contention.

Their Lordships observed there were two clear answers to that argument (152-3).

In the first place, a *kabuliyat*, predicates a patta. A patta is granted by the Zemindar as a title-deed to the tenant. The *kabuliyat*, as its name implies, is a mere acknowledgment, an engagement by the tenant to carry out the terms of the patta. If the jagirdar in question entered into a *kabuliyat* it may be inferred with certainty that there was also a patta; and that patta, as the title-deed of the grantee, would be in the hands of the grantee's heirs and successors, and would, it may safely be presumed, come into the hands of the mortgagee, the plaintiff, who derives his title from the mortgagor (152-3). (*Mr. Ameer Ali.*) SRINATH RAI *v.* PRATAP UDAI NATH SAHI DEO.

(1923) 28 C. W. N. 145 = 33 M. L. T. 408 = (1923) M. W. N. 702 = A. I. R. 1923 P. C. 217.

———**S. 114, Ill. (g)—***Party—Omission to examine himself—Inference from—England and India—Distinction.*

The non-appearance of a party in Court to support his statements may not have the same significance in India as in England. But the disinclination to appear, though it may abate or prevent suspicion of dishonesty, can in no way diminish the actual loss of evidence which is caused thereby (282-3). (*Sir Arthur Hobhouse.*) RUTTO SINGH *v.* BAJRANG SINGH. **(1883) 13 C. L. R. 280 = Bald. 475.**

———*Semble*, the presumption which would be drawn in England to the detriment of a plaintiff who, though the burden of proof rests upon him and he can examine himself as a witness, fails to enter the witness-box and face the ordeal of cross-examination, applies to cases between natives of India (4-5). (*Lord Atkinson.*) LAL KUNWAR *v.* CHIRANJI LAL. **(1909) 37 I.A. 1 = 32 A. 104 (108-9) = 7 M. L. T. 57 = 11 C. L. J. 172 = 14 C. W. N. 285 = 12 Bom. L. R. 244 = 5 I. C. 549 = 20 M. L. J. 182.**

Party—Omission to examine himself — Inference from—Facts within his knowledge.

———*See* EVIDENCE—PAYMENT — PROOF OF — ACCOUNT BOOKS. **(1865) 10 M. I. A. 386 (397-8).**

The plaintiff-respondent sued to recover possession of the property leased to him under a registered lease deed executed by the defendant-appellant in his favour. The defendant, *inter alia*, set up an agreement executed in his favour by the plaintiff to the effect that if he should fail to pay the balance of the advance made payable by the lease deed

EVIDENCE ACT (I OF 1872)—(*Contd.*)

S. 114, Ill. (g)—Party—Omission to examine himself—Inference from—Facts within his knowledge—(*Contd.*)

within 5 days, he would return the lease deed and take back the amount actually advanced. The question was as to the genuineness of the agreement set up by the defendant. A number of circumstances made the genuineness of the agreement improbable, and yet the defendant contended himself with examining a number of witnesses to prove its execution, and did not examine himself.

Held, that the failure of the defendant to examine himself was an important circumstance in considering the genuineness of the agreement (401).

All the facts were within his knowledge, and yet he did not tender himself as a witness to strengthen the evidence which both from the station of the witnesses produced by him, and from the general character of their testimony, is extremely untrustworthy (401). (*Lord Chelmsford.*) KAMALA NAICKEN *v.* PITCHACOOTTY CHETTY.

(1865) 10 M. I. A. 386 = 2 Sar. 147.

———In a suit brought by the plaintiff, the lessee under a registered lease deed, for possession of the property leased, the defendant (lessor) set up a document as having been executed by the plaintiff in his favour which had the effect of cancelling the suit lease deed. The question was as to the genuineness of that document. The plaintiff did not examine himself as a witness to disprove his signature to that document.

Held, that, notwithstanding the prejudice which arose to the plaintiff's case from his not appearing as a witness to facts peculiarly within his knowledge, and especially to disprove his signature to the document in question, that document was still exposed to all the improbabilities which surrounded it on every side (398). (*Lord Chelmsford.*) KAMALA NAICKEN *v.* PITCHACOOTTY CHETTY.

(1865) 10 M. I A. 386 = 2 Sar. 147.

———*See* PURDANASHIN—HUSBAND—TRANSFER TO—VALIDITY OF—ISSUE AS TO—EXAMINATION OF LADY BY HERSELF. **(1867) 11 M. I. A. 551 (595.)**

———Their Lordships are aware that the latter inference (*i.e.*, inference from the non-examination of the appellant when he could have examined himself) is met, as usual, by arguments founded on the unwillingness of natives of rank to appear and be examined as witnesses in a Court of Justice. There are, however, examples, increasing, fortunately, in number, of men who disregard this prejudice; and considering the vastness of the stake, and the pointed manner in which the contradiction was challenged by the witnesses on the other side, their Lordships cannot think that the failure of the appellant to tender himself as a witness is sufficiently accounted for by the feeling in question. (*Sir James Colvile.*) BABOO BEER PERTAB SAHEE *v.* MAHARAJAH RAJENDER PERTAB SINGH SAHEE.

(1867) 12 M. I. A 1 (27) = 9 W. R. 15 = 2 Suth. 114 = 2 Sar. 348.

———Where a defendant omitted to tender himself as a witness in support of his defence in a case, the circumstances of which were all within his own knowledge, and one of his witnesses kept back, from hostility to the opposite party, the books which he ought to have produced, *held*, that such a course suggested the natural inference, that the evidence which had not been produced, was felt to be adverse, and subjected the parties who took such a course, to the construction that was least favourable to the views and interest which they sought to support by imperfect or inferior evidence. (*Sir Joseph Napier.*) GOPEEKISHEN GOSHAMEE *v.* BRINDABUNCHUNDER SIRCAR CHOWDHRY.

(1869) 13 M. I. A. 37 (56) = 12 W. R. (P. C.) 36 = 3 B. L. R. (P.C.) 37 = 2 Suth. 261 = 2 Sar. 479.

EVIDENCE ACT (I OF 1872)—(*Contd.*)

S. 114, Ill. (g)—Party—Omission to examine himself—Inference from—Facts within his knowledge—(*Contd.*)

———Where two witnesses identified some of the defendants as having been present at a plunder of plaintiff's property, and these defendants did not think fit to avail themselves of the opportunity they had of exculpating themselves by their own evidence from the charge against them, it was *held*, that their reluctance to give evidence justified the Court in relying on the unopposed testimony of the two witnesses. GANESH SINGH *v.* RAM RAJA.

(1869) 3 B.L.R. (P.C.) 44 (46-7) = 12 W.R.(P.C.) 38 = 2 Sar. 505 = 2 Suth. 263.

———Presumptions are necessarily made against parties, who, when facts are in dispute the knowledge of which must rest with them, will not present themselves to the Court to state their own evidence and knowledge of those facts. Presumptions are necessarily made against persons who will not subject themselves to examination when a *prima facie* case is made against them, and when by their own evidence they might have answered it (793). NAWAB SYED ALLEE SHAH *v.* MUSST. AMANEE BEGUM.

(1873) 2 Suth. 790 = 19 W.R. 149.

———The suit was to set aside a certain ikrarnamah, or agreement, purporting to have been executed by the plaintiff in favour of the defendant, on the allegation that it was forged.

The ikrar was registered soon after its date. It was sealed with the plaintiff's seal, but not signed. Five witnesses, two of whom were cited by both sides, deposed that the seal was affixed to the ikrar by the plaintiff himself in their presence, and there was no opposing evidence. The plaintiff was not called to negative the personal execution of the ikrar attributed to him by the witnesses.

Held that, whilst making due allowance for the dislike of Mahomedans of rank to give evidence in the Courts, it was the plaintiff's duty, if the instrument had been forged, to give the judge the opportunity of hearing his own evidence, and that his not having done so naturally conduced to the belief that the witnesses who proved his execution of the ikrar had spoken the truth (110). (*Sir Montague E. Smith.*) AMEEROONISSA KHATOON *v.* ABEDOONISSA KHATOON.

(1875) 2 I.A. 87 = 15 B.L.R. 67 = 23 W.R. 208 = 3 Sar. 423 = 3 Suth. 87.

———*See* HINDU LAW—ADOPTION—AUTHORITY TO ADOPT—DEED OF—EXECUTION OF, BY SON IN FAVOUR OF HIS WIFE. **(1876) 3 I.A. 72 (81-2) = 1 C. 289.**

———*See* HINDU LAW—ADOPTION—EVIDENCE OF—ADOPTED SON—EXAMINATION AS WITNESS OF.

(1879) 6 C.L.R. 76.

———Where, in a suit based upon a promissory note, the making of the note was deposed to by three or four witnesses who were described as Zemindars, and whose respectability was not impeached, *held* that the defendant, disputing the genuineness of that note, was bound to come forward and swear that the note was not his, or at all events to call some witness who would say that it was not in his handwriting, or that it did not resemble his handwriting (435). (*Sir Robert P. Collier.*) HUSSAIN ALI KHAN *v.* KHURSAID ALI KHAN. **(1882) Bald. 432.**

———If a person who has drawn up a contract with his own hand and signed it, wishes to persuade the Court that somehow or other an important term has been omitted by inadvertence or mistake, he is surely bound to pledge his oath to the truth of the story, and not the less so when his opponent comes forward and swears that there is no foundation for the suggestion. Surely his advocate is not to be listened to, if he himself will not venture to go into the witness-box in support of the story he asks the Court to

EVIDENCE ACT (I OF 1872)—(*Contd.*)

S. 114, Ill. (g)—Party--Omission to examine himself—Inference from—Facts within his knowledge—(*Contd.*)

believe. (*Ford Macnaghten.*) IKRAMULL HUQ *v.* WILKIE.
(1907) 11 C.W.N. 946 = 4 A.L.J. 740 = 2 M. L. T. 448 = 6 C. L. J. 682 = 17 M. L. J. 454 (463).

———Where the circumstances of the case made it necessary for the respondents to examine themselves and their son, and they refused to enter the witness-box, *held*, that their conduct raised a presumption against them (965). (*Lord Robson.*) MUSSAMMAT DURGA KUNWUR *v.* MUSAMMAT MATHURA KUNWAR. **(1911) 10 I.C. 963 = 15 C.W.N. 717 (722) = 10 M.L T. 216.**

———In a suit in which it is sought by the defendants to have declared void a solemn deed entered into by a lady and on the faith of which she had obtained the appellant's money, it is the duty of the defendants to examine her to explain the circumstances under which she entered into it. (*Lord Atkinson.*) SHADIK HUSAIN KHAN *v.* HASHIM ALI KHAN. **(1916) 43 I. A. 212 (236) = 38 A. 627 = (1916) 2 M.W.N. 577 = 21 M.L.T. 40 = 6 L.W. 378 = 21 C.W.N. 133 = 25 C.L.J. 363 = 14 A.L.J. 1248 = 18 Bom. L.R. 1037 = 19 O.C. 192 = 1 Pat. L.W. 157 = 36 I.C. 104 = 31 M.L.J. 607.**

———Where a party against whom a case had been established requiring a challenge by her was present in Court and was in a position to examine herself so as, if possible, to refute the story against her, but she did not, however, go into the witness-box, *held*, that her non-appearance as a witness would be the strongest possible circumstance going to discredit the truth of her case. (*Lord Shaw.*) SARDAR GURBAKSH *v.* GURDIAL SINGH.
(1927) AI.R. 1927 P.C. 230 = 46 C.L.J. 272 = 4 O.W.N. 935 = (1927) M.W.N. 778 = 29 Bom. L.R. 1392 = 28 Punj. L.R. 567 = 105 I. C. 220 = 32 C.W.N 119 = 53 M. L. J. 392.

———*Party—Omission to examine himself—Inference from—Facts not within his knowledge—Infant at date of suit transaction.*

Held, that the Courts below were in error in giving undue weight to the non-appearance of the defendant as a witness, because it appeared that he was a mere child at the time of the transaction in question (399). (*Sir Robert P. Collier.*) BABOO LEKRAJ ROY *v.* BABOO MAHTAB CHUND. **(1871) 14 M.I.A. 393 = 10 B.L.R. 35 (P.C.) = 17 W. R. 117 = 2 Suth. 536 = 3 Sar. 43.**

———*Party—Omission to examine himself—Inference adverse from—Refusal to draw on ground that he had in mutation proceedings made a full statement and was only likely to repeat himself—Propriety.*

The true object to be achieved by a Court of Justice can only be furthered with propriety by the testimony of the party who personally knowing the whole circumstances of the case can dispel the suspicions attaching to it. The story can then be subjected in all its particulars to cross-examination. To say that the party would likely have repeated what she had already said omits the entire force of the consideration as to cross-examination.

Where, therefore, in a case in which a party who ought to have gone into the witness-box did not do so, and the High Court observed that that was immaterial because she had made a full statement before the mutation officer and was only likely to have repeated what she had already said, their Lordships disapproved of such reasoning. (*Lord Shaw.*) SARDAR GURBAKSH *v.* GURDIAL SINGH.
(1927) A. I. R. 1927 P.C. 230 = 46 C. L. J. 272 = 4 O.W.N. 935 = 1927 M.W.N. 778 = 29 Bom. L.R. 1392 = 28 Punj. L.R. 567 = 105 I.C. 220 = 32 C.W.N 119 = 53 M. L. J. 392.

EVIDENCE ACT (I OF 1872)—(*Contd.*)

———S. 114, Ill. (i)—*Bond—Production by obligor with endorsement of payment by obligee—Effect.*

In a suit for sale on a mortgage, the plaintiff, at the time of the institution of the suit, produced only a copy of the document sued upon, alleging that the original had been lost. The defendant in his answer admitted its execution, but alleged that the debt was discharged. In support of his allegations he produced the original document containing the indorsement of payment by the mortgagee and her agent.

Held that, in view of the presumption under S. 114 of the Evidence Act, the Subordinate Judge was right in holding that the production by the defendant of the bond with the indorsement of payment cast on the plaintiff the burden of establishing the affirmative proposition that the debt was still oustanding, in other words, of showing that the bond came into defendant's possession by dishonest means and that the signatures to the indorsement were either forgeries or unauthorized (190).

The presumption under S. 114 of the Evidence Act only embodies the ordinary rule of law (190). (*Mr. Ameer Ali.*) MOHAMAD MEHDI HASAN KHAN *v.* MANDIR DAS.
(1912) 39 I.A. 184 = 34 A. 511 (515, 517) = 10 A.L.J. 373 = 12 M.L.T. 392 = 14 Bom. L.R. 1073 = 17 C.W.N. 49 = 16 C.L.J. 629 = (1912) M.W.N. 1052 = 17 I.C. 396 = 23 M.L.J. 741.

———*Debt — Instrument of, and security therefor in debtor's hands—Effect—Onus on creditor to rebut presumption—Quantum.*

Prima facie, the presumption is, where you find the instrument of a debt and the security for that debt in the hands of the debtor, that the debt has been discharged. That presumption is a strong one, and the burden of proof is upon the creditor to rebut that presumption.

In a suit upon a promissory note, both the suit note and the security which was given for its payment, being some title-deeds of lands, were in the hands of the defendants. *Held* that, though that circumstance raised a strong presumption of discharge, the plaintiff had adduced sufficient evidence to rebut that presumption. (*Lord Davey.*) BHOY HONGKONG *v.* RAMANATHAN CHETTY.
(1902) 29 I.A. 43 (45) = 29 C. 334 (337) = 6 C.W.N. 401 = 4 Bom. L.R. 378 = 8 Sar. 253.

———*Mortgage—Deed of, with mortgagor—Effect—Onus on mortgagee in case of—Shifting of.*

In a suit by the appellant claiming payment or sale under a mortgage bond executed by the respondent, the question was whether the debt had been truly discharged, and the bond returned to the mortgagor.

Held, that the initial burden of proof rested upon the appellant, both on general grounds and by reason of the provisions of S. 114 of the Evidence Act, but that that burden was one which shifted easily as the evidence was developed.

Held further, reversing the Court below and affirming the trial Judge, that the appellant had discharged the onus which lay upon him of proving that the bond had not been duly discharged and returned. (*Viscount Haldane.*) KUNDAN LAL *v.* MUSAMMAT BEGUM-UN-NISSA.
(1918) 8 L.W. 233 (237) = 22 C.W.N. 937 = 47 I. C. 337.

———*Mortgage—Title-deeds deposited with mortgagee at time of, in possession of mortgagee—Mortgage bond itself with endorsement of discharge by mortgagee's father in possession of mortgagor—Discharge of mortgage—Presumption of, in such a case—Force of.*

EVIDENCE ACT (I OF 1872), S. 114, Ill. (i)—(*Contd.*)

In a suit upon a mortgage bond the defendants pleaded discharge, and relied in support of their plea on the fact that the mortgage bond had come into their possession with an endorsement of discharge. The plaintiff's father had admittedly lent the money and taken the mortgage bond in the name of his son, the second plaintiff. The endorsement of discharge which the document bore was one made by the father. At the time of the execution of the mortgage bond the mortgagor deposited with the plaintiffs the title-deeds of the mortgaged property, and they were with the plaintiffs even at the date of suit.

Held, that the fact that the mortgagors did not take back the title-deeds at the time of the alleged discharge when, according to them, the document itself was returned to them, considerably weakened the presumption in their favour arising from the possession of the mortgage document. (*Sir John Wallis.*) ALWAR NAIDU *v.* KOTHANDAPANI NAIDU. **(1927) A.I.R. 1927 P. C. 261 = 46 C.L.J. 292 = (1927) M. W. N. 709 = 30 M.L.T. 290 = 29 Bom. L.R. 1388 = 105 I. C. 263 = 53 M. L. J. 295.**

———S. 115.

APPLICABILITY OF.
CONSTRUCTION OF.
INTENTIONALLY—USE OF, INSTEAD OF "WILFULLY".
LAW ENACTED BY.
NATURE OF ESTOPPEL.
PLEA OF ESTOPPEL UNDER.
SCOPE OF.
CASES UNDER (*N. B.*—Under this head are collected in alphabetical order all the cases in which the section was or was not held to be applicable.)

Applicability of.

———Truth known—Effect. *See* BENAMI—BENAMIDAR—MORTGAGE BY—VALIDITY—RIGHT TO DISPUTE.
(1883) 10 I. A. 62 (66-8) = 9 C. 961 (973-4).

———There can be no estoppel when the truth of the matter appears on the face of the proceedings (38). (*Lord Davey.*) TARA LAL SINGH *v.* SAROBUR SINGH.
(1899) 27 I.A. 33 = 27 C. 407 (413) = 4 C.W.N. 533 = 2 Bom. L.R. 5 = 7 Sar. 657.

———S. 115 of the Evidence Act does not clearly apply to a case where the statement relied upon is made to a person who knows the real facts and is not misled by the untrue statement. There can be no estoppel where the truth of the matter is known to both parties (122). (*Sir Ford Nath.*) MOHORI BIBEE *v.* DHURMODAS GHOSE.
(1903) 30 I. A. 114 = 30 C. 539 (546) = 7 C.W.N. 441 = 5 Bom. L.R. 421 = 8 Sar. 374.

Construction of.

———*Addition of qualifying conditions to language of—Court's power of.*

The Court is not warranted or entitled to add any qualifying conditions to the language of S. 115 of the Evidence Act. It has no power to virtually interpolate words in the statute which are not to be found there (215). (*Lord Shand*). SARAT CHUNDER DEY *v.* GOPAL CHUNDER LAHA.
(1892) 19 I.A. 203 = 20 C. 296 (310) = 6 Sar. 224

———*Estop—Use of, loosely in India.*

The word "estop" is often used in Indian cases very loosely to denote obligations which do not rest on estoppel at all. Such uses of the word are not countenanced by the definition of estoppel in S. 115 of the Evidence Act (128). (*Lord Hobhouse.*) SURENDRAKESHAV ROY *v.* DOORGASUNDARI DASSEE. **(1892) 19 I. A. 108 = 19 C. 513 (532) = 6 Sar. 150.**

EVIDENCE ACT (I OF 1872)—(*Contd.*)

S. 115—Construction of—(*Contd.*)

———*Estoppel—Meaning of.*

The word "estoppel" is not infrequently used to cover transactions to which it has no proper application. In its essence it means that the party estopped has by conduct or language prevented himself from asserting the true facts on which he would otherwise have been entitled to rely. (*Lord Buckmaster.*) RAJA DURGA PRASHAD SINGH *v.* TATA IRON AND STEEL CO. **(1918) 45 I. A. 275 (283) = 46 C. 552 (565) = 23 C.W.N. 466 = (1919) M. W. N. 287.**

———*Intentionally—Meaning of.*

A person who, by his declaration, act, or omission, had caused another to believe a thing to be true and to act upon that belief, must be held to have done so "intentionally" within the meaning of the statute, if a reasonable man would take the representation to be true, and believe it was meant that he should act upon it (219). (*Lord Shand.*) SARAT CHUNDER DEY *v.* GOPAL CHUNDER LAHA.
(1892) 19 I. A. 203 = 20 C. 296 (314-5) = 6 Sar. 224.

———Thing—Existing fact—Intention to do something in future—Representation of—Distinction. *See* under this section PLEA OF ESTOPPEL UNDER—REPRESENTATION—PLEA BASED UPON. **(1922) 32 M. L. T. 25 (P. C.) (34).**

Intentionally—Use of, instead of "Wilfully."

———*Effect.*

It was said in I. L. R. 7 Mad. 8 that the substitution in S. 115 of the Evidence Act of the word "intentionally" for the term "wilfully" in the rule stated in the English decisions showed that the design of the framers of the Evidence Act was to exclude cases from the rule in India to which it might be applied under the terms in which it had been stated by the English Courts. Their Lordships are unable to agree in this view. On the contrary, as the rule had been modified in England by there substituting the word "intentionally" in the rule established for the word "wilfully" which had been previously used, it seems to their Lordships that the term "intentionally" was used in the Evidence Act for the purpose of declaring the law in India to be precisely that of the law of England. Further the word "wilfully" used in the earlier English decisions was really equivalent to "intentionally" (218-9). (*Lord Shand.*) SARAT CHUNDER DEY *v.* GOPAL CHUNDER LAHA. **(1892) 19 I. A. 203 = 20 C. 296 (314) = 6 Sar. 224.**

Law enacted by.

———*English Law—Same as.*

The terms of the Evidence Act did not enact as law in India anything different from the law of England on the subject of estoppel (215). (*Lord Shand.*) SARAT CHUNDER DEY *v.* GOPAL CHUNDER LAHA.
(1892) 19 I. A. 203 = 20 C. 296 (310) = 6 Sar. 224.

Nature of estoppel.

———Inquiry by evidence into the truth—Exclusion of (161) (*Sir Montague E. Smith.*) RANI MEWA KUWAR *v.* RANI HULAS KUWAR. **(1874) 1 I. A. 157 = 13 B. L. R. 312 = 3 Sar 354 = R. and J.'s No. 27.**

Plea of estoppel under.

———Certainty—Necessity. *See* DEED—ESTOPPEL.
(1874) 1 I. A. 157 (161).

———Effect of—Truth—Inquiry into—Exclusion of. (*Sir Montague E. Smith.*) RANI MEWA KUWAR *v.* RANI HULAS KUWAR. **(1874) 1 I. A. 157 (161) = 13 B. L. R. 312 = R. & J.'s No. 27.**

———*Facts and circumstances necessary to establish—Onus of Proof of.*

In cases of estoppel the onus of establishing the facts and circumstances from which estoppel arises rests upon the

EVIDENCE ACT (I OF 1872)—(*Contd.*)

S. 115—Plea of estoppel under—(*Contd.*)

person pleading it. (*Lord Shaw.*) MITRA SEN SINGH *v.* JANKI KUWAR. **(1924) 51 I. A. 326 (331) = 46 A. 728 = A. I. R. 1924 P. C. 213 = 23 A. L. J. 172 = 20 L. W. 566 = (1924) M.W.N. 703 = 40 C.L.J. 468 = 26 Bom. L. R. 1134 = 29 C.W.N. 533 = 35 M.L.T. 247 = 27 O. C. 208 = 3 Pat.L.R. 169 = 82 I. C. 946 = 47 M. L. J. 591.**

———Maintainability of—Mutuality—Necessity. GIRJA KANTO CHOWDHRY *v.* HURRISH CHUNDER CHOWDHRY. **(1872) 19 W.R. 114 = 5 Sar. 702 (705) = 2 Suth. 758.**

———*Representation—Plea based on—Maintainability—Existing fact—Intention to do something in future—Representation of—Distinction.*

It has been well established by a long line of authority that in order to support a plea of estoppel by representation, the representation must be a representation of an existing fact. A promise or a representation of an intention to do something in the future is entirely insufficient, and this, though Lord Bowen said that the state of a man's mind was as much a fact as the state of his digestion (34). (*Lord Atkinson.*) YORKSHIRE INSURANCE CO. *v.* THOMAS BRAINE. **(1922) 32 M. L. T. 25 (P. C.).**

———*Representation—Plea based upon—Maintainability—Intention to deceive or knowledge of untruth of representation unnecessary—Prejudice to opposite party enough.*

S. 115 does not make it a condition of estoppel resulting that the person who by his declaration or act has induced the belief on which another has acted was either committing or seeking to commit a fraud, or that he was acting with a full knowledge of the circumstances, and under no mistake or misapprehension. The law of England gives no countenance to the doctrine that in order to create estoppel the person whose acts or declarations induced another to act in a particular way must have been under no mistake himself, or must have acted with an intention to mislead or deceive. What the law and the Statute mainly regard is the position of the person who was induced to act ; and the principle on which the law and the statute rest is, that it would be most inequitable and unjust to him that if another, by a representation made, or by conduct amounting to a representation, has induced him to act as he would not otherwise have done, the person who made the representation should be allowed to deny or repudiate the effect of his former statement, to the loss and injury of the person who acted on it. If the person who made the statement did so without full knowledge, or under error, *sibi imputet.* It may, in the result, be unfortunate for him, but it would be unjust, even though he acted under error, to throw the consequences on the person who believed his statement and acted on it as it was intended he should do (215-6). (*Lord Shand.*) SARAT CHUNDER DEY *v.* GOPAL CHUNDER LAHA.

(1892) 19 I.A. 203 = 20 C. 296 (310-1) = 6 Sar. 224.

———In the case of *Set on Laing & Co.* v. *Lafane* (19 Q.B.D. 68) Lord Esher said :—" One ground of estoppel is where a man makes a fraudulent misrepresentation and another man acts upon it to his detriment. Another may be where a man makes a false statement negligently, though without fraud, and another person acts upon it. And there may be circumstances under which, where a misrepresentation is made without fraud and without negligence, there may be an estoppel." To this statement it may be added that there may be statements made, which have induced another party to do that from which otherwise he would have abstained, and which cannot properly be characterised as " misrepresentations." (217). (*Lord Shand.*) SARAT CHUNDER DEY *v.* GOPAL CHUNDER LAHA.

(1892) 19 I. A. 203 = 20 C. 296 (312-3) = 6 Sar. 224.

EVIDENCE ACT (I OF 1872)—(*Contd.*)

S. 115—Plea of estoppel under—(*Contd.*)

———*Specific plea—Necessity—Proof of estoppel without plea - Permissibility—Benamidar—Sale by—Suit by heirs of real owner to recover property subject of—Estoppel by misrepresentations of real owner—Plea of.*

A sale-deed in favour of a Hindu lady stated that the price therefor was received from the lady's stridhanum fund through her husband. The lady in her turn sold the property to the defendants, who were *bona fide* purchasers thereof for valuable consideration. The lady's sons instituted, after the death of their father, a suit for the recovery of the property from the defendants, alleging that the property had been acquired by their father in the name of his wife, that it really belonged to their father and they became entitled to the same by descent on his death, and that their mother had no right to or interest in the same and had none to convey to the defendants. The defendants, in their written statement, alleged that the wife, their vendor, had acquired the property by purchase from out of her stridhanum funds, and that, consequently, it did not pass to the plaintiffs upon the death of their father, but that the wife having purchased the property out of her stridhanum was entitled to sell it. The issue framed on that point was whether the late father of the plaintiffs acquired the disputed property in the name of his wife with his own funds, and remained in possession of the same during his lifetime, or whether the property was acquired by the wife with her own stridhun, and she herself held possession of it.

Held, that the pleadings and the issue were sufficiently wide to entitle the defendants to prove that the father had, during his lifetime, misrepresented that the funds with which the wife had purchased the property were her stridhanum funds and that the property purchased by her was really her property, that he was estopped by his misrepresentations from asserting that he, and not she, was the real owner of that property, and the plaintiffs, claiming by descent from him, were equally estopped from doing so, and that it was not necessary for the defendants to plead the estoppel on the part of the heirs (plaintiffs) arising from the misrepresentation of the father (815-6).

The defendants had purchased under a deed representing that the property had been purchased out of the wife's stridhun. They knew nothing as to the real facts of the case. They allege the facts as they find them represented in the deed which was their title deed. They go to trial upon those facts, and they put in evidence the misrepresentations of the father and the title-deed founded upon those misrepresentations as proof of their case, which was that the property was purchased out of the separate estate of the wife. If the defendants were entitled to avail themselves of the estoppel in consequence of the misrepresentation of the husband, they are entitled to use that estoppel as matter of proof, and they use it to prove that the property was not purchased out of the father's own property, but that it was obtained by the mother, with her own stridhun, and that she herself held possession of it. So they prove the issue on their part by means of the estoppel (815-6). LUCHMUN CHUNDER GEER GOSSAIN *v.* KALI CHURN SINGH.

(1873) 2 Suth. 809 = 19 W. R. 292 = 4 Sar. 802.

Scope of.

———*If exhaustive.*

Questions of estoppel must in India be determined by S. 115 of the Evidence Act (215). (*Lord Shand.*) SARAT CHUNDER DEY *v.* GOPAL CHUNDER LAHA.

(1892) 19 I.A. 203 = 20 C. 296 (310) = 6 Sar. 224.

Cases under.

———Acquiescence—Estoppel by reason of—Government officials—Acts of—Challenge of, after lapse of time—

EVIDENCE ACT (I OF 1872)—(*Contd.*)

S. 115—Cases under—(*Contd.*)

Acquiescence in such acts—Effect. *See* CROWN—OFFICERS OF—ACTS OF—CHALLENGE OF, AFTER LAPSE OF TIME.
(1922) 33 **M. L. T. 228 (P. C.) (231).**

———Acquiescence—Estoppel by reason of—Government promissory notes—Sale by endorsement of—Validity of—Right to dispute, on ground of invalidity of endorsement—Acquiescence in such endorsement—Estoppel by reason of—Purchaser acting *bona fide*. *See* GOVERNMENT PROMISSORY NOTES—SALE BY INVALID ENDORSEMENT OF.
(1875) 3 **Suth. 175 (177).**

———Acquiescence—Estoppel by reason of—Landlord and tenant—Building by tenant—Acquiescence by landlord in—Claim by him subsequently to eject—Maintainability. *See* LANDLORD AND TENANT—EJECTMENT.
(1899) 26 **I. A. 58 (63) = 21 A. 496 (503-4).**

———Acquiescence—Estoppel by reason of—Mortgage—Validity—Right to dispute. *See* WATAN—WATAN LANDS—MORTGAGE OF, ETC. (1900) 27 **I. A. 86 = 24 B. 556.**

———Acquiescence—Estoppel by reason of—Trespasser—Assertion of proprietary right by—Real owner's acquiescence in, on erroneous view of rights of parties—Effect. *See* COURT OF WARDS—ASSERTION OF RIGHTS OF PROPRIETOR IN GOVERNMENT TRACTS BY.
(1905) 30 **I. A. 53 (70-1) = 28 M. 130 (150-1).**

———*Administration suit—Heir-at-law representing whole inheritance in—Right to plead true state of case.*

It would be difficult to see how the younger Ranee, who represents the whole inheritance in an administration suit, could be prevented from pleading anything but the true state of the case (128). (*Lord Hobhouse.*) SURENDRAKESHAV ROY *v.* DOORGASUNDARI DASSEE.
(1892) **19 I. A. 108 = 19 C. 513 (532) = 6 Sar. 150.**

———Admission—Estoppel by reason of—Co-defendants—Written statement filed by, in suit by third party—Admission in—Effect *inter se*. *See* PRACTICE—PLEADINGS—ADMISSION IN—CO-DEFENDANTS.
(1870) **10 M. I. A. 551 (559).**

———Admission—Estoppel by reason of—Deed—Admissions in—Effect—Estoppel—Onus of proof—Shifting of—Deed *inter partes* and deed not *inter partes*—Distinction. *See* ADMISSION—DEED—ADMISSIONS IN—EFFECT—ESTOPPEL—ONUS OF PROOF.

———Admission—Estoppel by reason of—Deed—Execution of—Admission of—Effect—Validity and real nature of deed—Right to contest—Estoppel. *See* DEED—EXECUTION—ADMISSION OF. (1872) **19 W. R. 118 (121).**

———Admission—Estoppel by reason of—Law—Point of—Admission on—Estoppel by reason of. *See* LAW—ADMISSION.

———Admission—Estoppel by reason of—Suit—Admission prior to—Estoppel by reason of—Conditions. *See* SUIT—ADMISSION PRIOR TO.

———Affirm and disaffirm same transaction—Rule against. *See* (1) APPROBATE AND REPROBATE. (2) Under this section CASES UNDER—APPROBATE AND REPROBATE.

———Agent. *See* EVIDENCE ACT, S. 115—CASES UNDER—PRINCIPAL AND AGENT.

———Alternative remedies—Adoption of one of—Adoption of the other—Right of—Effect on. *See* TORT—REMEDIES ALTERNATIVE FOR. (1913) **40 I. A. 56 (63-4) = 40 C. 598 (609-10).**

———Approbate and reprobate—Rule against. *See* APPROBATE AND REPROBATE.

———*Approbate and reprobate—Rule against—Executor—Legatee—Interest on legacy—Damdupat rule of Hindu law—Application of—Objection by legatee to.*

EVIDENCE ACT (I OF 1872)—(*Contd.*)

S. 115—Cases under—(*Contd.*)

In a case in which a legatee objected to the trial Judge's applying the rule of damdupat to the interest allowed on the legacy, on the ground that the claim for the legacy was not a matter of contract, it appeared that the legatee had claimed to have the benefit of a course of business, under which, so far as the accounts of the executrix's business went, all the items were treated as invested in commercial speculations for the legatee. *Held*, that the legatee could not both approbate and reprobate, and that he could not, on finding that the claim to the benefit of that course of business with its resulting contractual obligations, was not sustainable, claim that the executrix was a mere executrix, who had failed to apply assets which had come to her hands in discharging legacies, and was not a merchant—banker liable in contract to a customer for interest on the balances in her hands. (*Viscount Sumner.*) HARIRAM *v.* MADAN GOPAL.
(1928) **33 C. W. N. 493 = 49 C. L. J. 335 = 27 A. L. J. 406 = 114 I. C. 565 = 31 Bom. L. R. 710 = A. I. R. 1929 P. C. 77 = 57 M. L. J. 581.**

———Award—Suit dismissed in accordance with—Revision by plaintiffs against—Setting aside of arbitration and of award in—Benefit of—Right to claim—Plaintiff who had withdrawn revision petition as regards himself—Right of. *See* ARBITRATION—AWARD—SUIT DISMISSED IN ACCORDANCE WITH. (1915) **29 M. L. J. 307 (312-3)**

———Benamidar—Mortgage by—Validity of—Real owner—Right of, to dispute—Benami character known to mortgagee. *See* BENAMI—BENAMIDAR—MORTGAGE BY—VALIDITY OF—RIGHT TO DISPUTE—ESTOPPEL.
(1883) **10 I. A. 62 (66-8) = 9 C. 961 (973-4).**

———Benamidar—Mortgage by—Validity of—Real owner's decree-holder execution purchaser—Right of, to dispute—Estoppel against real owner—Effect. *See* BENAMI—BENAMIDAR—MORTGAGE BY—VALIDITY OF—RIGHT TO DISPUTE—ESTOPPEL. (1895) **22 I. A. 129 (137) = 22 C. 909 (919-20).**

———Benamidar—Mortgage by—Validity of—Real owner's heirs—Right of, to dispute—Estoppel against real owner—Effect. *See* BENAMI—BENAMIDAR—MORTGAGE BY—VALIDITY OF—RIGHT TO DISPUTE—ESTOPPEL.
(1892) **19 I. A. 203 (210-1) = 20 C. 296 (304-6).**

———Benamidar—Mortgage by—Validity of—Right to dispute—Real owner's heirs—Estoppel against—Conduct amounting to. *See* BENAMI—BENAMIDAR—MORTGAGE BY—VALIDITY OF—RIGHT TO DISPUTE—ESTOPPEL.
(1892) **19 I. A. 203 (212 3) = 20 C. 296 (307-8).**

———Benamidar—Sale by—Real owner's heirs—Suit by, to recover property sold—Estoppel by misrepresentations of real owner—Plea specific of, in defence—Necessity—Plea that benamidar was real owner—Proof of estoppel under—Permissibility. *See* EVIDENCE ACT, S. 115—PLEA OF ESTOPPEL UNDER—SPECIFIC PLEA.
(1873) **2 Suth. 809 (815-6).**

———Benamidar—Sale by—Validity of—Real owner's right to dispute—Estoppel. *See* BENAMI—BENAMIDAR SALE BY—VALIDITY OF—RIGHT TO DISPUTE—ESTOPPEL. (1872) **Sup. I. A. 40 (43-4).**

———Benamidar—Sale by—Validity of—Right to dispute—Real owner—Estoppel against—Effect of, on his heir. *See* BENAMI—BENAMIDAR—SALE BY—VALIDITY OF—RIGHT TO DISPUTE—ESTOPPEL.
(1873) **19 W. R. 292 and (1918) 45 I. A. 97 (101-2) = 45 C. 909 (918-9).**

———Benamidar—Title of—Real owner's heir's right to dispute—Estoppel—Conduct amounting to. *See* BENAMI—BENAMIDAR—TITLE OF—REAL OWNER'S HEIR'S RIGHT TO DISPUTE. (1887) **15 I. A. 29 (36) = 10 A. 197 (205-6).**

EVIDENCE ACT (I OF 1872)—(*Contd.*)

S. 115—Cases under—(*Contd.*)

———Building. *See* under this section CASES UNDER—LAND.

———Co-defendants—Written statement filed by, in suit by third party—Admission in—Effect *inter se*—No estoppel. *See* PRACTICE—PLEADINGS—ADMISSION IN—CO-DEFENDANTS. **(1870) 13 M. I. A. 551 (559).**

———Company—Director of—Appointment of, and allotment of shares to—Invalidity of—Plea by director of, in action for calls—Maintainability of—Participation by him in shares allotted—Effect. *See* COMPANY—DIRECTORS OF—ALLOTMENT OF SHARES TO DIRECTOR HIMSELF. **(1922) 32 M. L. T. 25 (P. C.) (29).**

———Compromise—Right to insist upon—Estoppel by reason of claim inconsistent with compromise—Condition. *See* COMPROMISE—RIGHT TO INSIST UPON. **(1839) 2 M. I. A. 181 (243-4).**

———*Compromise for valuable consideration—Decree on foot of—Claim inconsistent with—Maintainability.*

In the present case, the compromise, which was entered into for valuable consideration, is not challenged; it has neither been disclaimed nor impeached; it stands. Nor is any challenge made of the judgment which followed it; that also stands. This being so, the respondents, who were parties to the compromise, can in this suit have no right or title to prefer a claim for pre-emption to the lands upon which the buildings were erected, a claim which, if sustained, might destroy the entire value and validity of the settlement and the decree. Whether the case be viewed under the heading of *res judicata* or of estoppel, or of no title and interest to sue, the result would be the same; the respondent's claim in this litigation is excluded. (*Lord Shaw.*) RIKHI RAM *v.* DHANPAT RAI. **(1928) 55 I. A. 266 = 110 I. C. 1 = 48 C. L. J. 158 = 33 C. W. N. 90 = A. I. R. 1928 P. C. 190.**

———Condition—Breach of—Right to take advantage of—Estoppel—Party claiming advantage responsible for breach. *See* (1) HINDU LAW—WILL—CONDITION IMPOSED BY—BREACH OF AND (2) HINDU LAW—JOINT FAMILY—PARTITION—RELIGIOUS CEREMONIES. **(1874) 1 I. A. 837 (398) = (1869) 12 M I.A. 389 (393-4).**

———Consent decree—Invalidity of, on ground of its being contrary to statute—Plea by judgment-debtor of—Estoppel. *See* CENTRAL PROVINCES TENANCY ACT OF 1883, S. 42 **(1921) 48 I. A. 230 = 48 C. 501.**

———*Consent decree or order—Estoppel by—Order of Court not made by consent—Effect of—Distinction.*

For purposes of estoppel an order by consent, not discharged by mutual agreement, and remaining unreduced, is as effective as an order of the Court made otherwise than by consent and not discharged on appeal. In other words, the only difference in this respect between an order made by consent and one not so made is that the first stands unless and until it is discharged by mutual agreement or is set aside by an order of the Court; the second stands unless and until it is discharged on appeal. (*Lord Blanesburgh.*) CHARLES HUBERT KINCH *v.* EDWARD KEITH WALCOTT **(1929) 118 I.C. 7 = 57 M. L. J. 429 = (1929) A.C. 482.**

———Consideration—Admission of receipt of—Effect. *See* ADMISSION—CONSIDERATION.

———Court of Wards—Assertion of rights of proprietor in Government tracts by—Proprietor's title to such tracts—Government's right subsequent to dispute—Estoppel. *See* COURT OF WARDS—ASSERTION OF RIGHTS OF PROPRIETOR IN GOVERNMENT TRACTS BY. **(1905) 32 I. A. 53 (71) = 28 M. 130 (150-1.)**

———Court of Wards—Disqualified proprietor—Contract by—Incompetency for—Plea of, by Court of Wards—Maintainability—Estoppel—Holding out of competency by it—No misleading. *See* COURT OF WARDS—DISQUALIFIED PROPRIETOR—CONTRACT BY—INCOMPETENCY FOR. **(1882) 9 I. A. 182 (195) = 5 A. 142 (156-7).**

———Creditor and debtor—Debt—Composition payment in—Acceptance by creditor of—Effect—Claim subsequent by him for balance of old debt—Maintainability. *See* DEBTOR AND CREDITOR—DEBT—COMPOSITION PAYMENT IN. **(1869) 2 B. L. R. 98 (100) (P. C.) = 11 W. R. (P. C.) 41.**

———Crown—Escheat—Claim by—Maintainability—Estoppel. *See* ESCHEAT—CROWN.

———Crown—Escheat—Crown taking by—Widow of last male owner—Alienation by—Validity of—Right to dispute. *See* ESCHEAT—CROWN—WIDOW OF LAST MALE OWNER.

———Crown—Land of—Canal constructed by private persons on—Rights acquired by—Proprietary right in land and right to have canal irrigated by water from Government river—Conditions—Expectations raised by Government to that effect. *See* CROWN—LAND OF—CANAL CONSTRUCTED BY PRIVATE PERSONS ON. **(1901) 28 I. A. 211 = 28 C. 693 (705-6).**

———Crown—Officers of—Acts of—Estoppel against Crown by reason of. *See* CROWN—OFFICERS OF AND GOVERNMENT—OFFICERS OF.

———Debt. *See* under this section CASES UNDER—CREDITOR AND DEBTOR.

———Debtor. *See* under this section CASES UNDER—CREDITOR AND DEBTOR.

———Deceased—Estoppel against—Heir-at-law if bound by. *See* DECEASED—ESTOPPEL AGAINST.

———Decree—Construction of—Instalment decree providing for contingencies—Decree-holder's acceptance of payment under, on particular construction of one of contingencies—Claim subsequent by him inconsistent with that construction in regard to that and other contingencies—Maintainability. *See* DECREE—CONSTRUCTION—INSTALMENT DECREE, ETC. **(1883) 10 I. A. 162 (170) = 10 C. 305 (313 314).**

———Decree—Consent decree—Estoppel by reason of. *See* under this section CASES UNDER—(1) COMPROMISE FOR VALUABLE CONSIDERATION AND (2) CONSENT DECREE.

———Decree—Execution of—Limitation bar to—Plea by judgment-debtor of—Maintainability—Estoppel. *See* JUDGMENT-DEBTOR—EXECUTION OF DECREE—LIMITATION BAR TO.

———Decree—Transmission for execution of—Death of judgment-debtor after starting of execution in court of transfer—Order of that court bringing his legal representative on record—Submission by legal representative to—Right to dispute validity of order subsequently—Estoppel. *See* CIVIL PROCEDURE CODE OF 1908, SS. 39, 41 AND 50. **(1928) 55 I. A. 227 = 3 Luck. 114.**

———Decree—Validity of—Judgment-debtor's right to dispute, on ground of its being contrary to statute—Estoppel—Decree by consent. *See* CENTRAL PROVINCES TENANCY ACT OF 1883, S. 42. **(1921) 48 I. A. 220 = 48 C. 591.**

———Decree-holder. *See* under this section CASES UNDER—DECREE.

———Decree-holder—Estoppel in favour of—Execution purchaser if entitled to benefit of. *See* EXECUTION SALE—PURCHASER AT—DECREE-HOLDER.

———Deed—Admissions in—Estoppel by reason of. *See* ADMISSION—DEED.

———Deed—Affirm and disaffirm—Rule against. *See* (1) APPROBATE AND REPROBATE (AND) under this section CASES UNDER—APPROBATE AND REPROBATE.

EVIDENCE ACT (I OF 1872)—(*Contd.*)

S. 115—Cases under—(*Contd.*)

———Deed—Approbate and reprobate—Rule against. *See* (1) APPROBATE AND REPROBATE AND (2) under this section CASES UNDER—APPROBATE AND REPROBATE.

———Deed—Attestation of—Effect—Validity of deed—Right of attestor to dispute—Estoppel—Conditions. *See* DEED—ATTESTATION OF—EFFECT AND HINDU LAW—REVERSIONER—WIDOW—ALIENATION BY — ATTESTATION OF DEED OF.

———Deed—Construction of — Abandonment of one—Claim subsequent on basis of—Maintainability. *See* DEED—CONSTRUCTION OF—ABANDONMENT OF ONE.

(1866) **11 M. I. A. 50 (72-3).**

———Deed—Estoppel by—Plea of—Ambiguity in deed—Effect. *See* DEED—ESTOPPEL BY.

(1874) **1 I. A. 157 (161).**

———Deed—Execution of—Admission of—Effect—Validity and real nature of deed—Right to contest—Estoppel. *See* DEED—EXECUTION OF—ADMISSION OF.

(1872) **19 W.R. 118 (121).**

———Deed—Fraudulent and inoperative nature of—Plea of, by plaintiff in ejectment suit—Deed barring his claim. *See* EJECTMENT SUIT—RIGHT OF—DEED BARRING.

(1869) **4 B. L. R. 16 (28).**

———Deed—Nature real of—Plea of—No estoppel as to. *See* LITIGATION—INCONSISTENT POSITIONS IN—ESTOPPEL. (1911) **38 I.A. 104 (111) = 38 A. 344 (355-6).**

———Deed—Nature real of—Right to contest—Execution of deed—Admission of—Effect. *See* DEED—EXECUTION OF—ADMISSION OF—EFFECT.

(1872) **19 W. R. 118 (121).**

———Deed—Operative character of—Right to dispute—Deed subsequent modifying its operation—Party relying on—Right of. *See* DEED—OPERATIVE CHARACTER OF—RIGHT TO DISPUTE. (1875) **2 I. A. 87 (104).**

———Deed—Recitals in—Effect—Evidence or admissions operating as estoppel. *See* DEED—RECITALS IN.

———Deed—Validity and real nature of—Right to contest—Execution of deed—Admission of—Effect. *See* DEED—EXECUTION OF—ADMISSION OF.

(1872) **19 W. R. 118 (121).**

———Ejectment suit—Right of—Deed barring—Fraudulent and inoperative nature of—Plea of—Maintainability. *See* EJECTMENT SUIT—RIGHT OF—DEED BARRING.

(1869) **4 B. L. R. 16 (28) = 13 W. R. (P. C.) 14.**

———Escheat—Claim by. *See* ESCHEAT.

———Execution of decree. *See* under this section CASES UNDER—DECREE—EXECUTION OF.

———Execution purchaser—Decree-holder—Estoppel in favour of—Purchaser if entitled to benefit of. *See* EXECUTION SALE—PURCHASER AT—DECREE-HOLDER.

———Execution purchaser — Judgment-debtor—Estoppel against—Effect of. *See* JUDGMENT-DEBTOR—ESTOPPEL AGAINST.

———Execution sale—Setting aside of—Judgment-debtor's application for—Maintainability—Estoppel. *See* CIVIL PROCEDURE CODE OF 1908, O. 21, R. 90—APPLICATION UNDER—MAINTAINABILITY—ESTOPPEL.

———Executor—Administration by—Legatee's right to question—Minority of legatee—Distribution made during, acted upon by legatee after attaining age—Re-distribution made impossible. *See* EXECUTOR — LEGATEE — ADMINISTRATION BY EXECUTOR.

(1915) **19 C. W. N. 787 (790-1).**

———Executor—Conveyance by — Validity of—Heir-at-law's right to dispute—Estoppel—Couditions—Misapprehension that executor was owner—Conveyance taken under

EVIDENCE ACT (I OF 1872)—(*Contd.*)

S. 115—Cases under—(*Contd.*)

—Effect. *See* EXECUTOR—CONVEYANCE BY—VALIDITY OF—HEIR-AT-LAW'S RIGHT TO DISPUTE.

(1927) **54 I. A. 276 (288).**

———Government. *See* under this section CASES UNDER—CROWN.

———Government promissory notes—Sale by invalid endorsement of—Validity of—Right to dispute—Acquiescence in such endorsement—Purchaser acting *bona fide*—Effect. *See* GOVERNMENT PROMISSORY NOTES—SALE BY INVALID ENDORSEMENT. (1875) **3 Suth. 175 (177).**

———Grant—Resumption—Grantor's right of—Life estate with reverter to grantor—Grant of—Heir of grantee—Recognition by grantor of right of, under grant—Effect. *See* GRANT—RESUMPTION OF—LIFE ESTATE WITH REVERTER TO GRANTOR.

———Heir-at-law — Estoppel against deceased — Effect against heir of. *See* BENAMI—BENAMIDAR—SALE BY—VALIDITY OF—RIGHT TO DISPUTE — REAL OWNER'S RIGHT OF. (1873) **19 W. R. 292.**

———Heir-at-law—Inheritance—Partition of, to the exclusion of one of the heirs—Claim subsequent by heir who was party to the, on foot of right of excluded member—Maintainability. *See* DECEASED—HEIR-AT-LAW—INHERITANCE—PARTITION OF, ETC. (1919) **11 L. W. 421 (424).**

———Heir-at-law—Inheritance—Right of—Disclaimer of, for valuable consideration—Claim by him or his heirs inconsistent with—Maintainability. *See* MAHOMEDAN LAW—INHERITANCE—RIGHT OF—RENUNCIATION FOR VALUABLE CONSIDERATION OF. (1875) **24 W. R. 28.**

———Heir-at-law—Inheritance—Right of — Enforcement of—Bar to—Conveyance by heir during life-time of propositus of present interest in his estate—Effect. *See* HINDU LAW—WIDOW—INHERITANCE TO SON.

(1870) **13 M. I. A. 585 (600).**

———Hindu Law—Adoption—Adopted son—Status of—Right to dispute—Estoppel. *See* HINDU LAW—ADOPTION

———Hindu Law—Adoption—Validity of—Right to dispute—Estoppel. *See* HINDU LAW—ADOPTION.

———Hindu Law—Inheritance—Exclusion from—Plea of—Right to set up—Recognition of right to inherit till incapacity becomes apparent—Effect. *See* HINDU LAW—INHERITANCE—EXCLUSION FROM—PLEA OF.

(1890) **18 I. A. 9 = 18 C. 341.**

———Hindu Law—Inheritance—Right of—Enforcement of—Bar to—Conveyance by heir during lifetime of propositus of present interest in his estate—Effect. *See* HINDU LAW—WIDOW—INHERITANCE TO SON—RIGHT OF—ENFORCEMENT OF—ESTOPPEL.

(1870) **13 M.I.A. 585 (600).**

———Hindu Law—Inheritance — Right of—Disclaimer for valuable consideration of—Claim subsequent inconsistent with—Maintainability. *See* MAHOMEDAN LAW—INHERITANCE — RIGHT OF — RENUNCIATION FOR VALUABLE CONSIDERATION OF.

(1875) **3 Suth. 165 (169) = 24 W.R. 28.**

———Hindu Law—Religious endowment—Mutt—Mohunt of—Estoppel against—Getting rid of, by suit brought by him formally in name of idol—Permissibility. *See* HINDU LAW—RELIGIOUS ENDOWMENT—MUTT—MOHUNT OF—OFFICE OF—SUCCESSION TO—DISPUTES AS TO, ETC.

(1928) **56 I.A. 104 (109-10).**

———Hindu Law — Religious endowment — Shebait—Grant invalid by—Validity—Grantor's right to dispute—Estoppel. *See* HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT—GRANT INVALID BY.

(1923) **51 I.A. 83 (97) = 47 M. 337.**

EVIDENCE ACT (I OF 1872)—(*Contd.*)

S. 115—Cases under—(*Contd.*)

———Hindu Law — Religious endowment — Shebait—Grant invalid of debutter property by—Estoppel—Validity by, against himself—Validity against his successors. *See* HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT—PROPERTY OF ENDOWMENT—GRANT INVALID OF.

(1923) 51 I.A. 83 (97) = 47 M. 337.

———Hindu Law — Reversioner—Widow. *See* under HINDU LAW—REVERSIONER—WIDOW.

———Hindu Law—Widow—Alienation by Validity of—Crown taking by escheat—Right to dispute of—Collector's acts estopping. *See* ESCHEAT — CROWN—WIDOW OF LAST MALE OWNER.

———Hindu Law—Widow—Inheritance to son—Right of—Enforcement of — Bar to—Conveyance by her during son's lifetime of present interest in his estate—Effect. *See* HINDU LAW—WIDOW—INHERITANCE TO SON—RIGHT OF—ENFORCEMENT OF—ESTOPPEL.

(1870) 13 M.I.A. 585 (600).

———Hindu Law—Widow — Reversioner. *See* HINDU LAW—REVERSIONER—WIDOW.

———Inheritance. *See* under this section CASES UNDER—HEIR-AT-LAW.

———Insurance Company — Claim by assured—Delay in making—Intention not to rely upon—Representation of—Effect. *See* INSURANCE—CLAIM BY ASSURED AGAINST COMPANY. **(1922) 32 M.L.T. 25 (34-5) (P.C.).**

———Insurance Company—Claim with full particulars—Provision as to—Waiver of—Effect of. *See* INSURANCE—CLAIM AGAINST COMPANY WITH FULL PARTICULARS.

(1922) 32 M.L.T. 25 (P.C.).

———Insurance Company—Policy—Validity of—Right to question—Acceptance of premiums with knowledge of circumstances entitling avoidance of policy—Effect. *See* INSURANCE—POLICY—VALIDITY OF.

(1922) 32 M.L.T. 25 (29) (P.C.).

———Judgment or proceeding—Admission in—Effect—Judgment or proceeding *inter partes*—Judgment or proceeding not *inter partes*—Distinction. *See* ADMISSION—DEED—ADMISSION IN—EFFECT.

———Judgment-debtor — Admission by—Execution purchaser—Effect against. *See* HINDU LAW—SELF-ACQUISITION—JOINT FAMILY—MEMBER OF.

(1837) 2 Suth. 840 (844).

———Judgment-debtor—Estoppel against—Execution purchaser — Effect against. *See* JUDGMENT-DEBTOR—ESTOPPEL AGAINST.

———Jurisdiction — Erroneous or irregular exercise of—Acquiescence in—Estoppel by reason of. *See* JURISDICTION—ERRONEOUS OR IRREGULAR EXERCISE OF.

———Land—Expenditure of money by third party on, under promise or expectation of creation of some interest in land by landlord—Landlord if and when will be bound to give effect to promise or expectation. *See* LAND—EXPENDITURE OF MONEY BY THIRD PARTY ON, ETC.

(1901) 28 I.A. 211 = 28 C. 693 (705-6).

———Land of one person—Building erected by third party on—Owner of land standing by and not preventing third party from doing so—Effect—Claim to building by owner of land — Estoppel—Condition. *See* LAND—BUILDING ERECTED BY THIRD PARTY ON.

(1899) 26 I. A. 58 (62-3) = 21 A. 496 (502).

———Landlord and tenant—Adverse possession—Plea by tenant of—Maintainability — Estoppel. *See* LANDLORD AND TENANT—ADVERSE POSSESSION—TENANT'S PLEA OF.

EVIDENCE ACT (I OF 1872)—(*Contd.*)

S. 115—Cases under—(*Contd.*)

———Landlord and tenant—Alienation by tenant—Validity of—Landlord's right to dispute—Ejectment suit by landlord—Alienation by tenant pending—Application by landlord to implead alienee in suit—Joinder of alienee as party—Effect. *See* LANDLORD AND TENANT—ALIENATION BY TENANT—VALIDITY OF—LANDLORD'S RIGHT TO DISPUTE. **(1922) 44 M.L.J. 723 (727).**

———Landlord and tenant—Building by tenant—Acquiescence by landlord in—Ejectment suit subsequent by him—Maintainability. *See* LANDLORD AND TENANT—EJECTMENT—BUILDING BY TENANT.

(1899) 26 I.A. 58 (63) = 21 A. 496 (503-4).

———Landlord and tenant—Building by tenant on faith of representation of permanent tenure—Ejectment by landlord in case of—Right of. *See* LANDLORD AND TENANT—EJECTMENT — BUILDING BY TENANT ON FAITH OF ETC. **(1925) 52 I.A. 178 (186-7) = 4 P. 707.**

———Landlord and tenant—Expenditure of money on land by tenant on promise or expectation of creation of some interest in land—Landlord's duty to give effect to promise or expectation. *See* LAND—EXPENDITURE OF MONEY BY THIRD PARTY ON.

(1901) 28 I.A. 211 = 28 C. 693 (705-6).

———Law—Admission on point of—Effect. *See* LAW—ADMISSION ON POINT OF.

———Legatee — Administration by executor— Right to question—Minority of legatee—Distribution made during, acted upon by legatee after attaining age—Redistribution made impossible — Effect. *See* EXECUTOR—LEGATEE—ADMINISTRATION BY EXECUTOR.

(1915) 19 C.W.N. 787 (790-1).

———Limitation — Plea of—Maintainability— Estoppel. *See* LIMITATION—PLEA OF— MAINTAINABILITY— ESTOPPEL.

———Limitation Act of 1908, S. 22—Applicability by estoppel of. *See* LIMITATION ACT OF 1908, S. 22—APPLICABILITY BY ESTOPPEL OF. **(1889) 17 C. 580.**

———Limitation Act of 1908, Art. 11 (1)—Applicability by estoppel of. *See* LIMITATION ACT OF 1908, ART. 11 (1)—APPLICABILITY BY ESTOPPEL OF.

(1928) 55 I.A. 256 = 51 Mad. 349.

———Litigation—Inconsistent positions in—Maintainability—Estoppel. *See* LITIGATION—INCONSISTENT POSITIONS IN— MAINTAINABILITY—ESTOPPEL.

———Mahomedan Law — Dower—Widow's suit against husband's heirs for—Husband's statements and conduct in litigations between him and his wife—Effect—No estoppel. *See* MAHOMEDAN LAW—DOWER—SUIT BY WIDOW AGAINST HUSBAND'S HEIRS FOR—EVIDENCE.

(1921) 25 C.W.N. 866 (873).

———Mahomedan Law—Inheritance—Partition of, on a particular basis—Claim subsequent inconsistent with, by party to—Maintainability. *See* MAHOMEDAN LAW—INHERITANCE—PARTITION OF, ON A PARTICULAR BASIS.

(1919) 11 L.W. 421 (424).

———Mahomedan Law—Inheritance—Right of—Renunciation of—Estoppel based on—Onus of proof of. *See* MAHOMEDAN LAW — INHERITANCE—RIGHT OF—RENUNCIATION OF— ESTOPPEL BASED ON.

(1909) 36 I. A. 210 (220) = 31 A. 557 (571).

———Mahomedan Law—Inheritance—Right of—Renunciation of, for valuable consideration—Claim subsequent inconsistent with, by heir himself or his heir. *See* MAHOMEDAN LAW—INHERITANCE—RIGHT OF—RENUNCIATION OF, FOR VALUABLE CONSIDERATION.

(1875) 24 W. R. 28.

EVIDENCE ACT (I OF 1872)—(*Contd.*)

S. 115—Cases under—(*Contd.*)

———Mahomedan Law—Male members of family—Mortgage of ancestral property by — Validity of — Female members of family—Right of, to dispute—Estoppel. *See* MAHOMEDAN LAW—MALE MEMBERS OF FAMILY.
(1912) 40 C. 378.

———Minor—Estoppel against. *See* HINDU LAW—MINOR—ESTOPPEL AGAINST.

———Misapprehension of parties—Proceedings taken under—Order of court based on—Estoppel by reason of. *See* (1) LIMITATION ACT OF 1908, S. 22—APPLICABILITY BY ESTOPPEL OF AND (2) LIMITATION ACT OF 1908, ART. 11 (1)—APPLICABILITY BY ESTOPPEL OF.

———Misapprehension of parties as to real ownership of property—Conveyance taken from wrong person under—Validity of—Real owner's right to dispute—No estoppel. *See* EXECUTOR—CONVEYANCE BY.
(1927) 54 I. A. 276 (288) = 5 R. 247.

———Mortgage—Mortgaged property—Revenue sale of, brought about by fraud of mortgagee in possession—Agreement for secret purchase at, between him and third party—Plea of, against mortgagor's right of redemption—Maintainability. *See* MORTGAGE—MORTGAGOR AND MORTGAGEE—ESTOPPEL BETWEEN — MORTGAGED PROPERTY—REVENUE SALE OF, ETC.
(1866) 10 M. I. A. 540 (557-8).

———Mortgage—Mortgagee—Estoppel protecting title of—Purchaser in execution of mortgage decree if entitled to benefit of. *See* MORTGAGE—MORTGAGEE—ESTOPPEL PROTECTING TITLE OF. **(1892) 19 I. A. 203 (220) = 20 C. 296.**

———Mortgage — Mortgagee — Subsequent purchaser—Right to set up mortgage against—Representation of no mortgage prior to purchase—Effect. *See* MORTGAGE—MORTGAGEE—SUBSEQUENT PURCHASER.
(1873) 1 I. A. 144 (156).

———Mortgage—Mortgagor's title to mortgaged property—Mortgagee's right to dispute. *See* MORTGAGE—MORTGAGOR AND MORTGAGEE—ESTOPPEL BETWEEN—TITLE OF MORTGAGOR. **(1872) 8 M. J. 149 and (1922) 47 M. L. J. 258.**

———Mortgage—Redemption—Right of occupant of mortgaged property claiming to have purchased same from mortgagor—Mortgagee's right to dispute—Notice of foreclosure in proceedings under Reg. XVII of 1806 (Beng.)—Service on occupant of—Effect. *See* BENGAL REGULATIONS LAND MORTGAGE REDEMPTION AND FORECLOSURE REG. XVII OF 1806, S. 7. **(1859) 7 M. I. A. 323 (359).**

———Mortgage — Usufructuary mortgagee—Redemption right of mortgagor—Limitation bar to—Plea of—Maintainability—Lease by mortgagee to mortgagor after bar of limitation—Description of lessor in, as usufructuary mortgagee—Effect. *See* MORTGACE—USUFRUCTUARY MORTGAGE—REDEMPTION OF—RIGHT OF—LIMITATION BAR TO. **(1900) 27 I. A. 103 (108-9) = 27 C. 1004 (1012).**

———Mortgage—Void mortgage—Validity of—Right to question—Acquiescence in mortgage—Estoppel by reason of. *See* WATAN—WATAN LANDS—MORTGAGE OF, BY WATANDAR—VOID OR VOIDABLE.
(1900) 27 I. A. 86 = 24 B. 556.

———Mutation proceedings—Admission of legal title of third party in—Mutation effected and possession given to third party pursuant to—Subsequent suit by real owner to recover estate from third party—Maintainability—Estoppel. *See* MUTATION—PROCEEDINGS FOR—ADMISSION OF TITLE OF THIRD PARTY IN.
(1898) 25 I. A. 161 (177 8) = 26 C. 81 (100-1).

EVIDENCE ACT (I OF 1872)—(*Contd.*)

S. 115—Cases under—(*Contd.*)

———Oudh estate— Sub-settlement — Under-proprietary rights—Talukdar's right to dispute. *See* OUDH ESTATE—SETTLEMENT OF, INCLUDING ANOTHER VILLAGE, ETC.
(1876) Bald. 105.

———Oudh estate—Under-proprietor (Pukhtadar) right—Possession of property with—Denial by talukdar of right of—Estoppel—Rent from person in possession—Acceptance of—Effect. *See* OUDH ESTATE—TALUKDAR—UNDER-PROPRIETOR (PUKHTADAR) RIGHT.
(1924) 51 I. A. 326 = 46 A. 728.

———Principal and agent—Agent— Act of, consistent with limited or general authority—Principal's right to dispute—Estoppel—Person dealing with agent knowing his authority to be only limited—Effect. *See* PRINCIPAL AND AGENT—AGENT—ACT OF, CONSISTENT WITH, ETC.
(1909) 14 C. W. N. 381.

———Principal and agent—Agent— Adverse interest in subject-matter of agency—Assertion of—Permissibility. *See* PRINCIPAL AND AGENT—AGENT—ADVERSE INTEREST IN SUBJECT-MATTER OF AGENCY.
(1863) 9 M. I. A. 195 (252-3).

———Principal and agent—Agent—Authority of—Holding out of—Principal's liability on ground of. *See* PRINCIPAL AND AGENT—AGENT—AUTHORITY OF—HOLDING OUT OF. **(1909) 14 C. W. N. 381 (387-8).**

———Principal and agent— Agent—Money or property entrusted to—Principal's title to—Right to dispute—Title of third party—Right to set up—Estoppel. *See* PRINCIPAL AND AGENT—AGENT—MONEY OR PROPERTY ENTRUSTED TO. **(1929) 56 I. A. 170 = 56 M. L. J. 799.**

———Principal and agent — Agent—Purchase by, on behalf of principal—Claim subsequent to benefit of—Maintainability. *See* PRINCIPAL AND AGENT—AGENT—PURCHASE BY, ON BEHALF OF PRINCIPAL.
(1875) 2 I. A. 154 (161-2).

———Principal and agent—Agent—Remuneration of—Liability for—Principal's right to dispute—Services rendered in expectation of remuneration—Acceptance thereof with knowledge of such expectation—Effect. *See* PRINCIPAL AND AGENT—AGENT—REMUNERATION OF.
(1863) 9 M. I. A. 195 (254-5).

———Purdanashin ladies — Mahomedan family — Male members of—Mortgage of ancestral property by—Validity of, as regards shares of female members of family—Their right to dispute—Estoppel. *See* MAHOMEDAN LAW—MALE MEMBERS OF FAMILY. **(1912) 40 C. 378.**

———Relationship—Recognition by conduct of—Dispute of relationship subsequently—Permissibility. *See* RELATIONSHIP—RECOGNITION BY CONDUCT OF.
(1880) 8 C. L. R. 346 (349).

———Remedies alternative—Choice of—Person with right as to—Choice of one remedy by him—Effect of, on his right to choose other—Estoppel. *See* TORT—REMEDIES ALTERNATIVE FOR. **(1913) 40 I. A. 56 (63-4) = 40 C. 598 (609-10).**

———Sale—Person not entitled to property—Sale by—Validity of—Real owner's right to dispute—Estoppel by representations—Contract complete before date of alleged representations—Effect. *See* SALE—PERSON NOT ENTITLED TO PROPERTY—SALE BY.
(1927) 54 I. A. 276 (288) = 5 R. 427.

———Statute—Estoppel against—Consent of parties—Effect. *See* STATUTE—PROVISIONS OF—VIOLATION OF—OBJECTION TO. **(1924) 52 I. A. 126 (128-9) = 52 C. 408.**

EVIDENCE ACT (I OF 1872)—(*Contd.*)

S. 115—Cases under—(*Contd.*)

———Statute—Provisions of—Non-compliance with—Plea of—Maintainability—Estoppel. *See* STATUTE—PROVISIONS OF—NON-COMPLIANCE WITH.

(1856) 6 M. I. A. 467 (484 5).

———Suit—Valuation of— Plaint valuation—Objection by defendant to, in Privy Council appeal—Maintainability—Acceptance of valuation by him and appeal to High Court by him on foot thereof—Effect. *See* CIVIL PROCEDURE CODE OF 1908, S. 110, PARA. 1—SUBJECT MATTER OF APPEAL—VALUE OF—PLAINT VALUATION.

(1873) 1 I. A. 84.

———Surety for official—Embezzlement by official—Suit by employer against surety in respect of—Maintainability—Auditing by employer of accounts rendered by official for period in question—Effect. *See* SURETY—DISCHARGE OF—OFFICIAL—SURETY FOR—EMBEZZLEMENT, ETC.

(1871) 14 M. I. A. 86 (89).

———Thakbust proceeding—Decision in—Effect of, on parties to proceeding—No estoppel but of high authority. *See* THAKBUST PROCEEDING—DECISION IN—EFFECT OF, ON PARTIES TO PROCEEDING.

(1914) 27 M. L. J. 365 (372-3).

———Title—Admission against, on erroneous view of legal status of party Effect—Suit different for different object—No estoppel in. *See* TITLE—ADMISSION AGAINST, ON ERRONEOUS VIEW, ETC.

(1861) 8 M. I. A. 400 (418-9).

———*Tora garas huk*—Execution sale of—Invalidity of—Plea by Government of—Maintainability—Estoppel. *See* TORA GARAS HUK—EXECUTION SALE OF—INVALIDITY OF—PLEA BY, ETC. **(1859) 8 M. I. A. 1 (38-9).**

———Trust—Trustee—Estoppel against. For all cases, *see* under TRUST—TRUSTEE.

———Vendor—Estoppel against—Purchaser if bound by. *See* VENDOR AND PURCHASER—VENDOR—ESTOPPEL AGAINST.

———Void transaction—Validity of—Right to dispute—Acquiescence in transaction—Estoppel by reason of. *See* WATAN—WATAN LANDS—MORTGAGE OF, BY WATANDAR—VOID OR VOIDABLE.

(1900) 27 I. A. 86 = 24 B. 556.

———Watan lands—Mortgage of—Heir of watandar effecting—Right to question validity of mortgage—Acquiescence in mortgage—Estoppel by reason of. *See* WATAN—WATAN LANDS—MORTGAGE OF, BY WATANDAR—VOID OR VOIDABLE. **(1900) 27 I. A. 86 = 24 B. 556.**

———Will—Condition imposed by—Breach of—Advantage of—Right to take—Estoppel—Party claiming advantage responsible for breach. *See* HINDU LAW—WILL—CONDITION IMPOSED BY—BREACH OF.

(1874) 1 I. A. 387 (398).

———Will—Legatee under—Administration by executor——Right to question—Minority of legatee—Distribution made during, acted upon by legatee after attaining age—Redistribution made impossible—Effect. *See* EXECUTOR—LEGATEE—ADMINISTRATION BY EXECUTOR.

(1915) 19 C.W.N. 787 (790-1).

———S. 116—*Tenant—Denial of landlord's title by—Estoppel—Conditions.*

The suit property was let by the plaintiff to the defendant. He was let into possession by the plaintiff's gardener, on her behalf and by her direction, and he regularly paid rent to her and applied to her to do all the necessary repairs. He did not give up possession to her although he duly received notice to quit, and he has, in the suit brought by her for possession of the property, denied her title. He is clearly estopped from denying the plaintiff's title (207).

EVIDENCE ACT (I OF 1872), S. 116—(*Contd.*)

S. 116 of the Evidence Act is perfectly clear on the point and rests on the principle well established by many English cases, that a tenant who has been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord (207). (*Sir George Farwell.*) BILAS KUNWAR *v.* DEORAJ RANJIT SINGH.

(1915) 42 I. A. 202 = 37 A. 557 (566-7) = 13 A. L. J. 991 = 19 C. W. N. 1207 = 22 C.L. J. 516 = 18 M.L. T. 248 = (1915) M. W. N. 757 = 2 L.W. 830 = 17 Bom. L. R. 1006 = 30 I. C. 299 = 29 M. L. J. 335.

———*Tenant—Landlord's title under conveyance—Validity of—Right to dispute—Brothers of tenant living with him on property let—Right of, to dispute such title—Distinction.*

An Armenian Christian resident in Rangoon made a will by which he appointed his wife executrix and bequeathed to her specified immoveable properties "and all my household furnitures, carriages, horses, chattels and effects, and all money and debts due and owing to me which I shall be possessed of at the time of my death." The testator died in 1897. At that time he was possessed of other immoveable property besides that mentioned in the will, namely, certain land at Kokine in a suburb of Rangoon. The widow obtained probate of the will and administered the estate, sold the three houses in Halpin Road specified in the will, paid all the debts including a mortgage on the Kokine land, and was left finally with that land free from incumbrances and Rs. 19,000 in August, 1904. The family then moved to the Kokine land and resided there from that time and down to the date of the suit which was instituted in 1920. In 1918 the widow conveyed the property to the plaintiff-respondent in discharge of an equitable mortgage with which she had charged it, and he agreed to let it to the eldest son for a year. In 1920 the plaintiff instituted the suit in ejectment out of which the appeal arose against the widow, the eldest son, and the younger children.

Held, that the eldest son was estopped under S. 116 of the Evidence Act from denying the title of the plaintiff, his landlord, but that the younger children were not so estopped (287-8).

It was, indeed, suggested that the younger children also came under S. 116, because they were in occupation under the leave and licence either of the plaintiff or of his tenant, the eldest son. But their Lordships do not take this view of the facts (288). (*Lord Phillimore.*) VERTANNES *v.* ROBINSON. **(1927) 54 I. A. 276 = 5 R. 427 = 102 I.C. 639 (2) = 29 Bom. L. R. 1017 = 46 C.L.J. 126 = 25 A.L.J. 713 = 31 C. W. N. 1078 = 39 M. L. T. 134 = 26 L. W. 417 = A.I.R. 1927 P. C. 151 = 53 M. L. J. 71.**

———S. 117—Bailee—Money or property entrusted to—Bailor's title to—Right to dispute—Title of third party—Right to set up. *See* PRINCIPAL AND AGENT—AGENT—MONEY OR PROPERTY ENTRUSTED TO.

(1929) 56 I. A. 170 = 56 M. L J. 799.

———Ss. 129 and 126—*Witness—Evidence of—Notes of, taken for purposes of litigation—Production of—Privilege—Non-production—Inference adverse from.*

In a litigation as to the grant of probate of a will, the High Court set aside the decree of the court below granting probate, and, in doing so, they allowed their minds to be influenced by the fact that a note of the evidence which, *G*, one of the witnesses for the applicant, could give, was not produced in Court for the information of the caveators. That note was obtained from the witness by a person, acting on bebalf of the applicant, and for the purposes of the applicant's brief in the litigation as to the grant of probate. *Held*, that the note was privileged from production, and that the caveators were not entitled to see the

EVIDENCE ACT (I OF 1872), Ss. 129, 126—(*Contd.*)

same. (*Sir John Edge.*) DULHIN GENDA KUNWAR *v.* HARNANDAN PRASHAD SINGH. **(1916) 20 C.W.N. 617 = (1916) 1 M. W. N. 358 = 4 L. W. 214 = 33 I. C. 790 = 30 M. L. J. 624 (633-4).**

——**S. 145**—*Depositions in former case — Documents concerning witness—Use of, to discredit him—Procedure in case of.*

On general principles it would appear to be sound that if a witness is under cross-examination on oath he should be given the opportunity, if documents are to be used against him, to tender his explanation and to clear up the particular point of ambiguity or dispute. This is a general, salutary, and intelligible rule, and where a witness's reputation and character are at stake the duty of enforcing this rule would appear to be singularly clear. S. 145 of the Evidence Act is to the same effect. Their Lordships have observed with regret and with surprise that the general principle and the specific statutory provisions have not been followed. The verdict of the High Court is an inferential verdict actually of perjury. The premises upon which this inference proceeds consist, in no inconsiderable degree, of documents, statements, even turns of expression, which are used to confound the spoken word. The safeguards set up by the law with respect to the use of documents have not been observed. Not only have documents been used for the purpose of contradicting witnesses without obeying the injunctions prescribed by law, but the inference thus derived, and improperly derived, from these documents has resulted in an inferential verdict of perjury (147-8). (*Lord Shaw.*) BAL GANGADHAR TILAK *v.* SHRINIVAS PANDIT. **(1915) 42 I. A. 135 = 39 B. 441 (461-2) = 17 Bom. L. R. 527 = 19 C. W. N. 729 = 22 C. L. J. 1 = 13 A.L.J. 570 = 18 M. L. T. 1 = (1915) M. W. N. 554 = 2 L.W. 611 = 29 I.C. 639 = 29 M.L.J. 34.**

——Depositions in prior litigation — Admissibility—Purpose of—Mahomedan Law — Dower—Widow's suit against husband's heirs for — Depositions in prior suit between husband and wife—Admissibility. *See* MAHOMEDAN LAW—DOWER—WIDOW'S SUIT AGAINST HUSBAND'S HEIRS FOR—EVIDENCE—DEPOSITIONS IN.
(1921) 25 C. W. N. 866 (872).

——Witness—Prior statements in writing of—Cross-examination with reference to — Necessity — Use of statements to discredit witness without such cross-examination —Permissibility. *See* CROSS-EXAMINATION—WITNESS —PRIOR STATEMENTS IN WRITING OF.
(1923) 45 M. L. J. 438 (442-3).

——**Ss. 153 and 155**—*Construction strict of—Necessity.*

Ss. 153 and 155 must be strictly construed and narrowly interpreted if the Courts governed by that statute are to be spared the task in many suits of prosecuting, on most imperfect material, issues which have no bearing upon that really in contest between the parties. S. 153 does not go far beyond, if it goes at all beyond, the case of *A. G.* v. *Hitchcock* (154 E. R. 38) on which doubtless it was based. (*Lord Blanesburgh.*) BHOGILAL BHIKACHAND *v.* ROYAL INSURANCE CO., LTD. **(1927) 6 R. 142 = 26 A. L. J. 377 = 32 C. W. N. 593 = 108 I.C. 1 = 47 C. L. J. 550 = 30 Bom. L. R. 818 = 28 L.W. 276 = A. I. R. 1928 P. C. 54 = 54 M. L. J. 545 (562).**

——**S. 154**—Witness turning hostile—Cross-examination of—Refusal to permit—Effect of, on value of his evidence. *See* CROSS-EXAMINATION—WITNESS TURNING HOSTILE.
(1901) 6 C. W. N. 513 (524).

——*Witness turning hostile—Procedure on — Declaration that he turned hostile—Necessity.*

EVIDENCE ACT (I OF 1872), S. 154—(*Contd.*)

An application was therefore made to the District Judge to declare the witness hostile and to allow the proponent of the will to cross-examine him. This is a position for which provision is made by S. 154 of the Evidence Act, which says nothing as to declaring a witness hostile but provides that the Court may *in its discretion* permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party. (*Sir Lawrence Jenkins.*) BAIKUNTHA NATH CHATTORAJ *v.* PRASANNAMOYI DEBYA. **(1922) 27 C. W. N. 797 = 9 O. & A. L. R. 501 = 72 I. C. 286 = A. I. R. 1922 P. C. 409 = 44 M. L. J. 699 (701).**

——**S. 155 (3)**—*Witness—Credit of—Impeachment of—Former statements inconsistent alleged to have been made by witness to* A*—Evidence of third persons as to—Admissibility—Statements alleged to have been communicated to them by* A *in absence of witness—Effect.*

The question was whether the appellant whilst employed as an advocate for the prosecution in an abduction case suggested or hinted to the prosecutor that he should bribe an expert witness to give evidence which would be favourable to him (the prosecutor).

The appellant's senior advocate in the abduction case deposed to certain conversation that took place in the absence of the appellant between himself and the prosecutor who was alleged to have been instructed by the appellant. Another witness, the Government Advocate, also deposed to particulars of a long conversation between him and the prosecutor.

Held, that their evidence was inadmissible to prove the charge against the appellant of having suggested bribery of the expert witness by the prosecutor (63).

Quære, whether their evidence was admissible for the purpose of impeaching the credit of the appellant examined as a witness, under S. 155 (3) of the Evidence Act (63). (*Lord Davey.*) BOMANJEE COWASJEE, *In re.*
(1906) 34 I. A. 55 = 34 C. 129 (147) = 2 M. L. T. 96 = 5 C. L. J. 123 = 11 C. W. N. 370 = 9 Bom. L. R. 3 = 5 Cr. L. J. 50 = 4 L.B.R. 27 = 9 Sar. 188 = 17 M.L J. 67.

——**S. 157**—*Discrediting of witness—Letter written by Police Officer to his superior that a person would make a certain statement if bribed—Admissibility of, in evidence for any purpose.*

A letter written by a police officer to his superior expressing that a certain person would make a certain statement for a certain sum of money is not under S. 157 properly admissible in evidence for any purpose. (*Lord Blanesburgh.*) BHOGILAL BHICKACHAND *v.* ROYAL INSURANCE CO., LTD. **(1927) 6 R. 142 = 26 A.L.J. 377 = 32 C. W. N. 593 = 108 I. C. 1 = 47 C. L. J. 550 = 30 Bom. L. R. 818 = 28 L. W. 276 = A. I. R. 1928 P. C. 54 = 54 M. L. J. 545 (563).**

——*Partition—Suit for—Demand for partition prior to, and what happened them and pursuant to such demand —Evidence of — Sale-deed about a year after alleged demand by member—Recital as to demand in — Admissibility in evidence of deed and of recital in it—Purpose of.*

In a suit for partition instituted by *N* in 1920, his case and evidence were to the effect that in 1909 he (then living with his maternal uncle in his maternal uncle's village) went to his father's village, saw *B*, his paternal uncle and the *karta* of the joint family, and demanded a partition and the allotment to him of his share of the joint family property, that *B* advised him to continue joint and not to demand a separate share, that *B* promised to arrange an advance of money for *N*, and took him to *N*, and that he obtained a sum of Rs. 1,500 from *S*. In June, 1910, *N* executed a sale-deed conveying his share in the joint family property to

EVIDENCE ACT (I OF 1872), S. 157—(*Contd.*)

S for the sum of Rs. 1,500. The sale-deed recited, *inter alia*, "About a year ago I came to Poona and asked my uncles and my step-brothers to effect a partition and to allot to me my one-ninth share of our ancestral property. But they refused to give (my) share."

On a question arising as to whether the recitals in the said sale-deed were or were not admissible against the defendants (the other members of the family) on the issue whether *N* demanded a share of the property in 1909, *held*, that the sale-deed was some evidence of the act alleged to have been done in pursuance of *N's* interview with *B*, and that it was material on the question whether the evidence of *N* and his witnesses on that part of the case could be relied upon.

It may be that this particular statement (the recital in the deed set out above) does not come within S. 157 of the Evidence Act on the ground that it was not made at or about the time of *N's* alleged interview with *B* in 1909. (*Sir Lancelot Sanderson.*) RADHOBA BALOBA VAGH *v.* ABURAO BHAGWANTRAO SHIROLE.

(1929) 33 C. W. N 1096 = 50 C. L. J. 135 = A.I.R. 1929 P. C. 231 = 57 M. L. J. 287.

———*Witness— Evidence of — Corroboration of—Statements by him to third parties at or about time when fact took place—Evidence of those parties as to—Admissibility.*

The question was whether the appellant whilst employed as an advocate for the prosecution in an abduction case suggested or hinted to the prosecutor that he should bribe an expert witness to give evidence which would be favourable to him (the prosecutor).

The senior advocate in the abduction case deposed to the effect that, as they were going to Court on a particular day, the appellant said something to him which conveyed to his mind the impression that the appellant had advised the prosecutor to bribe the expert witness. The senior advocate was corroborated by certain persons, who severally stated that he had on the same day repeated to them his impression of the effect of his conversation with the appellant.

Held, that the evidence of those other persons was admissible under S. 157 of the Evidence Act, as it tended to support the credibility of the senior advocate (60). (*Lord Davey.*) BOMANJEE COWASJEE, *In re.*

(1906) 34 I. A. 55 = 34 C. 129 (145) = 2 M. L. T. 96 = 5 C. L. J. 123 = 11 C.W.N. 370 = 9 Bom. L. R. 3 = 5 Cr. L. J. 50 = 4 L. B. R. 27 = 9 Sar. 188 = 17 M. L. J. 67.

———**S. 159**—Account books kept by witness—Refreshing memory from—Evidence given after — Rejection of — Propriety. *See* EVIDENCE ACT, S. 34.

(1899) 4 C. W. N. 18 (20).

———*Document produced at a late stage and therefore not admitted in evidence—Use of, for refreshing memory of witness.*

For purposes of S. 159 of the Evidence Act, it is not necessary that the writing used to refresh the memory of a witness should have been *admitted* in evidence. Accordingly, a document not produced in Court within the proper time, and, in consequence, *rejected* as evidence under the provisions of O. 13, R. 2 of C. P. C. of 1908, may nevertheless be referred to by the party producing it or his witness to refresh his memory if the document is otherwise within the purview of S. 159 of the Evidence Act. "The weight of the evidence, the objection to the document upon the ground that its not having been produced at the proper time renders its authenticity the subject of suspicion, and all other grounds upon which a document can be successfully impeached still remain open, but refusal to permit a man to refresh his memory by proper relevant contemporaneous documents might lead to a grave injustice." (*Lord Buckmaster.*) JEWUN LAL DAGA *v.* NILMANI CHAUDHURI.

(1927) 55 I. A. 107 = 7 P. 305 = (1928) M. W. N. 154 = 30 Bom. L. R. 305 = 107 I. C. 337 = 47 C. L. J. 302 = 32 C. W. N. 565 = 27 L.W. 740 = A.I.R. 1928 P. C. 80 = 26 A. L. J. 124 = 54 M. L. J. 325.

———List of documents required by O. 7, R. 14 (2) of C.P.C. of 1908—Document not included in—Use of, for refreshing memory of witness. *See* C. P. C. OF 1908, O. 7, R. 14 (2)—LIST OF DOCUMENTS REQUIRED BY.

(1918) 45 I. A. 284 (286-7) = 41 A. 63 (66).

———**S. 162**—*Court of Wards—Release of management by—Order of Government of India directing—Correspondence between it and local Government regarding—Privileged documents if.*

The court cannot compel the production of an order of the Government of India directing a Local Government to release an estate from the superintendence of the Court of Wards and the correspondence which passed between the Local Government and the Central Government in regard to that matter (498). (*Viscount Haldane.*) NARINDRA BAHADUR SINGH *v.* OUDH COMMERCIAL BANK, LTD.

(1921) 48 I. A. 494 = 43 A. 478 (482) = 26 C. W. N. 326 = L.R. 3 P.C. 25 = (1922) M. W. N. 61 = A.I.R. 1922 P.C. 1 = 24 O.C. 183 = 64 I.C. 187 = 42 M.L J. 58.

EXCHANGE.

———*Agreement for—Completed or not—Thing to be exchanged, defined and specified—Thing to be taken in exchange indefinite and requiring further act to be done—Effect.*

The case is one of an agreement to exchange, where on the one side the thing to be exchanged is already defined and specified, and where that which is to be taken in exchange is to some extent indefinite and requires a further act to ascertain it. Suppose *A* and *B* had agreed to make an exchange of this sort; *A* agrees to give *B* six cows, specific cows, in exchange for six horses which he is at liberty to select out of the stock then upon *B's* farm, the selection to be made at a future time; that is a perfect agreement for the exchange, and all that remains is that *A* should select the horses on *B's* farm. There might be a dispute whether the horses that were upon the farm at the time of the agreement had not been removed, and others substituted; they might differ as to the horses which were intended to be taken in exchange; but that would not affect the agreement, but would be a question of the mode of performance of it (142-3). (*Sir Montague E. Smith.*) PORT CANNING LAND INVESTMENT RECLAMATION AND DOCK CO. *v.* SMITH. **(1874) 1 I. A. 124 = 21 W.R. 315 = 3 Sar. 359.**

———*Property taken in—Value of—Fluctuations in—Liability for.*

Whenever one person gives another something instead of what he has got, both parties take the risk of whether the thing that is given will keep, or lose, or enhance its value. Even an obligation to pay in currency is liable to that risk. The fluctuations in quite recent years in European rates of exchange have brought home that lesson to many an unfortunate grantee. (*Viscount Dunedin.*) BOMANJI ARDESHIR *v.* SECRETARY OF STATE FOR INDIA.

(1928) 56 I.A. 51 = 53 B. 230 (238) = 27 A.L.J. 47 = 33 C.W.N. 293 = 49 C.L.J. 179 = I.D. (1929) P.C. 41 = 31 Bom. L.R. 256 = 114 I.C. 1 = A.I.R. 1929 P.C. 34.

EXECUTING COURT.

———*See also* EXECUTION OF DECREE AND EXECUTION PROCEEDING.

EXECUTING COURT—(*Contd.*)

———Cost—Interest on—Award of—Jurisdiction—Appellate decree—Cost of all courts awarded by—Interest on costs of each court as from date of its decree—Award of—Appellate decree not expressly providing for same. *See* PRIVY COUNCIL—APPEAL— DECREE IN—CONSTRUCTION—COST OF ALL COURTS AWARDED BY.

(1877) 4 I.A. 137 (142) = 3 C. 161 (169).

———*Costs—Interest on—Decree silent as to—Award of interest in case of.*

Where an order of His Majesty in Council is silent as to interest upon the costs decreed, the Judge of the Indian Court which has to execute the decree has no power to direct payment of those costs with interest (142-3).

As to orders in Council, as well as to decrees of the Indian courts, the existing practice is that interest cannot be given in execution unless it is specially directed to be given. It appears to their Lordships that the principle of the decisions which have established this practice is sound (144). (*Sir James W. Colvile.*) FORESTER *v.* SECRETARY OF STATE FOR INDIA. **(1877) 4 I.A. 137 = 3 C. 161 (169-71) = 3 Sar. 717 = 3 Suth. 405 = 1 P.R. 1877.**

———*Decree—Addition to or alteration of—Power to make.*

The Court executing a decree cannot vary or add to it by awarding anything beyond that which was originally decreed (4). (*Sir Barnes Peacock.*) HURRO DOORGA CHOWDHRANI *v.* MAHARANI SURAT SOONDARI DEBI. **(1881) 9 I.A. 1 = 8 C. 332 (334-5) = 4 Sar. 304.**

——— A Court executing a decree must work out the rights of the parties as directed by the decree and cannot make additions to it (133). (*Lord Davey.*) GOPI NARAIN KHANNA *v.* BABU BANSIDHAR **(1905) 32 I.A. 123 = 27 A. 325 (333) = 2 C.L.J. 173 = 9 C.W.N. 577 = 7 Bom. L.R. 427 = 2 A.L.J. 336 = 8 Sar. 779 = 15 M. L. J. 191.**

———*Decree—Property awarded to plaintiff by—Disallowance of, in execution—Jurisdiction.*

Where a decree plainly deprived the plaintiffs of certain scheduled items bearing numbers which denoted certain mouzahs, and awarded to them other items bearing numbers, which denoted kasht or jote lands lying within the ambit of those mouzahs and defined by measurements, boundaries and personal names, and there was no suggestion of any difficulty in identifying the parcels so awarded, *held*, that to say, in execution proceedings, that the plaintiffs should not have the kasht or jote lands, because in the process of execution the defendants raised a new question as to the nature of their relation to the mouza, was to alter the decree, not to execute it.

To re-open the question in execution was an error of procedure; and one of a substantial kind, calculated to cause great irregularity in the conduct of suits. (*Lord Hobhouse.*) UDWANT SINGH *v.* TOKHAN SINGH.

(1901) 28 I A. 57 = 28 C. 353 = 3 Bom. L.R. 318 = 8 Sar. 14.

———*Decree -- Relief granted by — Disallowance of—Jurisdiction.*

In execution proceedings, the court only construes the decree and does not consider its merits.

Where, therefore, the decree, on its proper construction, entitles the decree-holder to interest on mesne profits awarded by the decree, the executing court cannot disallow such interest because, in its opinion, interest ought not to be given in such a case (124). (*Lord Hobhouse.*) GIRISH CHUNDER LAHIRI *v.* SHOSHI SHIKHARESWAR ROY.

(1900) 27 I.A. 110 = 27 C. 951 (967) = 4 C.W.N. 631.

EXECUTING COURT—(*Contd.*)

———Decree—Relief not awarded by, and obtainable only by fresh suit—(1) Agreement by judgment-debtor to give in execution—Validity and enforceability of, and (2) Award of, in execution—Jurisdiction—Absence or irregular exercise of. *See* DECREE—RELIEF NOT AWARDED BY, AND OBTAINABLE ONLY BY FRESH SUIT.

(1875) 2 I. A. 219 (233-4).

———Decree—Relief not granted by—Grant of—Jurisdiction—Binding nature of order granting relief in subsequent stages. *See* C. P.C. OF 1908, S. 11—CASES UNDER—EXECUTION PROCEEDINGS—RELIEF NOT GRANTED BY DECREE. **(1894) 22 I.A. 68 (70) = 22 C. 434 (440).**

———*Decree—Validity of—Questioning of.*

If, in a case in which the cause of action for a suit is barred by limitation, a Judge decrees for the plaintiff, instead of dismissing the suit, his decree is valid, unless reversed upon appeal; and the defendant cannot, upon an application to execute the decree, set up as an answer that the cause of action was barred by limitation (132). (*Sir Barnes Peacock.*) MUNGUL PERSHAD DICHIT *v.* GRIJA KANT LAHIRI CHOWDHRY. **(1881) 8 I.A. 123 = 8 C. 51 (60) = 11 C. L. R. 113 = 4 Sar. 248.**

———The duty of the executing Court is to carry the orders of the decree into effect, as being conclusive between the parties whether it may or may not be disputable in point of law. (*Lord Hobhouse.*) MAHARAJAH OF BHARATPUR *v.* RAM KANNO DEI. **(1900) 28 I. A. 35 (42) = 23 A. 181 (190) = 5 C. W. N. 137 = 3 Bom. L. R. 51 = 7 Sar. 792.**

———*Decree in favour of widow as legal representative of deceased plaintiff—Application for execution by his alleged posthumous son—Legitimacy of son—Decision by executing Court as to—Jurisdiction—Not* res judicata *in regular suit—C.P.C. of* 1859, *S.* 208—*C. P. C. of* 1861, *S.* 11—*Effect.*

Pending an appeal to the High Court the plaintiff died, and his widow was substituted on the record under S. 103 of C. P. C. of 1859, for the purpose of prosecuting the appeal, and a decree was passed in her favour. An appeal was preferred from that judgment to Her Majesty in Council and the judgment was reversed. In the meantime, however, pending the appeal, certain execution proceedings were taken. The widow applied for execution on behalf of herself, and also, in a different character, as guardian of *W*, an infant, who, she alleged, was a posthumous legitimate son of her deceased husband. The legitimacy of *W* was disputed by the judgment-debtor, but the High Court, on appeal in the execution proceeding, held that *W* was the legitimate son of the deceased plaintiff and declared the widow's right to execute the decree in two capacities, partly for herself, and partly as guardian of *W*.

Upon that, the judgment-debtor having died, his widow instituted the suit out of which the appeal arose for the purpose of setting aside the judgment of the High Court in the execution proceeding upon the ground that in an execution proceeding it was not competent to the Court to entertain such a question as the legitimacy of *W*. The widow of the deceased plaintiff in the prior suit (*W's* mother) contended, on the other hand, that the suit was not maintainable, because the very question had been decided between the same parties in a previous suit by a competent Court. In other words, she pleaded *res judicata*.

Held, affirming the High Court, that the issue as to the legitimacy of *W* was not *res judicata* by a competent Court in a competent proceeding (75).

Assuming that *W* acquired on his birth an interest in the decree that had been obtained by his mother, the decree was not in the terms of S. 208 of C. P. C. of 1859, transferred to him, either by assignment, which is not pretended,

EXECUTING COURT—(*Concld.*)

or by operation of law, from the original decree-holder. No incident had occurred, on which the law could operate, to transfer any estate from his mother to him. There had been no death ; there had been no devolution ; there had been no succession. His mother retained what right she had ; that right was not transferred to him ; if he had a right, it was derived from his father ; he is not therefore a transferee of a decree within the terms of that section (73-4).

Section 11 of C.P.C. of 1861 cannot apply to the present case, because *W* was in no proper sense of the word a party to the suit by his alleged father. No rights of *W* were determined or considered in the suit. He was not on the record when judgment was given, nor when the decree was made (75). (*Sir Robert P. Collier.*) ABEDOONISSA KHATOON *v.* AMEEROONISSA KHATOON.

(1876) 4 I. A. 66 = 2 C. 327 (334-5) = 3 Suth. 371 = 3 Sar. 677.

———Interest subsequent to suit—Decree silent as to—Award of. *See* MESNE PROFITS—SUIT—PROFITS OR INTEREST SUBSEQUENT TO.

(1875) 2 I. A. 219 (228).

———*Land outside jurisdiction—Attachment of—Sale of.*

Quœre, whether, under a writ of *fieri facias* issued out of the Supreme Court directing the sheriff to seize and put for sale "goods and chattels within the jurisdiction of the Supreme Court," the sheriff has any right to proceed against lands which are not within the jurisdiction limited to the Supreme Court by the charter of the King, but within the Jaghire of the Company (104). (*Lord Denman.*) STEPHEN LAZAR *v.* COLLA RAGHAVA CHETTY.

(1838) 2 M.I.A. 83 = 5 W.R. 126 = 1 Suth. 90 = 1 Sar. 157.

———A Court may not have jurisdiction in executing a decree to attach lands out of its district (196). (*Sir Robert P. Collier.*) RAI BALKRISHNA *v.* MUSSUMAT MASUMA BIBI. **(1882) 9 I. A. 182 = 5 A. 142 (157) = 13 C. L. R. 232 = 4 Sar. 398.**

———Mesne profits—Interest on—Decree silent as to—Award of—Jurisdiction—Discretion. *See* MESNE PROFITS—INTEREST ON—DECREE SILENT AS TO.

———Mesne profits not awarded by decree—Award of—Jurisdiction. *See* MESNE PROFITS—EXECUTING COURT—DECREE—PROFITS NOT AWARDED BY.

———Mesne profits subsequent to suit—Decree silent as to—Award of. *See* MESNE PROFITS — SUIT—PROFITS OR INTEREST SUBSEQUENT TO.

(1875) 2 I.A. 219 (228).

———*Mortgage bond of property outside jurisdiction—Right to enforce—Sale of.*

A Court executing a decree has jurisdiction to sell in execution the right to enforce a mortgage bond of property outside jurisdiction (196). (*Sir Robert P. Collier.*) RAI BALKRISHNA *v.* MUSSUMAT MASUMA BIBI.

(1882) 9 I. A. 182 = 5 A. 142 (157) = 13 C. L. R. 232 = 4 Sar. 398.

EXECUTION APPLICATION.

———*Application in suit in which decree was passed.*

An application for the execution of a decree is an application in the suit in which the decree was obtained. There are many enactments which shew that an application for execution of a decree is an application in the suit in which the decree was obtained (133). (*Sir Barnes Peacock.*) MUNGUL PERSHAD DICHIT *v.* GRIJA KANT LAHIRI CHOWDHRY. **(1881) 8 I.A. 123 = 8 C. 51 (61) = 11 C.L.R. 113 = 4 Sar. 248.**

———Continuation of prior application—Fresh application—Test. *See* C.P.C. OF 1908, S. 48 AND LIMITATION ACT OF 1908, ART. 182, CL. (3).

EXECUTION APPLICATION—(*Contd.*)

———*Dismissal of, for want of jurisdiction—Effect.*

An order declining to execute a decree for want of jurisdiction is not an adjudication within the rule of *res judicata*, or within S. 2 of Act VIII of 1859, so as to bar a subsequent application for the execution of that decree (136). (*Sir Barnes Peacock.*) DELHI AND LONDON BANK *v.* ORCHARD. **(1877) 4 I. A. 127 = 3 C. 47 (58) = 3 Sar. 721 = 3 Suth. 423.**

———Limitation bar to—Court's duty to take note of, even in absence of plea. *See* C.P.C. OF 1908, S. 11—CASES UNDER — EXECUTION PROCEEDINGS — ORDER ERRONEOUS IN, ETC.

(1881) 8 I.A. 123 (131-2) = 8 C. 51 (59-60).

———*Order on — Construction of—Record of execution case—Reference to—Permissibility.*

An application for execution, which was not actively prosecuted by the decree-holder, was, on his pleader's statement that the case might be struck off the list of pending cases "for the present," ordered to be struck off the list "for default."

On a question arising as to whether the order striking off the application was to be read as giving permission to the decree-holder to apply afresh, the Subordinate Judge, who made the order in question, construed it, in combination with the statement then made by the decree-holder's pleader, and held that the order ought to be read as giving permission to apply afresh. The High Court considered themselves bound by the order in question as recorded, and were of opinion that liberty was not granted thereby.

Their Lordships thought that the Sub-Judge was right in reciting the whole of the record of the execution case in question, in order to get at the true meaning of the order (49). (*Lord Hobhouse.*) THAKUR PERSHAD *v.* SHEIKH FAKIR-ULLAH. **(1894) 22 I.A. 44 = 17 A. 106 (111) = 6 Sar. 526 = 5 M. L.J. 3.**

———Presentation of — Pleader appointed by authorized agent of decree-holder — Presentation by—Validity. *See* C.P.C. OF 1908, O. 3, RR. 1 AND 2.

(1921) 48 I. A. 534 = 44 M. 736.

———*Striking off of—Effect.*

It would be contrary to general principles and a senseless addition to all the vexations of delay in the course of procedure to hold that, when, for any reason satisfactory or not, the execution of a final decree in a suit fails or is set aside and the proceedings as regards that execution are taken off the file, the whole suit is discontinued thereby, and the further proceedings for the same purpose are to be considered as taken in a new suit (337). (*Sir John Coleridge*). RAJAH MUHESH NARAIN SINGH *v.* KISHANUND MISR. **(1862) 9 M.I.A. 324 = 5 W.R. 7 = 1 Suth. 488 = 1 Sar. 862 = 2 I.J. 51.**

———An application for execution of a decree filed against the heir of a deceased judgment-debtor was disposed of by an order which was as follows :—" Whereas the heir of the judgment-debtor is a respectable woman, the final process cannot be issued against her. Let the number of the suit be struck off from this record, at present."

Quaere, whether that was a final judgment, or only a temporary delay interposed in the proceeding of the suit (487).

The execution application was treated as a suit. (*Lord Cairns.*) MAHARAJAH DHERAJ MAHTAB CHUND BAHADOOR *v.* BULRAM SINGH.

(1870) 13 M.I.A. 479 = 14 W. R. (P.C.) 21 = 5 B.L.R. 611 = 2 Suth. 351 = 2 Sar. 597.

———The jurisdiction of a Principal Sudder Ameen to deal with a decree referred to him for execution by the Zillah Judge under Act V of 1836 does not cease by his striking the case off his file after partial execution, so as to render neces-

EXECUTION APPLICATION—(*Contd.*)

sary a subsequent reference by the Judge to enable the Ameen, upon a fresh application being made for execution, to restore the case to the file.

The appellants have not shown what this striking off the file amounts to. They have not shown the grounds on which the case was struck off the file, whether for non-prosecution, whether for some default on the part of the decree holders, whether from inadvertance, or whether from the business of the Court being so conducted that causes which are not immediately before it are not kept upon the paper (320-1). GOURMONEE DOSSEE *v.* JUTINDRONARAIN.

(1872) 18 W. R. 319 = 2 Suth. 711 = 5 Sar. 696.

———Appellant first applied for execution of a decree. He did not actively prosecute that application, and, on his pleader stating that the case might be struck off the list of pending cases " for the present," an order was made striking the case off the list " for default." On a fresh application for execution being presented within three years from the date of the first application, *held*, that the first application afforded a fresh starting point of time within the terms of the Limitation Act of 1877, and that the second application was therefore not barred by lapse of time (47-8).

The first application must not be treated as a nullity because it had been struck off the list. (*Lord Hobhouse.*) THAKUR PERSHAD *v.* SHEIKH FAKIR-ULLAH.

(1894) 22 I. A. 44 = 17 A. 106 (109) = 6 Sar. 526 = 5 M. L. J. 3.

———*Striking off of—Effect—Long lapse of time between original execution and date at which it was struck off—Presumption from.*

In India the striking an execution proceeding off the file is an act which may admit of different interpretations according to the circumstances under which it is done, and, accordingly, their Lordships do not lay down any general rule which would govern all cases of that kind ; but they are of opinion that when a very long time has elapsed between the original execution and the date at which it was struck off it should be presumed that the execution was abandoned and ceased to be operative, unless the circumstances are otherwise explained (877). PUDDOMONEE DOSSEE *v.* ROY MUTHOORANATH CHOWDRY.

(1873) 2 Suth. 873 = 20 W. R. 133 = 12 B. L. R. 411 = 3 Sar. 268.

———*Striking off of—Effect—Stay of execution at instance of judgment-debtor—Effect.*

On an application for the execution of a decree an order for attachment was made by the Subordinate Judge on the 8th of October, 1874, after notice served on the judgment-debtor to show cause why the decree should not be executed against him. In pursuance of the attachment a sale proclamation was issued. On the 25th of January, 1875, the judgment-debtor presented a petition, by which he prayed that the sale under the attachment might be stayed for three months, and the execution case struck off for the present, with the attachment remaining in force. Upon that petition being presented, the creditor agreed to have the execution stayed in accordance with the petition " the attachment on the property attached continuing." The proceedings under the petition of the 8th of October, 1874, were, however, struck off on the 9th of February, 1875, on account of the decree-holders not paying the cost of issuing the notification.

Held that, as the sale was stayed on the 25th of January, 1875, for three months upon the application of the judgment-debtor, and upon the condition that the attachment should remain in force, the striking off of the case from the Judge's file on the 9th of February, 1875, did not affect the rights of the decree-holders (134-5). (*Sir Barnes Peacock.*) MUNGUL PERSHAD DICHIT *v.* GRIJA KANT LAHIRI CHOWDHRY.

(1881) 8 I. A. 123 = 8 C. 51 (62-3) = 11 C. L. R. 113 = 4 Sar. 248.

EXECUTION APPLICATION—(*Concld.*)

———*Withdrawal without liberty—Fresh application for execution—Maintainability—C. P. C. of* 1908, *O.* 23, *R.* 1 ; *S.* 141—*Applicability.*

The High Court of Allahabad held, in I. L. R. 10 All. 71, " that where the circumstances and the facts in regard to an application for execution show that it was withdrawn at the instance of the pleader for the decree-holder, and that no sanction was given to its withdrawal with liberty to present a fresh application, any subsequent application made by that decree-holder was prohibited by the rule of S. 373 of C. P. C. of 1882 read with S. 647 of the same Act."

Held that the ruling in that case was erroneous, and that under the circumstances stated therein a fresh application for execution would not be barred (49).

Both from the Code itself and from the provisions of the Limitation Act of 1877, it is clear that the Legislature contemplated that there might be a succession of applications for execution (50). (*Lord Hobhouse.*) THAKUR PERSHAD *v.* SHEIKH FAKIR-ULLAH.

(1894) 22 I. A. 44 = 17 A. 106 (110-1) = 6 Sar. 526 = 5 M. L. J. 3.

EXECUTION OF DECREE.

(*See also* EXECUTING COURT; AND EXECUTION PROCEEDING.)

APPEAL.
ARREST OF JUDGMENT-DEBTOR IN.
ATTACHMENT IN.
COMPROMISE BETWEEN ALL PARTIES SUBSEQUENT TO DECREE.
DELAYING OF—DEVICES FOR.
INSOLVENCY OF JUDGMENT-DEBTOR PENDING PROCEEDINGS FOR.
JURISDICTION—MORTGAGE.
LIMITATION.
MESNE PROFITS TO BE REALISED IN.
PIECEMEAL EXECUTION—PERMISSIBILITY.
POSSESSION — DECREE GRANTING IMMEDIATE, OF SOME ITEMS AND POSSESSION OF OTHER ITEMS AFTER ASCERTAINMENT THEREOF.
RIGHT TO APPLY FOR.
TRANSMISSION OF DECREE FOR.

Appeal.

———Execution pending. *See also* under CIVIL PROCEDURE CODE OF 1908, O. 41, R. 5 AND O. 41, RR. 5 AND 6.

Arrest of Judgment-debtor in.

———*Breaking open door and entrance into house on expulsion after obtaining peaceable entrance—Liability of Sheriff's officer in case of—Civil or criminal.*

In execution of a bailable writ, a Sheriff's officer peaceably obtained entrance by the outer door, but before he could make an actual arrest, was forcibly expelled from the house, and the outer door fastened against him. The officer obtained assistance, broke open the outer door, and made the arrest.

Quaere, whether supposing the breaking open the outer door and the second entrance into the house to have been illegal, an indictment for assault and false imprisonment would lie against the Sheriff's officer, or the aggrieved party would be confined to his remedy, either civil or criminal, for forcibly breaking and entering his dwelling-house (172-3). (*Lord Campbell.*) AGA KURBOOLIE MAHOMED *v.* THE QUEEN.

(1843) 3 M. I. A. 164 = 4 Moo. P. C. 239 = 1 Sar. 261.

———*Breaking open outer door of judgment-debtor's dwelling-house for purposes of—Propriety—Expulsion of Sheriff's officer after obtaining peaceable entrance and before actual arrest of judgment-debtor.*

EXECUTION OF DECREE—(*Contd.*)

Arrest of Judgment-debtor in—(*Contd.*)

In execution of a bailable writ, a Sheriff's officer peaceably obtained entrance by the outer door, but before he could make an actual arrest, was forcibly expelled from the house, and the outer door fastened against him. The officer obtained assistance, broke open the outer door, and made the arrest. There was no evidence of an express demand for leave to re-enter before the outer door was broken.

Held, that there was no infraction of the law, and no objection could be made to the regularity of the arrest (172).

There is no doubt that a man's house being his castle, the ordinary rule is, that the outer door cannot be broken open to execute civil process; but it is admitted here, that if the prosecutor had been arrested, and had then expelled the defendants from his house, they might have broken open the outer door to enter and re-take him; and their Lordships think that as they had once been lawfully in the house, and he knew that they were lawfully about to arrest him, and he unlawfully caused them to be expelled for the purpose of preventing them from so doing, he cannot be permitted to take advantage of his own wrong, by thus defeating the process of the law; and that they had a right to place themselves in the position which they occupied when his unlawful act began. Without an actual arrest, there was no rescue or escape; but the proposition that till an actual arrest had taken place, the prosecutor might forcibly expel the officer and those acting in his aid, and lock the outer door, so as to entitle himself to the protection of his castle, cannot be supported. The outer door being open, they were entitled to enter the house under civil process; and they being lawfully in the house, to arrest him, he was guilty of a trespass by expelling them. The act of locking the outer door was unlawful, and he could confer no privilege upon himself by that unlawful act (171). (*Lord Campbell.*) AGA KURBOOLIE MAHOMED *v.* THE QUEEN. **(1843) 3 M. I. A. 164 = 4 Moo. P. C. 239 = 1 Sar. 261.**

———*Breaking open of outer door for purposes of—Demand of entry and refusal prior to—Necessity for—Object of—Dispensing with of—Conditions.*

Generally speaking, before an outer door can be broken open, even to execute criminal process, there must be a demand of entry, and a refusal. But to what extent? To inform the owners of the house of the purpose for which the entry is to be made, and to afford him the opportunity of opening the door and personally admitting the parties who are to execute the process of the law. This ceremony the law requires, however, to be observed only when it possibly may be attended with some advantage, and may render the breaking open of the outer door unnecessary (171-2). (*Lord Campbell.*) AGA KURBOOLIE MAHOMED *v.* THE QUEEN. **(1843) 3 M. I. A. 164 = 4 Moo. P. C. 239 = 1 Sar. 261.**

———*Place of imprisonment—Change of, at instance of plaintiff—Sheriff's right and duty as regards—Escape from custody while in such changed place—Action for escape—Sheriff's liability in.*

If the sheriff had it communicated to him by the plaintiffs that they were inclined to grant this indulgence to the prisoner (*viz.*, substitution of one place of imprisonment for another), and that he might go to another house in the custody of the sheriff's officers, I am not prepared to state that the sheriff might not say, "I will not do any such thing; I have him here under a *capias ad satisfaciendum*, and unless you have a rule of that court for that purpose, I shall not consent to any such thing, because I cannot have the same strict custody over the party, and the means of keeping him in custody in another house (at this substituted

EXECUTION OF DECREE—(*Contd.*)

Arrest of Judgment-debtor in—(*Contd.*)

prison as it were) that I have when he is in gaol. and, therefore, I will not consent to anything of the sort; if you mean to take him, discharge him; you have authority to do it yourself, and take him yourself; make your agreement as you please with him; I will have nothing to do with it." Still the sheriff may consent to do it.

Where, at the request of the plaintiff, the sheriff changes the place of detention of the judgment-debtor, and the latter escapes by reason of the carelessness of the sheriff's officers, and the plaintiff brings an action against the sheriff for escape, it will be, under all the circumstances, for a jury to consider whether, being in some measure instrumental in the matter of the escape, the plaintiff ought to recover against the sheriff at all; and it will be a question of fact to be decided under all the circumstances of the case (487). (*Sir John Patteson.*) HAINES *v.* EAST INDIA COMPANY. **(1856) 6 M. I. A. 467 = 4 W. R. 99 = 11 Moo. P. C. 39 = 1 Suth. 274.**

———Place of imprisonment—Change of, by agreement between debtor and creditor—Effect of—Decree debt if thereby discharged. *See* DECREE—DISCHARGE OF.

(1856) 6 M. I. A. 467 (488).

———*Place of imprisonment—Release from—Permission by plaintiff to defendant to go where he pleased—Effect.*

It would be a fallacy and an absurdity to say that it is possible for a plaintiff to say to a defendant, "Oh, you may go about just where you please, but it shall be considered that you are in custody" (488). (*Sir John Patteson.*) HAINES *v.* EAST INDIA COMPANY.

(1856) 6 M. I. A. 467 = 4 W. R. 99 = 11 Moo. P. C. 39 = 1 Suth. 274.

———*Place of imprisonment—Release by plaintiff from—Re-arrest of judgment-debtor—Plaintiff's right of.*

The plaintiff in any case, in order to be barred from continuing his execution, and from having the benefit of his judgment, must voluntarily discharge the defendant out of custody. If he does discharge him out of custody, I agree that if it be only for a week, he cannot, by any agreement which he may have made with the defendant, afterwards retake him, although the defendant may possibly have agreed that, if he does not pay the money within a week, he shall be retaken. That is decided law (482). (*Sir John Patteson.*) HAINES *v.* EAST INDIA COMPANY.

(1856) 6 M. I. A. 467 = 4 W. R. 99 = 11 Moo. P. C. 39 = 1 Suth. 274.

———*Sheriff — Release of judgment-debtor from his custody—Change of place of imprisonment—Power of.*

If the sheriff, upon the representation that the defendant was suffering very severely in health, had taken upon himself to make a relaxation of the imprisonment, and had permitted the defendant, accompanied by ever so many of his own officers, to go and reside in a house of his own, it would have been an escape. There can be no question at all about it; and why? Because the sheriff having taken a party in execution under a *capias ad satisfaciendum*, is bound to keep him in his own gaol, he cannot of his own authority allow the prisoner to make a gaol for himself; he is bound to keep him *in arcta et salva custodia*, in order to enforce payment of the debt, and if he relax that *arctam custodiam* at all, so far the pressure to compel the payment of the debt is relaxed also, which the sheriff has no right to do (481-2). (*Sir John Patteson.*) HAINES *v.* EAST INDIA COMPANY. **(1856) 6 M. I. A. 467 = 4 W. R. 99 = 11 Moo. P. C. 39 = 1 Suth. 274.**

———*Sheriff's custody—Change of place of imprisonment in pursuance of rule of court obtained by judgment-debtor on ground of ill-health—Effect.*

EXECUTION OF DECREE--(*Contd.*)

Arrest of Judgment-debtor in—(*Contd.*)

Supposing that the defendant was in a bad state of health and supposing that it had arisen from his confinement in the prison, and that he had applied to the Supreme Court at Bombay, from which the execution issued, for a rule of court, to be allowed to be taken from the prison and put into some other place, and there kept by the sheriff's officer, and that for the sake of saving his life, or for the benefit of his health, the court had thought fit to grant that indulgence even against the will of the plaintiffs and there had been a rule of court to that effect, and he had been removed out of gaol under that rule of court, and had been kept in the charge of a sheriff's officer in a private house, can there be the slightest doubt that he would then still have been in the custody of the sheriff? I cannot conceive that there would have been any question upon it (482-3). (*Sir John Patteson.*) HAINES *v.* EAST INDIA COMPANY.
(1856) 6 M. I. A. 467 = 4 W. R. 99 = 11 Moo. P. C. 39 = 1 Suth. 274.

———*Sheriff's custody—Discharge from—What amounts to—Change of place of imprisonment pursuant to private arrangement between plaintiff and judgment-debtor—Effect—Plea of discharge by judgment-debtor in such a case—Maintainability—Estoppel.*

Upon the representation of the medical officer that the defendant was in a bad state of health, arising from his confinement in the prison, the plaintiffs (East India Company) wrote a letter to the sheriff that, in consequence of the state of the defendant's health, a temporary release from confinement in the gaol itself was essentially necessary, and that "Government is pleased to permit him temporarily to reside outside the gaol, under such surveillance as may prove as little irksome as possible to the prisoner, while consistent with its perfect efficiency." Their letter to the Superintendent of Police recited that same thing; that the defendant had been allowed to be so under surveillance, and directed him also to take care that he did not go out of the Island. That was communicated to the defendant, who verbally agreed to it, and expressed his willingness to avail himself of that permission. He also actually wrote a letter to the sheriff feeling grateful for the change allowed.

Held, that the defendant continued to be in the custody of the sheriff and that he was estopped from contending that he was not in the sheriff's custody (483-4).

Can there be a doubt but that the object of the plaintiffs was, in consequence of the state of his health, a kindness towards the defendant? Their object was to keep the judgment and the writ of *capias ad satisfaciendum* still on foot, and to keep the defendant in the actual custody of the sheriff. A place where his health might be re-established, was constituted a special prison for that purpose, by consent as it were. The defendant agrees to that, and is thankful for it. Then, surely, he must be estopped (it is a sort of estoppel) from saying that the custody in which he then was, was not the custody of the sheriff, when both parties intended it to be so, and that in point of law such custody should be treated as the custody of the sheriff (484). (*Sir John Pattessn.*) HAINES *v.* EAST INDIA COMPANY.
(1856) 6 M. I. A. 467 = 4 W. R. 99 = 11 Moo. P. C. 39 = 1 Suth. 274.

Attachment in.

———Alienation pending—Validity. *See* C. P. CODE OF 1908, S. 64.

———*De facto* attachment—Order for attachment—Distinction—Meaning of word in O. 21 of C.P. Code of 1908. *See* C. P. CODE OF 1908, O. 21, Rr. 41 TO 54.
(1928) 55 I. A. 256 = 51 M. 349.

EXECUTION OF DECREE—(*Contd.*)

Attachment in—(*Contd.*)

———*Effect of.*

Attachment only prevents alienation, and does not confer title (175). (*Lord Hobhouse.*) MOTI LAL *v.* KARRAB-UL-DIN.
(1897) 24 I. A. 170 = 25 C. 179 (185) = 1 C. W. N. 639 = 7 Sar. 222.

———Effect of—Insolvency of judgment-debtor and vesting order subsequent to—Attachment if prevails against vesting order. *See* EXECUTION OF DECREE—INSOLVENCY OF JUDGMENT-DEBTOR PENDING PROCEEDINGS FOR—ATTACHMENT IN EXECUTION.
(1914) 41 I. A. 251 (254) = 42 C. 72 (79-80).

———Formalities for—Non-observance of—Invalidity of attachment on ground of—Plea of—Appeal—Maintainability for first time in. *See* APPEAL—NEW POINT—PERMISSIBILITY—ATTACHMENT.
(1880) 7 I. A. 157 (160-1) = 6 C. 129 (134).

———Formalities for—Non-observance of—Invalidity of attachment on ground of—Plea of—Onus of proof of. *See* MORTGAGE—FORECLOSURE. REG. XVII OF 1806.
(1880) 7 I. A. 157 (160) = 6 C. 129 (134).

———*Injunction involved in.*

Every attachment involves an injunction, which is indeed one of its necessary effects (539). (*Sir Montague E. Smith.*) SARODA PROSAUD MULLICK *v.* LUCHMEEPUT SINGH DOOGUR.
(1872) 14 M. I. A. 529 = 17 W. R. 289 = 10 B. L. R. 214 = 2 Suth. 560 = 3 Sar. 77.

———Insolvency of judgment-debtor and vesting order subsequent to. *See* EXECUTION OF DECREE—INSOLVENCY OF JUDGMENT-DEBTOR PENDING PROCEEDINGS FOR—ATTACHMENT IN EXECUTION.

———Land outside jurisdiction—Attachment of—Jurisdiction. *See* EXECUTING COURT—LAND OUTSIDE JURISDICTION.

———*Mortgage—Property subject to—Attachment of—Effect of, on rights of mortgagee.*

An attachment of property subject to mortgages created by the judgment-debtor in no way affects those mortgages. It affects only the judgment-debtor's beneficial interest in the property attached; in other words, the equity of redemption and nothing else. (*Lord Lindley.*) DINOBUNDHU SHAW CHOWDHURY *v.* JOGMAYA DASI.
(1901) 29 I. A. 9 (13) = 29 C. 154 (163) = 6 C. W. N. 209 = 4 Bom. L. R. 238 = 8 Sar. 217 = 12 M. L. J. 73.

———*Mortgage decree—Execution of—Attachment in case of—Necessity.*

The two Courts below held that, in the case of a decree to enforce a mortgage, an attachment is not required, and that the practice is to make an order for sale without an attachment.

Quære, whether the courts below were right in so holding (26). (*Lord Hobhouse.*) DOSIBAI *v.* ISHWARDAS JAGJIVANDAS.
(1891) 18 I. A. 22 = 15 B. 222 = 6 Sar. 10.

———Mortgage of property pending—Purchaser subsequent of property attached—Priority between, and mortgagee. *See* MORTGAGE—PRIORITY—ATTACHMENT IN EXECUTION.
(1871) 14 M. I. A. 101 (110).

———*Mortgage with possession—Property subject to—Attachment of—Mode of—Disturbance of possession of mortgagee—Right of attaching decree-holder as regards.*

The right of the respondent, under his decree, was to sell the factory pledged to him, subject to the rights of *D* under his prior mortgage. He had no right to invade or disturb the possession of the prior mortgagee by placing persons upon the property, in order to attach the factory as a step towards the judicial sale. Under the procedure, as it existed before 1859, this could not have been done. The attach-

EXECUTION OF DECREE—(*Contd.*)

Attachment in—(*Contd.*)

ment must have been constructive. But under the new Code of Procedure of 1859, the proper course was to issue and publish a written notice under Ss. 235 and 239 of C.P. Code of 1859 (590-1). (*Sir James W. Colvile.*) MUDHUN MOHUN DOSS *v.* GOKUL DOSS.

(1866) 10 M. I. A. 563 = 5 W. R. (P. C.) 91 = 1 I. J. N. S. 269 = 1 Suth. 644 = 2 Sar. 202.

———Nature of—Sequestration or injunction only or proceeding in execution. *See* C. P. CODE OF 1908, S. 39—TRANSMISSION OF DECREE FOR EXECUTION.

(1872) 14 M. I. A. 529 (539-40).

———*Order for sale pursuant to—Necessity of, to complete execution.*

Under the Code of Civil Procedure, property may be attached without view to immediate sale. In the case of lands, the process of attachment, and the order for sale may be distinct and separate, and there may be a complete execution of a decree under an attachment without any order for sale (538). (*Sir Montague E. Smith.*) SARODA PROSAUD MULLICK *v.* LUCHMEEPUT SINGH DOOGUR.

(1872) 14 M. I. A. 529 = 17 W. R. 289 = 10 B. L. R. 214 = 2 Suth. 560 = 3 Sar. 77.

———Property liable for. *See* C. P. CODE OF 1908, S. 60.

———*Release of—Order of—Revival subsequent to—What amounts to.*

The suit property was attached in execution of a decree obtained against *A*, who died subsequent to the decree. *A's* wife, who was brought on record as one of his representatives preferred a claim to the attached property, alleging that it belonged to her in her own right. The District Judge made an order allowing the claim and releasing the property from attachment. On appeal, however, the High Court remanded the case to the District Judge for the trial of a material issue, which had not been tried by him. The High Court did not, however, set aside the order of the Judge releasing the property from attachment, because, whether that should be done depended upon his finding on the issue which had not been tried by him.

When the case went back to the District Judge, the decree-holders and *A's* widow entered into a compromise, whereby the liability under the compromise was substituted for that under the decree in execution. The compromise, however, provided that the attachment already effected on the property should continue. In accordance with the compromise the District Judge struck the execution case off the file.

Held, that the attachment was put an end to by the original order of the District Judge releasing the property from attachment and was never afterwards revived (137-8).

The order of the District Judge striking the case off the list of pending suits could not have the effect of reversing the order releasing the property from attachment. The case being before the High Court on appeal, the District Judge had no power to reverse his order. The compromise did not operate to revive or restore the attachment and make it effective on the mortgage. The liability incurred under the compromise was different from that under the decree, and the effect of the compromise was to substitute that liability for the liability under the decree, and to put an end to the attachment (137-8). (*Sir Richard Couch.*) MIR MAHOMED MOZUFFER HOSSEIN *v.* KISHORI MOHUN LAL.

(1895) 22 I. A. 129 = 22 C. 909 (920) = 6 Sar. 583 = 5 M. L. J. 101.

———*Sale—Orders separate for, contemplated by Code of Civil Procedure.*

The procedure of the Civil Procedure Code contemplates,

EXECUTION OF DECREE—(*Contd.*)

Attachment in—(*Contd.*)

in the case of lands, the issuing of separate orders, subsequent to the attachment, for the sale or other disposition of them (540). (*Sir Montague E. Smith.*) SARODA PROSAUD MULLICK *v.* LUCHMEEPUT SINGH DOOGUR.

(1872) 14 M. I. A. 529 = 17 W. R. 289 = 10 B. L. R. 214 = 2 Suth. 560 = 3 Sar. 77.

———*Sale pursuant to—Application for—Order allowing—What amounts to.*

Upon an application for execution of a decree, praying that an attachment and sale of the judgment-debtor's property specified in the application should be had for the purpose of satisfying the decree, a question arose as to whether the Statute of Limitations was a bar to that application. The Sub-Judge held that the debtor's plea of limitation should be disallowed, with costs, but he did not go on to say that the attachment be issued.

Held, that the order must be treated as substantially an order that the debtor's plea of limitation should be disallowed, and that the application for attachment and sale of the property in execution of the decree should be granted (169-70). (*Sir Barnes Peacock.*) PULUKDHARI ROY *v.* RAJAH RADHA PERSHAD SINGH. **(1881) 8 I. A. 165 = 8 C. 28 (30-1) = 4 Sar. 279.**

———Sale pursuant to — Stay of — Power and duty of Court—Insolvency of judgment-debtor and vesting order subsequent to attachment. *See* EXECUTION OF DECREE—INSOLVENCY OF JUDGMENT-DEBTOR PENDING PROCEEDINGS FOR—ATTACHMENT IN EXECUTION.

(1914) 41 I. A. 251 (255) = 42 C. 72 (80).

———*Striking off of, and decree-holder compelled to take out another execution—Effect of, on decree-holder's rights.*

Generally where the party prosecuting the decree is compelled to take out another execution, his title should be presumed to date from the second attachment (877). PUDDOMONEE DOSSEE *v.* ROY MUTHOORANATH CHOWDRY.

(1872) 2 Suth. 873 = 20 W. R. 133 = 12 B. L. R. 411 = 3 Sar. 268.

———*Supersession of—Surburakur for liquidating debts of judgment-debtor—Appointment of—Effect.*

The suit was by the plaintiffs for the purpose of setting aside a sale for arrears of Government revenue. The plaintiffs were the owners of separate shares of the estate in question. Certain decrees had been obtained against the plaintiffs, and attachments had been issued under Act VIII of 1859, some years prior to the sale in question. Upon the application of the plaintiffs themselves, a surburakur or manager was appointed for the purpose of liquidating the debts. It was argued that the appointment of the surburakur superseded the attachment. Their Lordships are of opinion that the attachments were not so superseded, but were in force (102). (*Sir James W. Colvile.*) BUNWAREE LALL SAHOO *v.* MOHABEER PROSHAD SINGH.

(1873) 1 I. A. 89 = 12 B. L. R. 297 = 3 Sar. 338.

———*Wrong property—Attachment and order for sale of — Decreee-holder's remedy in case of — Execution over again.*

If by a mistake the wrong property is attached and an order made to sell it, the only course open to the decree-holders on the discovery of the mistake is to commence the proceedings over again (*Lord Moulton.*) THAKUR BARMHA *v.* SIBAN RAM MARWARI.

(1913) 41 I. A. 38 = 41 C. 590 = 16 Bom. L. R. 156 = 21 I.C. 936 = 18 C. W. N. 313 = (1914) M. W. N. 118 = 15 M. L. T. 137 = 19 C. L. J. 161 = 12 A.L. J. 155 = 26 M. L. J. 89.

EXECUTION OF DECREE—(*Contd.*)

Attachment in—(*Contd.*)

———*Wrongful attachment—Damages for—Full indemnity—Owner's right to recover—Conditions.*

Bales of jute belonging to the respondent were attached by the appellants pending a suit brought by the appellants against certain third parties, The respondent preferred a claim, under S 278 of the C.P. Code of 1882, to the goods attached, but it was disallowed after inquiry. The goods themselves were subsequently sold in execution, when owing to the intermediate fall in the market, the price obtained for them was only about half of what they were worth at the date of the attachment. The respondent then instituted a suit for damages for wrongful attachment of the goods, and claimed to be entitled to recover their value upon the day of the attachment. The appellants contended that they were not to be held responsible for delay occasioned by litigation, and that the respondent could not recover the difference between the value of the goods upon the day of the attachment and the depreciated price arising from such delay, unless he alleged and proved that the appellants had litigated maliciously and without probable cause.

Held, that, in order to entitle the respondent to recover full indemnity for the wrongful attachment of his goods, he was not bound to allege and prove that the appellants resisted his application maliciously, and without probable cause (27).

The rule contended for for the appellants is one which obtains between the parties to a suit when the defendant suffers loss through its institution and dependence. It does not apply to proceedings taken by the injured party, after the wrong is done, in order to obtain redress. But, in this case, there has been no action and no proceeding instituted by the appellants against the respondent. The summary proceeding under S. 278 was taken by the respondent for the purpose of getting release of an attachment issued in a suit to which he was not a party (27). (*Lord Watson.*) KISSORY MOHUN ROY *v.* HURSOOK DASS.

(1889) 17 I. A 17 = 17 C. 436 (442) = 5 Sar. 472.

———*Wrongful attachment—Damages for—Measure of.*

Pending a suit, to which the respondent was not a party, brought against third parties, certain bales of jute of the respondent were attached by the appellants, the plaintiffs in that suit, on 28—11—1883. The respondent preferred a claim to the goods attached under S. 278 of C. P. Code of 1882, but that was disallowed after inquiry on 15—4—1884. The goods were sold in execution in June or July, 1884, when, owing to the intermediate fall in the market, the price obtained for them was about half of what they were worth at the date of the attachment.

In a suit instituted on 28—4—1884 by the respondent for establishment of the right which he claimed in the goods, and for damages in respect of their wrongful attachment, the question was whether the respondent was entitled to recover the value of the goods upon the day of the attachment, or only the price which the goods realised when sold in June or July, 1884.

Held, that the illegal attachment of the goods on 28—11—1883 being the direct act of the appellants. for which they became immediately responsible in law, and the litigation and delay, and consequent depreciation of the jute, being the natural and necessary consequences of their unlawful act, the liability which the appellants incurred had been rightly estimated at the value of the goods upon the day of the attachment (27-8).

The appellants relied upon *Walker* v. *Olding*, 1 H. & C. 621, as an authority for the proposition that a judgment creditor is not responsible for the consequences of a sale, under a judicial order, of goods illegally taken in execution in satisfaction of his debt. *Walker* v. *Olding* would have been an authority of importance had the law of execution been the same in India as in England, but there is in that respect no analogy between the two systems. (27). (*Lord Watson.*) KISSORY MOHUN ROY *v*, HURSOOK DASS.

(1889) 17 I. A. 17 = 17 C. 436 (442-3) = 5 Sar. 472.

———*Wrongful attachment—Damages for—Special damage—Claim for—Failure to prove —Ordinary damages—Plaintiff's right to recover.*

In a suit for damages for wrongful attachment the gist of the action is not the special damage, but the unlawful attachment ; and the plaintiff would not he precluded from recovering ordinary damages for that actionable wrong, even if he wholly failed to prove the special damage laid (574-5). (*Sir James W. Colvile.*) MUDHUN MOHUN DOSS *v.* GOKUL DOSS. **(1866) 10 M.I. A. 563 = 5 W. R. (P. C.) 91 = 1 I. J. N. S. 269 = 1 Suth. 644 = 2 Sar. 202.**

———*Wrongful attachment—Owner's right in case of—Permission to use property given by Ameen—Owner availing himself of—Effect.*

A person whose property is wrongfully attached in execution of a decree is neither bound to accept the permission to use his own property accorded to him by the Ameen, nor, if he does accept it. will he lose his right of action (574). (*Sir James W. Colvile.*) MUDHUN MOHUN DOSS *v.* GOKUL DOSS. **(1866) 10 M. I. A. 563 = 5 W. R. (P. C.) 91 = 1. I. J. N. S. 269 = 1 Suth. 644 = 2 Sar. 202.**

———Wrongful attachment — Payment under protest of decree amount by owner of property — Remedy open to owner on—Claim under O. 21, R. 58 of C. P. Code of 1908 —Suit to recover amount paid. *See* C. P. Code OF 1908—O. 21, R. 58—PROCEDURE UNDER.

(1913) 40 I. A. 56 (64) = 40 C. 598 (610).

———*Wrongful attachment—Sale pursuant to — Decree-holder's responsibility for—English and Indian systems—Distinction.*

With regard to a judgment-creditor's responsibility for the consequences of a sale, under a judicial order, of goods illegally taken in execution in satisfaction of his debt, there is no analogy between the laws of execution in England and in India. In England, the execution of a decree for money is intrusted to the sheriff, an officer who is bound to use his own discretion, and is directly responsible to those interested for the illegal seizure of goods which do not belong to the judgment-debtor. In India, warrants for attachment in security are issued on the *ex parte* application of the creditor, who is bound to specify the property which he desires to attach, and its estimated value. Any illegal attachment made in execution is thus the direct act of the judgment-creditor, for which he becomes immediately responsible in law (27). (*Lord Watson.*) KISSORY MOHUN ROY *v*, HURSOOK DASS. **(1889) 17 I A. 17 = 17 C. 436 (443) = 5 Sar. 472.**

——*—Wrongful attachment—Submission to—Owner of property attached—Duty of.*

The proposition that a man whose possession was wrongfully invaded ought to have given effect to that invasion, because it was made under colour of legal process, by removing the lock of his own store-house, appears to their

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Attachment in—(*Contd.*)

Lordships to be untenable (573.) (*Sir James W. Colvile.*) MUDHUN MOHUN DOSS *v.* GOKUL DOSS.
(1866) 10 M. I. A. 563 = 5 W. R. (P. C.) 91 = 1 I. J. N. S. 269 = 1 Suth. 644 = 2 Sar. 202.

Compromise between all parties subsequent to decree.

———*Admissibility in evidence of.*

Quaere whether if, after a decree, a compromise is entered into by all the parties thereto, such an agreement could be put in evidence in proceedings for the execution of the decree. (*Lord Davey.*) RAJAH KOTAGIRI VENKATA SUBBAMMA RAO *v.* RAJA VELLANKI VENKATARAMA RAO. **(1900) 27 I. A. 197 = 24 M. 1 (10-11) = 4 C W. N. 725 = 2 Bom. L. R. 771 = 7 Sar. 678 = 10 M. L. J. 221.**

Delaying of—Devices for.

———*Checking of—Court's duty.*

Their Lordships cannot pass from this case without the expression of their surprise and deep regret, that such a case should have been possible under the system of jurisprudence prevailing in any country under the British dominion. The subject-matter of the original suit a debt, it should seem undisputed, or at least as to which, in substance, no serious dispute was possible, where the plaintiff's difficulty had not been to establish his right to the judgment of the Court in which he sued, but to make that judgment available when obtained, though the funds were ample for the purpose. By fraud and chicanery, by every possible abuse of the forms and procedure of law, by force and violence, even, it is to be greatly feared, to the shedding of blood, justice was evaded and defied for fifteen years, from 1830, when the decree was pronounced, to 1845, when the final sale took place. The original plaintiff, wearied out with the long delay and expense, fain to sell the benefit of his decree; the unhappy man who had been substituted for him losing his life, while vainly striving to realize its fruits. And now, in 1862, their Lordships have been called upon to dispose of a suit, in which it is sought to invalidate the whole proceeding as against a purchaser for value, the second in succession from the execution creditor against whom, or the party from whom he immediately purchased, no fraud, no collusion, no knowledge of the supposed defects in the title has been alleged. A system under which all this is possible loudly called for amendment, and, administered as it here has been, defeated the very object for which it was instituted (342-3). (*Sir John Colcridge*). RAJAH MUHESH NARAIN SINGH *v.* KISHANUND MISR. **(1862) 9 M. I. A. 324 = 5 W. R. 7 = Marsh. 592 = 2 I. J. 51 = 1 Suth. 488 = 1 Sar. 862.**

Insolvency of Judgment-debtor pending proceedings for.

———*Attachment in execution—Insolvency and vesting order subsequent to—Attachment if prevails against vesting order.*

Attachment in execution of a money decree followed by an order for sale does not confer upon the judgment-creditor any charge on the land affected. An attachment prevents and avoids any private alienation, but does not invalidate an alienation by operation of law such as is effected by a vesting order under the Indian Insolvency Act, 1848 (254). (*Lord Parker*). RAGHUNATH DAS *v.* SUNDAR DAS KHETRI. **(1914) 41 I. A. 251 = 42 C. 72 (79-80) = 18 C. W. N. 1058 = 24 I. C 304 = 1 L. W. 567 = 16 M. L. T. 353 = 16 Bom. L. R. 817 = (1914) M. W. N. 747 = 20 C. L. J. 555 = 13 A. L. J. 154 = 27 M. L. J. 150**

EXECUTION OF DECREE—(*Contd.*)

Insolvency of Judgment-debtor pending proceedings for—(*Contd.*)

———*Attachment in execution—Insolvency and vesting order subsequent to—Impleading of assignee in case of—Procedure for.*

Where, after the attachment of property in execution of a decree, the judgment-debtor is adjudicated an insolvent, and an order is made vesting his property in the Official Assignee under the Indian Insolvency Act, 1848, the only way of bringing the Official Assignee properly before the court and of obtaining an order binding on him is to obtain an order for the issue of, and to serve him with, a notice under S. 248 of Civil Procedure Code of 1882, the Code in force at the time (255).

Quaere: whether the Official Assignee may be made a party to the proceedings either under S. 32 or under S. 372 of Civil Procedure Code of 1882 (255). (*Lord Parker.*) RAGHUNATH DAS *v.* SUNDAR DAS KHETRI.
(1914) 41 I. A. 251 = 42 C. 72 (80-1) = 1 L. W. 567 = 16 M. L T. 353 = (1914) M. W. N. 747 = 18 C.W. N. 1058 = 16 Bom. L. R. 814 = 20 C. L. J. 555 = 13 A. L. J. 154 = 24 I. C. 304 = 27 M. L. J. 150.

———*Attachment in execution — Insolvency and vesting order subsequent to—Sale pursuant to attachment—Stay of—Power and duty of Court.*

Where after an attachment of property in execution of a decree, the judgment-debtor is adjudicated an insolvent, and an order is made vesting his property in the Official Assignee under the Indian Insolvency Act, 1848, the proper and indeed the only thing the Judge in the execution proceedings can do is to stay the sale therein directed until further order, for the judgment-debtor has no longer any interest which could be sold. Further, if the judgment-debt is included in the schedule filed by the insolvent under the Act, the Judge in the execution proceedings is bound to stay the sale under S. 49 of the Act (255). (*Lord Parker.*) RAGHUNATH DAS *v.* SUNDAR DAS KHETRI. **(1914) 41 I. A. 251 = 42 C. 72 (80) = 1 L. W. 567 = 16 M.L.T. 353 = (1914) M. W. N. 747 = 18 C. W. N. 1058 = 16 Bom. L. R. 814 = 20 C. L. J. 555 = 13 A. L. J. 154 = 24 I. C. 304 = 27 M. L. J. 150.**

———*Further proceedings in execution—Official Assignee in whom property vested—Impleading of—Necessity.*

Where, after the attachment of property in execution of a decree, the judgment-debtor is adjudicated an insolvent and an order is made vesting his property in the Official Assignee under the Indian Insolvency Act, 1848, the execution cannot proceed until the Official Assignee has been properly brought before the Court and an order binding on him has been obtained (255). (*Lord Parker*). RAGHUNATH DAS *v.* SUNDAR DAS KHETRI. **(1914) 41 I. A. 251 = 42 C. 72 (80) = 1 L. W. 567 = 16 M. L. T. 353 = (1914) M. W. N. 747 = 18 C. W. N. 1058 = 16 Bom. L. R. 814 = 20 C. L. J. 555 = 13 A. L. J. 154 = 24 I. C. 304 = 27 M. L. J. 150.**

———*Further proceedings in execution—Order for, made without impleading assignee in whom property vested—Effect as against him of.*

The father of the appellants applied to have an order of attachment made in execution of a decree obtained against him set aside, on the ground that no notice of execution had been served upon him and that the decree was barred by the law of limitation. That application was dismissed. On appeal by appellant's father a remand was ordered. He died after the remand and before any steps were taken under it. The decree-holder then took out a summons against the appellants to show cause why the original decree should not be executed against them as sons and heirs, and, having thus revived against them, brought the matter of the remand on for re-hearing. At the re-hearing it was decided that the

EXECUTION OF DECREE—(*Contd.*)

Insolvency of Judgment-debtor pending proceedings for—(*Contd.*)

order of attachment ought not to be set aside, and that order was affirmed on appeal.

On appeal preferred against the said orders, it was contended by the appellants that the proceedings subsequent to the remand were ineffective, because the appellant's father was, on the precise date of the order of remand, adjudicated an insolvent, and the Insolvent Court, through its officer or the Receiver—was not served and had no opportunity of being present and raising his points in objection to the attachment at the re-hearing on remand.

Their Lordships dismissed the appeal adding a declaration that, if the adjudication of the insolvency of the appellant's father had not been annulled or the insolvency had not otherwise terminated on or before the date of the order made on re-hearing after remand, that order would, owing to the absence of the Receiver or other representative of the Insolvency Court, be inoperative except in so far as it decided against any asserted interests of the appellants, his sons and heirs. (*Lord Phillimore.*) SRIPAT SINGH DUGAR *v.* RAI HARIRAM GOENKA. **(1922) 16 L. W. 447 = 31 M. L. T. (P. C.) 38 = 26 C. W. N. 739 = 74 I.C. 597 = 4 U. P. L. R. (P. C.) 68 = A. I. R. 1922 P.C. 51 = (1922) M. W. N. 671.**

———Official Assignee in whom property vested—Notice under O. 21, R. 22, of C. P. Code to—Form proper of. *See* C. P. Code 1908—O. 21, R 22—EXECUTION PROCEEDING. **(1914) 41 I. A. 251 (255) = 42 C. 72 (81).**

———*Official assignee in whom property vested—Notice under O. 21, R. 23 of C. P. Code to—Sale held without—Irregular or Invalid.*

After the attachment of property in execution of a decree, the judgment-debtor was adjudicated an insolvent, and an order was made vesting his property in the Official Assignee under the Indian Insolvency Act, 1848. The judgment-creditors obtained an order for the issue of, and served the Official Assignee with, a notice calling upon him to show cause why he should not be substituted in the suit for the judgment-debtor. The Official Assignee was not served with the notice required by S. 248 of C.P. Code of 1882 (the code then in force), nor was he made a party to the proceedings under S. 32 or S. 372 of that code. On the expiry of the time fixed by the notice for cause, the decree-holders, without further notice to the Official Assignee, applied for and obtained, an order not only substituting him as a party in the place of the judgment-debtor but directing the sale of the right and interest of the judgment-debtor in the attached property. At the sale the decree-holder himself purchased the property after obtaining leave to bid. On a question arising between the decree-holder-purchaser and the representative in interest of the Official Assignee as to the validity of the sale in favour of the former, *held* that the same was altogether irregular and inoperative, because (1) the property having passed to the Official Assignee, it was wrong to allow the sale to proceed at all, (2) no proper steps had been taken to bring the Official Assignee before the Court and obtain an order binding upon him, and accordingly he was not bound by anything which was done, and(3) the judgment-debtor had at the time of the sale no right, title or interest which could be sold or vested in a purchaser (256-7).

A notice under S. 248 of C. P. Code of 1882 is necessary in order that the Court should obtain jurisdiction to sell property by way of execution as against the legal representative of a deceased judgment-debtor (257). (*Lord Parker.*) RAGHUNATH DAS *v.* SUNDAR DAS KHETRI.

(1914) 41 I. A. 251 = 42 C. 72 (82-3) = 1 L. W. 567 = 16 M. L. T. 353 = (1914) M. W. N. 747 = 24 I.C. 304 = 18 C. W. N. 1058 = 16 Bom. L. R. 814 = 20 C. L.J.555 = 13 A.L.J. 154 = 27 M. L. J. 150.

EXECUTION OF DECREE—(*Contd.*)

Jurisdiction—Mortgage.

———*Decree for sale of Sub-Court in one suit—Supplemental decree of District Court in another suit substituting other properties for those mortgaged—Amendment of former by latter—Jurisdiction to execute supplemental decree.*

On 8-1-1877, the Sub-Court of *B* passed a mortgage decree under which the property comprised in the mortgage was to be sold. Before the sale was effected, it appeared that the property included in the mortgage had by a previous arrangement passed to other members of the mortgagor's family, and that in lieu of it the mortgagors had received other properties which were not included in the mortgage. The mortgagees instituted another suit, also in the Sub-Court of *B*, for the purpose of bringing within the influence of the mortgage the substituted property. That suit was called up by the District Judge into his Court, and in it a decree was made by the consent of the mortgagors on 6-8-1879. It declared that the substituted properties were fit to be sold in execution of the decree of 8-1-1877 and that for the purpose of that auction sale the subsequent suit ought to be taken as supplemental to the former suit. Then it directed that the mortgage in question, and the decree of 8-1-1877, should be amended according to the aforesaid declaration. Another term of the decree of 6-8-1879 was that the mortgagors were to have six months from the said date for payment of the amount due.

No payment having been made within the said six months, the District Judge, on the application of the mortgagees for execution of the decree of 6—8—1879, ordered a sale of the properties, and they were sold accordingly. It was contended that the decree of 6—8—1879 was really that of the Sub-Judge, and that the District Judge had no power to order execution thereof.

Held, that, on the broad construction of the decree of 6—8—1879, it must be taken to be the decree of the District Judge, that it affected the whole property mortgaged, and that he had jurisdiction to order execution (11).

Even construing the language of the decree of 6—8—1879 strictly, the better construction is that it was intended to be the decree of the District Judge. In point of procedure it was more proper to make it the decree of the District Judge than the decree of the Sub-Judge. If therefore it was desired that the Sub-Judge should execute the decree, there should have been an order made by the District Judge ordering the Sub-Judge to carry the decree into execution. The District Judge carried his own decree into execution, and the decree, which he carried into execution, drew up into itself the decree of the court below, and that it was in effect a decree for a sale of the whole of the property which the new suit approved to be the property affected by the mortgage (11). (*Sir Arthur Hobhouse.*) BISHENMUN SINGH *v.* LAND MORTGAGE BANK OF INDIA.

(1884) 12 I.A. 7 = 11 C. 244 = 4 Sar. 588.

Limitation.

———Bar of—Court's duty to take notice of, even in absence of plea. *See* C. P. CODE OF 1908—S. 11—CASES UNDER—EXECUTION PROCEEDING—ORDER ERRONEOUS IN, ETC. **(1881) 8 I.A. 123 (131-2) = 8 C. 51 (59-60).**

———*Bar of—Decision on—What amounts to.*

On an application made by a decree holder to a court having jurisdiction to execute the decree for the attachment of the properties of the judgment-debtor in execution, that court has jurisdiction to determine whether the decree was barred, and when it makes an order that an attachment should issue, it, whether right or wrong, must be considered to have determined that the decree was not barred

EXECUTION OF DECREE—(*Contd.*)

Limitation—(*Contd.*)

(131-2). (*Sir Barnes Peacock.*) MUNGUL PERSHAD DICHIT *v.* GRIJA KANT LAHIRI CHOWDHRY.
(1881) 8 I.A. 123 = 8 C. 51 (59-60) = 11 C.L.R. 113 = 4 Sar. 248.

———*See also* EXECUTION OF DECREE—ATTACHMENT IN—SALE PURSUANT TO—APPLICATION FOR.
(1881) 8 I.A. 165 (169-70) = 8 C. 28 (30-1).

———Bar of—Saving from—Duty as regards—Assignment of decree—Agreement for—Duty after, and before transfer by assignment in writing. *See* DECREE—KEEPING ALIVE OF. **(1916) 43 I.A. 108 (112) = 43 C. 990 (1000).**

———Law of, applicable—Suit in which decree was passed—Law applicable to—Applicability of. *See* LIMITATION ACT OF 1871—APPLICABILITY—DECREE IN SUIT ETC.
(1881) 8 I.A. 123 (133-4) = 8 C. 51 (61).

———*Plea by judgment-debtor of— Maintainability—Estoppel—Attachment in execution after notice to judgment-debtor—Sale pursuant to—Stay of, at his instance and with consent of decree-holder.*

On an application for execution, an order for attachment was made by the executing court on the 8th of October, 1874, after notice served on the judgment-debtor to show cause why the decree should not be executed against him. In pursuance of the attachment a sale proclamation was issued. The judgment-debtor not only did not appeal against the order for the attachment, but he presented a petition, by which he prayed that the sale under the attachment might be stayed for three months, and the execution case struck off for the present, with the attachment remaining in force. Upon that petition being presented, the creditor agreed to have the execution stayed in accordance with the petition "the attachment on the property attached continuing".

Held that, in the face of the order of the 8th of October, 1874, and the subsequent proceedings, it was not open to the judgment-debtor to contend that the decree was barred on the 8th of October, 1874 (132). (*Sir Barnes Peacock.*) MUNGUL PERSHAD DICHIT *v.* GRIJA KANT LAHIRI CHOWDHRY. **(1881) 8 I. A. 123 = 8 C. 51 (60) = 11 C.L.R. 113 = 4 Sar. 248.**

———*Plea by judgment-debtor of — Maintainability—Estoppel—Execution sale—Postponement of—Application by judgment-debtor for—Effect.*

A petition by a judgment-debtor for the postponement of a sale in execution of a decree against him is not an intentional causing, or permitting the decree-holder to believe that he (the judgment-debtor) admits that the decree can be legally executed against him and occasions no estoppel under S. 115 of the Evidence Act. The judgment-debtor can, notwithstanding his having filed such petition, maintain that execution of the decree is barred by limitation (128). (*Sir Richard Couch.*) MINA KONWARI *v.* JUGGUT SETANI. **(1883) 10 I. A 119 = 10 C. 196 (206) = 13 C. L. R. 385 = 4 Sar. 454.**

———Plea by judgment-debtor of—Maintainability—Assignment of decree—Order prior recognising, and allowing assignee to execute decree. *See* C. P. CODE OF 1908—S. 11—CASES UNDER—EXECUTION PROCEEDINGS—LIMITATION. **(1920) 48 I. A. 45 = 40 M.L.J. 197.**

Mesne profits to be realised in.

———Bond for payment of amount out of—Profits not realisable in execution or otherwise—Enforceability of bond in case of—Compromise by obligor giving up claim to such profits in case of—Effect. *See* BOND—MESNE PROFITS ETC. **(1894) 22 I. A. 68 (74) = 22 C. 434 (443).**

Piecemeal execution—Permissibility.

———Joint decree in favour of several persons—Purchase by defendant of interest of one or some of in—Execution in part by the other or others. *See* C. P. CODE OF 1908—O. 21, R. 15—DECREE AND C. P. CODE OF 1908—O. 21, R. 16—JOINT DECREE. **(1882) 10 I. A. 4 = 9 C. 482.**

———Possession—Decree granting immediate, of some items and possession of other items after ascertainment thereof—Execution as regards former before ascertainment of latter. *See* PRIVY COUNCIL—APPEAL—DECREE IN—EXECUTABILITY OF—POSSESSION.
(1870) 13 M. I. A. 490 (495).

Possession—Decree granting immediate, of some items and possession of other items after ascertainment thereof.

———Execution as regards former before ascertainment of latter—Right of. *See* PRIVY COUNCIL—APPEAL—DECREE IN—EXECUTABILITY—POSSESSION.
(1870) 13 M. I. A. 490 (495).

Right to apply for.

———Assignee of decree—Right of, after agreement to assign and before transfer by assignment in writing. *See* C.P. CODE OF 1908—O. 21, R. 16—ASSIGNMENT OF DECREE—AGREEMENT FOR. **(1916) 43 I. A. 108 (112) = 43 C. 990 (1000).**

———Person not party to decree but interested in same—Right of. *See* COMPROMISE—SUIT—COMPROMISE BY PLAINTIFF OF. **(1849) 4 M. I. A. 452.**

Transmission of decree for.

———*See* C. P. CODE OF 1908, (1) S. 39, (2) SS. 39, 41, 50, (3) SS. 39, 50, (4) O. 21, R. 6, AND (5) O. 21, R. 8.

EXECUTION PROCEEDING.

[*See also* (1) EXECUTION APPLICATION AND (2) EXECUTION OF DECREE.]

Abandonment of.

———*See* EXECUTION APPLICATION—STRIKING OFF OF.

Decree—Construction of—Final order as to.

———Binding nature of. *See* C. P. CODE OF 1908—S. 11—CASES UNDER—EXECUTION PROCEEDINGS—DECREE.
(1884) 11 I A. 181 = 7 A. 102.

Decree under execution—Binding nature of.

———*See* EXECUTING COURT—DECREE—VALIDITY OF.

Judgment under execution—Binding nature of.

———*See* C. P. CODE OF 1908—S. 11—CASES UNDER—SUIT—JUDGMENT FINAL IN. **(1883) 11 I. A. 37 (41) = 6 A. 269 (274).**

Limitation.

———*See* EXECUTION OF DECREE—LIMITATION.

Order in—Appeal from.

———Right of. *See* C. P. CODE OF 1908—S. 47—EXECUTION PROCEEDING—ORDER IN—APPEAL FROM.

Res Judicata.

———Rule of—Applicability. *See* C. P. CODE OF 1908—S. 11—CASES UNDER—EXECUTION PROCEEDINGS.

Separate suit—Remedy appropriate.

———*See also* C. P. CODE OF 1908 (1) S. 47—EXECUTION PROCEEDING—SEPARATE SUIT AND (2) S. 144.

———Decree—Dependent decree—Money paid under—Recovery of, on supersession of decree. *See* DECREE—MONEY PAID UNDER—RECOVERY OF—RIGHT OF—MODE OF.

———Ijmali Mahal—Share in—Possession of—Decree for—Partition of mahal prior to—Recovery of substituted share allotted at—Mode of. *See* DECREE—IJMALI MAHAL.
(1922) 49 I. A. 139 = 1 P. 378.

———Interest—Future interest—Decree silent as to—Recovery of. *See* MESNE PROFITS—FUTURE PROFITS—DECREE SILENT AS TO. **(1875) 2 I. A. 219 (228).**

EXECUTION PROCEEDING—(*Contd.*)

Separate suit—Remedy appropriate—(*Contd.*)

———Interest not awarded by decree—Recovery of. *See* INTEREST—DECREE—INTEREST NOT AWARDED BY—RECOVERY OF. **(1878) 5 I. A. 78 (85) = 3 C. 602 (609).**

———Mesne Profits—Future profits—Decree silent as to—Recovery. *See* MESNE PROFITS—FUTURE PROFITS. **(1875) 2 I. A. 219 (228).**

———Mesne Profits not awarded by decree—Recovery of. *See* MESNE PROFITS—DECREE—PROFITS NOT AWARDED BY.

———Mesne Profits on setting aside of Execution sale—Recovery by judgment-debtor of—Mode of—Decree holder purchaser. **(1909) 36 I. A. 197 = 31 A. 551.**

Setting aside of, on technical grounds.

———*Propriety—Execution substantially right.*

In execution proceedings, the Court will look at the substance of the transaction and will not be disposed to set aside an execution upon mere technical grounds when the Court finds that the execution is substantially right (237-8). (*Sir Robert P. Collier.*) BISSESSUR LALL SAHOO *v.* MAHARAJAH LUCHMESSUR SINGH. **(1879) 6 I. A. 233 = 5 C. L. R. 477 = 4 Sar. 76 = 3 Suth. 686 = Bald. 331.**

Striking off of.

———Effect. *See* EXECUTION APPLICATION—STRIKING OFF OF.

EXECUTION SALE.

ADMINISTRATION SUIT—EXECUTION SALE PENDING.
AGREEMENT OF SEVERAL NOT TO BID AT.
ATTACHMEET—SCHEDULE TO.
BENAMI OR NOT.
BENGAL LANDLORD AND TENANT PROCEDURE ACT VIII OF 1869—SALE UNDER SPECIAL PROCEDURE UNDER.
CERTIFICATE OF SALE.
CHARGE—PROPERTY SUBJECT TO—SALE OF.
CONDITIONS OF—ADDITION TO, SUBSEQUENT TO SALE.
CONDUCT OF.
DEBT—SALE OF—CERTIFIED PURCHASER AT—SUIT FOR RECOVERY OF DEBT BY.
FRAUD IN OBTAINING—AUCTION PURCHASER—FRAUD OF—EVIDENCE OF.
INSOLVENCY OF JUDGMENT-DEBTOR PENDING PROCEEDINGS FOR EXECUTION.
INSOLVENCY OF JUDGMENT-DEBTOR PRIOR TO, AND AFTER ATTACHMENT IN EXECUTION—STAY OF SALE IN CASE OF.
INTEREST PASSING UNDER.
IRREGULARITY OR NULLITY.
LAND OUTSIDE JURISDICTION—SALE OF.
LANDED PROPERTY—SALE OF—PRICE REALISED BY.
LEGAL REPRESENTATIVE.
LUNATIC—MANAGER OF ESTATE OF—DECREE HELD BY—SALE IN EXECUTION OF—PURCHASER BY MANAGER HIMSELF AT—VALIDITY.
MINOR.
MORTGAGE.
NULLITY OR IRREGULARITY.
OBJECTIONS TO—SPEEDY AND CHEAP DISPOSAL OF.
OFFICER CONDUCTING.
PERSONS NOT PARTIES TO PROCEEDINGS OR NOT PROPERLY REPRESENTED ON RECORD—SALE OF PROPERTY OF.
PRICE OF — ENHANCEMENT OF—EMPLOYMENT OF AGENTS MERELY FOR PURPOSES OF.
PRIVATE SALE.
PROPERTY PASSING UNDER.

EXECUTION SALE—(*Contd.*)

PROPERTY SOLD UNDER PRIOR EXECUTION SALE WHICH HAD BEEN CONFIRMED—SALE OF.
PUFFING—REAL BIDDING.
PURCHASE AT—FRAUD ON THE PUBLIC.
PURCHASER AT.
REVENUE SALE—PURCHASERS AT.
SACRIFICE OF PROPERTY INVOLVED IN.
SALE PROCLAMATION.
SETTING ASIDE OF.
STAY OF.
TIME FIXED FOR.
VALIDITY OF.
WRONGFUL ATTACHMENT AND — MONEY PAID TO AVERT—RECOVERY OF.
WRONG PROPERTY—ATTACHMENT AND ORDER FOR SALE OF.

Administration suit—Execution sale pending.

———Sale held in due course of administration in administration suit—Priority. *See* ADMINISTRATION—SUIT FOR—SALE HELD IN DUE COURSE OF ETC. **(1904) 32 I.A. 1 (16) = 32 C. 198 (218).**

Agreement of several not to bid at.

———Offence if an. *See* AUCTION SALE—AGREEMENT OF SEVERAL, ETC. **(1850) 5 M.I.A. 109 (133).**

Attachment—Schedule to.

———*Misdescription of property in—Validity of sale in case of—Calcutta Gazette—Advertisement in—Correct description in—Effect.*

Where in execution of a simple money decree, an application was made for the attachment and sale of property decribed in the Schedule as a 6 annas share in certain property mortgaged to *A B*, and the said property was sold by public auction, *held* that the Court had no power to grant a sale certificate which stated that the property sold and purchased was a 6 annas share not included in the mortgage of *A B i.e.*, another and different property from that which was, in fact, sold and purchased; that documents in other judicial proceedings tending to show that a mistake had been made in drawing up the Schedule and that the property intended to be inserted therein was the unincumbered 6 annas were irrelevant, it being impossible to attribute to the public to whom the attached property was offered in sale a knowledge of proceedings in other suits which might have led them to suspect that an error had been made; and that the fact that an advertisement in the Calcutta Gazette, though purporting to be a description of the attached property, differed from the description in the Schedule representing that the property to be sold was free from the mortgage was not a sufficient ground for holding that the property sold was what was described in the Gazette and not in the Schedule though it might be an irregularity requiring the assistance of the Court to cure if the sale were regular in other respects. (*Lord Moulton.*) THAKUR BARMHA *v.* JIBAN RAM MARWARI.
(1913) 41 I.A. 38 = 41 C. 590 = 16 Bom. L.R. 156 = 21 I.C. 936 = 18 C.W.N. 313 = (1914) M.W.N. 118 = 15 M.L.T. 137 = 19 C.L.J. 161 = 12 A.L.J. 156 = 26 M.L.J. 89.

———Property existing and accurately described in—Sale of—Certificate of sale in respect of different property in case of—Grant of—Jurisdiction. *See* EXECUTION SALE CERTIFICATE OF SALE—PROPERTY EXISTING AND ACCURATELY DESCRIBED, ETC. **(1913) 41 I. A. 38 = 41 C. 590.**

———*Property fully identified in — Misdescription in some respects of—Irregularity.*

A property fully identified in the Schedule to the attachment may be in some respects misdescribed. Such misdescription may be disregarded as mere irregularity.

EXECUTION SALE—(*Contd.*)

Attachment—Schedule to—(*Contd.*)

(*Lord Moulton.*) THAKUR BARMHA *v.* JIBAN RAM MARWARI. **(1913) 41 I.A. 38 = 41 C. 590 = 16 Bom. L.R. 156 = 21 I.C. 936 = 18 C.W.N. 313 = (1914) M.W.N. 118 = 15 M.L.T. 137 = 19 C.L.J. 161 = 12 A.L.J. 156 = 26 M.L.J. 89.**

Benami or not.

———*See* BENAMI—EXECUTION SALE.

Bengal Landlord and Tenant Procedure Act VIII of 1869—Sale under special procedure under.

———Purchaser at—Purchaser at execution sale—Rights of—Distinction. *See* BENGAL ACTS—LANDLORD AND TENANT PROCEDURE ACT VIII of 1869.

(1) Ss. 59, 60, 66. **(1878) 6 I.A. 47 (52-4).**
(2) S. 64. **(1903) 30 I. A. 81 (87) = 30 C. 550.**

Certificate of sale.

———Area and Boundaries of property given in—Conflict between— Which prevail. *See* DEED—AREA—BOUNDARY. **(1869) 13 M. I. A. 181 (200-1).**

———Construction of—Other documents—Reference to—Permissibility. *See* CIVIL PROCEDURE CODE OF 1908—O. 21, R. 94—CERTIFICATE OF SALE—CONSTRUCTION OF. **(1921) 48 I. A. 155 (161) = 44 M. 483 (488-9).**

———*Construction of—Satisfaction of claim—Construction leading to—Adoption of, in doubtful case.*

In a doubtful case, that interpretation of a deed should prevail which may best effect a satisfaction of a claim which cannot otherwise be fully satisfied.

The description of the northern boundary given in a sale certificate was susceptible of being applied to two kinds of lands, and the question was which of the two kinds was to be taken as the true northern boundary. The description of the northern boundary was "the lands of *R*". That description meant strictly sole (separate) not ijmali lands. As an imperfect description, it might be applied. The holding sold was found to extend beyond the ijmali lands to the sole owned lands. *Held* that, as the whole surplus was inadequate to supply the whole quantity purchased, there was no ground for narrowing the construction (201). (*Sir James Colvile.*) RAM CHUNDER DUTT *v.* CHUNDER COOMAR MUNDUL. **(1869) 13 M. I. A. 181 = 2 Sar. 507.**

———Cure by, of irregularities in sale. *See* CIVIL PROCEDURE CODE OF 1908—O. 21, R. 94—CERTIFICATE OF SALE—CURE OF, ETC. **(1882) 9 I. A. 182 (196) = 5 A. 142 (157).**

———*Mortgage decree—Sale in execution of—Certificate of sale in case of—Property passing under—Restriction of, by reference to mortgage—Permissibility.*

Where a certificate of sale issued to the purchaser at a sale held in execution of a mortgage decree clearly and unambiguously includes certain property, the language of the certificate cannot be explained and limited by reference back to the mortgage itself. The property in question will pass to the purchaser, though it was not included in the mortgage. (*Lord Buckmaster.*) RAMABHADRA NAIDOO *v.* KADIRIYASAMI NAICKER. **(1921) 48 I. A. 155 = 44 M. 483 (488) = (1921) M. W. N. 374 = 14 L. W. 125 = 30 M. L. T. 34 = 24 Bom. L. R. 692 = A.I.R. 1922 P. C. 252 = 63 I. C. 708.**

———Nature of—Statutory evidence of transfer. *See* C.P. Code OF 1908—O. 21, R. 94—CERTIFICATE OF SALE—NATURE OF. **(1872) 14 M. I. A. 496 (523).**

———*Property existing and accurately described in Schedule to which attachment refers—Sale of—Certificate of sale in respect of different property—Grant of—Validity.*

Where existing property accurately described in the Schedule to which the attachment refers is sold, the case is

EXECUTION SALE—(*Contd.*)

Certificate of sale—(*Contd.*)

not one of misdescription but of identity. In such case it is beyond the powers of the court to make an order granting a sale certificate which states that another and a different property has been purchased at the judicial sale. In other words the attachment cannot be converted into an authority to sell another and a different property. (*Lord Moulton.*) THAKUR BARMHA *v.* JIBAN KAM MARWARI. **(1913) 41 I. A. 38 = 41 C. 590 = 16 Bom. L. R. 156 = 21 I. C. 936 = 18 C. W. N. 313 = (1914) M. W. N. 118 = 15 M. L. T. 137 = 19 C. L. J. 161 = 12 A. L. J. 155 = 26 M. L. J. 89.**

———*Right, title and interest of judgment-debtor—Description of property sold as—Effect.*

The Civil Procedure Code of 1859 required that property sold in execution should be described as the right, title, and interest of the judgment-debtor, and the presence of these words in the sale certificate is consistent with the sale of every interest which the judgment-debtor might have sold. (*Sir Andrew Scoble.*) ABDUL AZIZ KHAN *v.* APPAYASAMI NAICKER. **(1903) 31 I. A. 1 = 27 M. 131 (141) = 6 Bom. L. R. 7 = 8 C. W. N. 186 = 8 Sar. 568.**

———*See also* the following cases under. HINDU LAW—JOINT FAMILY—FATHER—DECREE AGAINST—SALE IN EXECUTION OF—INTEREST PASSING UNDER.

(1) **(1877) 4 I. A. 247 (251) = 3 C. 198 (204-5).**
(2) **(1888) 16 I. A. 1 (5) = 12 M. 142.**
(3) **(1889) 17 I. A. 11 (16) = 17 C. 584 (589-90).**
(4) **(1916) 44 I. A. 1 = 44 C. 524.**
& (5) **(1917) 34 M. L. J. 97 (101-2).**

———And the following cases under HINDU LAW—WIDOW—DECREE AGAINST—SALE IN EXECUTION OF—INTEREST PASSING UNDER.

(1) **(1875) 2 I. A. 275 (280-1).**
& (2) **(1884) 11 I. A. 66 (72-4) = 10 C 985.**

Charge—Property subject to—Sale of.

———Payment of charge by purchaser—Sale subsequently set aside— Subrogation to charge-holder's rights—Purchaser's right of. *See* SUBROGATION—CHARGE. **(1922) 49 I. A. 351 (356) = 2 Pat. 10 (17).**

Conditions of—Addition to, subsequent to sale.

———Validity. *See* AUCTION SALE—CONDITIONS OF. **(1869) 13 W. R. 4 (P. C.)**

Conduct of.

———*Formalities for—Non-compliance with—Purchaser if affected by.*

There could be no safety, except by the Statute of Limitations, for any man's title, where a judicial sale had taken place, if he were bound to satisfy himself of the decree-holder's compliance with every one of the many formalities prescribed by law for the conduct of it (338). (*Sir John Coleridge.*) RAJAH MUHESH NARAIN SINGH *v.* KISHANUND MISR. **(1862) 9 M. I. A. 324 = 5 W. R. 7 = Marsh. 592 = 2 I. J. 51 = 1 Suth. 488 = 1 Sar. 862.**

———*See also* EXECUTION SALE—PURCHASER AT—(1) DECREE AND ORDER FOR SALE & (2) STRANGER INNOCENT PURCHASER.

———*Responsibility of decree-holder for — England and India—Distinction.*

Under the English system the decree-holder has the conduct of the sale. The Code of Civil Procedure, on the other hand, throws on the Court the whole responsibility of conducting the sale. (*Lord Hobhouse.*) MAHOMED MEERA ROWTHER *v.* SAVVASI VIJAYA RAGHUNADHA GOPALAR. **(1899) 27 I. A. 17 (28) = 23 M. 227 (237-8) = 4 C. W. N. 228 = 2 Bom. L. R. 640 = 7 Sar. 661 = 10 M. L. J. 1.**

———In India a judicial sale is conducted, not by the creditor who seeks payment, but by the Court itself (224).

EXECUTION SALE—(*Contd.*)

Conduct of—(*Contd.*)

(*Lord Hobhouse.*) MALKARJUN *v.* NARAHARI.
(1900) 27 I. A. 216 = 25 B 337 (346) = 5 C. W. N. 10 = 2 Bom. L. R. 927 = 7 Sar. 739 = 10 M. L. J. 368.

Debt—Sale of—Certified purchaser at—Suit for recovery of debt by.

———Benami title of third person—Plea by debtor of—Maintainability. *See* C. P. CODE OF 1908, O. 21, R. 79 (3)—DEBT **(1872) 14 M. I. A. 496 (526).**

Fraud in obtaining—Auction purchaser—Fraud of—Evidence of.

———*Judgment-debtor's pleader's misrepresentation if.*

Appellant was the purchaser of the properties of *C* at a sale held in execution of a decree obtained against him (*C*) by *T*. The respondent was another creditor of *C* who had also obtained a decree against *C* and had taken out execution. He (the respondent) sued the appellant, *C*, and *T* for a declaration that the purchase by the appellant was invalid on the ground that it was brought about by the fraud of the defendants, that the decree obtained by *T* was false and was obtained by collusion with *C*; that there was similar fraud in relation to the attachment and the sale proclamation, and that the appellant was merely a benamidar for *C*. These charges of fraud were found against, and all that remained of respondent's case was that of fraud and misrepresentation by the judgment-debtor's pleader that he was going to apply for an adjournment of the sale and the consequent omission of the respondent to be present and bid at the sale.

Held, that there was no fraud, and that, even if the alleged misrepresentation of the judgment-debtor's pleader was true, the auction-purchaser was not responsible for the same. (*Lord Robson.*) BISHUN CHAND BACHHAOT *v.* BIJOY SINGH DUDHURIA. **(1911) 15 C. W. N. 648 = 8 A. L. J. 587 = 13 C. L. J. 588 = 13 Bom. L. R 440 = 11 I. C. 399 = (1911) 2 M. W. N 418 = 10 M. L. T. 335 = 21 M. L. J. 352.**

Insolvency of judgment-debtor pending proceedings for execution.

———Sale in case of—For cases under head of. *See* EXECUTION OF DECREE — INSOLVENCY OF JUDGMENT-DEBTOR, ETC.

Insolvency of judgment debtor prior to, and after attachment in execution — Stay of sale in case of.

———Power and duty of executing Court. *See* EXECUTION OF DECREE—INSOLVENCY OF JUDGMENT-DEBTOR PENDING PROCEEDINGS FOR—ATTACHMENT IN EXECUTION. **(1914) 41 I A. 251 (255) = 42 C. 72 (80)**

Interest passing under.

———*See* EXECUTION SALE—PROPERTY PASSING UNDER.

Irregularity or nullity.

———*See* EXECUTION SALE. (1) SETTING ASIDE OF AND (2) VALIDITY OF.

Land outside jurisdiction—Sale of.

———Validity. *See* EXECUTING COURT—LAND OUTSIDE JURISDICTION.

———Where objection was taken to the validity of an execution sale on the ground that the court which issued the execution under which the sale took place, had no jurisdiction to issue it, inasmuch as the district in which the property sold was situated was divided between the Court which issued the execution and another Court, and the property sold, or a great portion of it, was situated not within the jurisdiction of the former Court, but within that of the latter, their Lordships wished it to be understood (though it was not necessary for them to decide the question) that they threw no doubt whatever upon the decision of the High Court by which it was held that the former Court had jurisdiction to issue the execution. (*Sir Barnes Peacock.*) RAM CHUNDER BYSACK *v.* DINONATH SURMA SIRKAR. **(1879) 3 Suth. 659 = Bald. 290 (291, 296) = 5 C. L. R. 470.**

Landed property—Sale of—Price realised by.

———*Notoriously low.*

It is notorious that landed property when sold under an execution, rarely, if ever, realises its full value (473). (*Sir James W. Colvile.*) LALLA BUNSEEDHUR *v.* KOONWUR BINDESEREE DUTT SINGH. **(1866) 10 M. I. A. 454 = 2 Suth. 39 = 2 Sar. 167.**

Legal representative.

———*Death of judgment-debtor pending execution proceedings and after partial execution of decree — Wrong legal representative of his—Execution continued against—Sale in —Validity of.*

On the death of *N*, after the execution in part against him of a decree obtained against him and *W*, an application for execution was filed giving the name of the person against whom the execution was sought as "the estate of the deceased *N*," and the names of the parties as, first, *N*, deceased, by his heir, *R*, and, secondly, *W*. The application prayed for the sale of the immoveable property of *N* for the realization of the balance of the decree amount. Notices were served on *R* and *W*. *R* was the nephew of *N*, but was not his heir. *N's* real heirs were his two daughters. *R* contended that he was not the heir of *N*, but the Court overruled his objection, decided that he was the right person, proceeded with the execution, and sold *N's* property.

Held, that the sale was not a nullity but was only irregular, and was binding on the real heirs of *N*, unless and until set aside in due course of law.

A decree had been made, and partially executed against *N*, and his estate was liable to make good the balance. To enforce that liability was within the jurisdiction of the Court. It was also within its jurisdiction to receive an application for execution against the legal representative of *N*. If there had been a dispute who was the heir of *N*, or whether his property had or had not devolved upon the heir, it was for the Court to determine such matters for the purpose of the execution. That jurisdiction was not lost by reason of the fact that the Court erroneously decided that *R* was the right person and so proceeded with the execution. Acting in its duty to make the estate of *N* available for the payment of his debt, the Court served with notice a person who did not legally represent the estate, and on objection decided that he did represent it. To treat such an error as destroying the jurisdiction of the Court is calculated to introduce great confusion into the administration of the law (224-5). (*Lord Hobhouse.*) MALKARJUN *v.* NARAHARI.
(1900) 27 I. A. 216 = 25 B. 337 (346-7) = 5 C.W.N. 10 = 2 Bom. L. R. 927 = 7 Sar. 739 = 10 M. L. J. 368.

———*Hindu joint family—Debtor deceased member of—Minor representatives of—Omission to implead—Validity of sale of deceased's estate in case of.*

The Indian Courts have properly exercised a wide discretion in allowing the estate of a deceased debtor to be represented by one member of the family, and in refusing to disturb judicial sales on the mere ground that some members of the family, who were minors, were not made parties to the proceedings, if it appears that there was a debt justly due from the deceased, and no prejudice is shown to the absent minors. But there are usually cases where the person named as defendant is *de facto*, manager of a Hindu family property, or has the assets out of which the decree is to be satisfied under his control (33). (*Lord Davey.*) KHIA

EXECUTION SALE—(*Contd.*)

Legal representative—(*Contd.*)

RAJMAL *v.* DAIM. **(1904) 32 I. A. 23 = 32 C. 296 (314) = 9 C. W. N. 201 = 2 A. L. J. 71 = 7 Bom. L. R. 1 = 1 C. L. J. 584 = 8 Sar. 734.**

———Jurisdiction to sell property in execution against judgment-debtor's—Notice under O. 21, R. 23 of C.P.Code --Service of—Condition precedent. *See* EXECUTION PROCEEDING—INSOLVENCY OF ETC.

(1914) 41 I. A. 251 (257) = 42 C. 72 (82-3).

———Mortgage—Suit to enforce—Mortgagor dead before suit—Suit filed against a minor, who was an heir of his, but not his legal representative, represented by a person who was not in law or in fact his guardian—Validity of decree in suit and of sale in execution thereof in such a case. *See* EXECUTION SALE—MORTGAGE—DECREE ON FOOT OF—SALE IN EXECUTION OF—MORTGAGOR DEAD BEFORE SUIT. **(1904) 32 1. A. 23 (35-6) = 32 C. 296 (314-5).**

———Mortgage suit—Death of one of mortgagors (party-defendant) pending—One of his legal representatives not impleaded in suit—Decree in suit and sale in execution thereof if binding on estate of deceased. *See* EXECUTION SALE—MORTGAGE—DECREE ON FOOT OF—SALE IN EXECUTION OF—LEGAL REPRESENTATIVES OF A DECEASED, ETC. **(1904) 32 I. A. 23 (34) = 32 C. 296 (313).**

Lunatic—Manager of estate of—Decree held by—Sale in execution of—Purchase by Manager himself at—Validity,

———*Security for sale proceeds required from him as condition precedent to actual delivery of possession — Failure to furnish—Effect*

M, the Manager of the estate of her husband—a Lunatic—(of which the appellant was at the time of the appeal Manager) obtained a decree in execution of which certain lands belonging to the judgment-debtor were sold and purchased by *M*. The executing Court required *M*. to give security for the proceeds of the sale before it would allow actual possession to be given to her. Several months elapsed before she found security, and meanwhile the defendants obtained attachment and sale of the same lands under a judgment obtained by them against the same debtor ; and the lands were sold in execution of their decree, and purchased by themselves, and possession afterwards given to them. *M*. then brought the suit out of which the appeal arose against the defendants-respondents, asserting her title under the first judgment sale. The Zillah Judge held that *M* having failed to give security, the sale to her became null.

Held, that that ground was clearly untenable (536).

The security was ordered for the protection of the lunatic plaintiff against misappropriation by his manager. It was not a proceeding affecting the judgment-debtor, and was entirely collateral to the course of the suit between the judgment-creditor and judgment-debtor. The omission to give this security could not in any way affect the title which had vested in the plaintiff by the previous sale. This decision of the Zillah Judge had the effect of causing the omission by the Lunatic's manager to do an act intended to secure the fruits of his judgment to him, to operate so as to deprive him altogether of them, and hand them over to the second judgment-creditor It is much to be lamented that such a misconception should have taken place (536). (*Sir Montague E. Smith.*) SARADA PROSAUD MULLICK *v.* LUCHMEEPUT SINGH DOOGUR. **(1872) 14 M. I. A. 529 = 3 Sar. 77 = 17 W. R. 289 = 10 B.L.R. 214 = 2 Suth. 560**

Minor.

———Decree and execution sale against—Suit for declaration of invalidity of—Maintainability—Guardian *ad litem* duly appointed—Non-representation by—Suit based on. *See* HINDU LAW — MINOR — DECREE AND EXECUTION SALE AGAINST. **(1909) 36 I. A. 168 (175) = 31 A. 572 (582).**

EXECUTION SALE—(*Contd.*)

Minor—(*Contd.*)

———Guardian of estate of—Decree held by—Sale in execution of—Purchase by guardian himself at—Validity—Security for sale proceeds required from him as condition precedent to actual delivery of possession—Failure to furnish—Effect. *See* EXECUTION SALE—LUNATIC.

(1872) 14 M. I. A. 529 (536.)

———*Representation proper of—Absence of—Decree in case of—Sale in execution of—Validity.*

N executed a mortgage and then died. After his death a suit was instituted to enforce the mortgage against *A*, described as a "minor aged about fourteen years, legal representative of *N*, deceased, by his guardian, his uncle *B*." *B*. was not in any legal sense or in fact the guardian of *A*, nor was he ever appointed his guardian *ad litem*. A decree was passed in the suit, and the share of *N* was sold in execution thereof.

Held, that *A* was not properly represented in the suit, the decree therein was not binding on him, and that the sale in execution thereof was not valid to pass even his share in his father's estate (36).

In the opinion of their Lordships the objection to the want of proper representation of *A* is not a mere question of form, but one of substance (36). (*Lord Davey.*) KHIARAJMAL *v.* DAIM. **(1904) 32 I.A. 23 = 32 C. 296 (314-5) = 9 C. W. N. 201 = 2 A. L. J. 71 = 7 Bom. L. R. 1 = 1 C. L. J. 584 = 8 Sar. 734.**

Mortgage.

———*Decree on foot of—Earlier decree superseded by later one to same effect—Execution Petition and attachment under earlier decree—Sale pursuant to, after date of later decree—Validity—Prejudice—Absence of.*

A decree for sale was passed on 15—4—1886 against a Hindu father and his two minor sons, notwithstanding the objection of the father that he was not their guardian, and that a guardian *ad litem* had not been appointed for the minors. The decree directed the recovery of the suit amount from the father personally and by sale of the mortgaged property. That decree was, however, set aside against the minors on 28—9—1886 on the application of their maternal uncle. A fresh decree was passed on 15—11—1886, which, though it superseded the decree of 15—4—1886, was to the same effect as that decree.

On 16—8—1886 the mortgagee applied for execution of the decree of 15—4—1886 by attachment and sale of the mortgaged property. In that application the court caused on 24—1—1887 a proclamation of the intended sale, and in pursuance thereof the right, title and interest of all the defendants in the mortgaged property was sold and was purchased by the mortgagee himself. The certificate of sale showed that the right, title, and interest in the property of all the defendants to the suit were sold to the mortgagee.

Held, that the sale was and was known to all the parties to be, in execution of the decree of 15—11—1886, though the application for execution was of the decree of 15—4—1886, and the attachment was made under that decree (59). (*Sir John Edge.*) GANAPATHI MUDALIAR *v.* KRISHNAMACHARIAR. **(1917) 45 I.A. 54 = 41 M. 403 (409-10) = 8 L. W. 427 = 22 C. W. N. 553 = 20 Bom. L. R. 580 = 23 M. L T. 198 = 27 C.L J. 367 = (1918) M.W.N. 310 = 16 A. L. J. 353 = 4 Pat. L. W. 310 = 44 I. C. 855 = 34 M. L. J. 463.**

———*Decree on foot of—Sale in execution—Exonerated defendants—Interests of, if pass under sale—Their names not actually removed from record.*

S and *K*, along with others, executed a usufructuary mortgage, and then died. After their death a suit was brought to enforce the mortgage against the surviving mort-

EXECUTION SALE—(*Contd*).

Mortgage—(*Contd.*)

gagors and the sons of *S* and *K*, each having left one son. Pending the suit a petition was put in praying that the points in issue in the suit should be referred for final disposal to the arbitration of a named person. The petition was not signed by the sons of *S* and *K*, and appended to it was a postscript signed by the remaining parties praying that the names of the sons of *S* and *K* might be struck off from the suit. An order for reference was then made, the arbitrator made an award, a decree was passed in accordance with the award and in execution thereof the mortgaged property was sold. On a question arising whether the shares of the sons of *S* and *K* in the mortgaged property passed by the sale, *held* that they did not (36).

The sons of *S* and *K* never signed the agreement for reference, and the Court was asked to strike their names out of the record. They were not, therefore, parties to any of the subsequent proceedings which were founded exclusively on the agreement, and it is immaterial whether their names were actually removed from the record or not (36). (*Lord Davey.*) KHIARAJMAL *v.* DAIM.

(1904) 32 I.A. 23 = 32 C. 296 (315) = 9 C.W.N. 201 = 2 A. L. J. 71 = 7 Bom. L. R. 1 = 1 C. L. J. 584 = 8 Sar. 734.

———*Decree on foot of—Sale in execution of—Legal representatives of a deceased mortgagor-defendant—Omission to implead one of, in suit—Estate of deceased if bound by sale.*

In a suit to enforce a mortgage a petition was presented to the Court praying that the points in issue between the parties should be referred for final disposal to the arbitration of a named person. *N*, one of the mortgagors and a defendant to the suit, signed the agreement of reference, and died shortly after. On his death his two widows and his minor son by his mother, one of the widows, were named as his legal representatives on the record. *N* had also an infant daughter, but her name was omitted. The evidence showed that the widows and the son of *N* were served with summonses to appear; that they were prepared to accept the award of the arbitrator; and that they were also served with notice of the sale of *N's* estate held in execution of the decree passed in accordance with the award of the arbitrator making the said estate liable.

On a question arising whether, in face of the omission to implead the daugther of *N*, his estate could be held to have been sufficiently represented for the purpose of the suit, and his equity of redemption in the estate could be held to be bound by the sale in execution, their Lordships answered the question in the affirmative (34). (*Lord Davey.*) KHIARAJMAL *v.* DAIM. **(1904) 32 I.A 23 = 32 C. 296 (313) = 9 C.W.N. 201 = 2 A.L.J. 71 = 7 Bom. L. R. 1 = 1 C. L. J. 584 = 8 Sar. 734.**

———*Decree on foot of—Sale in execution of—Mortgagor dead before suit—Suit against a minor, who was an heir of his, but not his legal representative, represented by a person who was not in law or in fact minor's guardian—Validity of decree and sale in case of—Award—Decree on foot of.*

N executed a mortgage and then died. A suit to enforce the mortgage was thereafter brought. The suit was instituted against *A* described as a "minor aged about 14 years, legal representative of *N*, deceased, by his guardian, his uncle *B*." *A* was, of course, one of the heirs of *N*, but in no other sense his legal representative. And *B* was not in any legal sense or in fact the guardian of *A*, and was never appointed his guardian *ad litem*.

Pending the suit, the points at issue therein were referred to arbitration, the petition being signed by *B* as "guardian of *A*", amongst others. An award was made by the arbitrator, a decree was passed in accordance with the award, and in execution thereof the estate of *N* was sold.

EXECUTION SALE—(*Contd.*)

Mortgage—(*Contd.*)

On a question arising as to whether *N's* heirs were bound by the proceedings in the suit, and his share of the property, whatever it was, effectively sold in the suit, or at any rate the share of *A* himself passed by the sale, *held* that the estate of *N* was not represented in law or in fact in the suit, and the sale of his property was therefore without jurisdiction and null and void (36).

Held also that the share of *A* himself in his father's estate was not bound (36).

In support of the validity and binding character of the proceedings and the sale, reliance was placed on the judgment of this Board in *Malkarjun* v. *Narahari*, 27 I.A. 216. Their Lordships think that the observations in that case do not apply to the case now before them. In the prior suit the judge seems to have accepted without question the statement on the record that *A* was legal representative of *N*, and *B* was his guardian and never applied his mind to the matter. Doubtless he would have done so if the suit had proceeded in the ordinary course, but the proceedings in the suit were cut short by the agreement for reference. It was not, therefore, the case of an erroneous decision, ruling, or exercise of discretion of the judge in a matter in which the court had jurisdiction (35-6).

The share of *A* himself in his father's estate was not bound. In the opinion of their Lordships it is not a mere question of form, but one of substance (36). (*Lord Davey.*) KHIARAJMAL *v.* DAIM. **(1904) 32 I. A. 23 = 32 C. 296 (314-5) = 9 C.W.N. 201 = 2 A.L.J. 71 = 7 Bom. L.R. 1 = 1 C.L.J. 584 = 8 Sar. 734.**

———Decree on foot of—Sale in execution of—Order for, subject to mortgagee's rights under prior decree on foot of another mortgage of same property—Validity of—Objection to—Privy Council Appeal—Maintainability for first time in. *See* PRIVY COUNCIL—APPEAL—NEW POINT—PERMISSIBILITY. **(1891) 18 I.A. 22 (26) = 15 B. 222.**

———Decree on foot of—Sale in execution of—Property passing under—Certificate of sale—Property clearly included in—Restriction of, by reference to mortgage—Permissibility. *See* EXECUTION SALE—CERTIFICATE OF SALE—MORTGAGE DECREE. **(1921) 48 I. A. 155 = 44 M. 483 (488).**

———*Property subject to—Sale of—Mortgage turning out to be invalid—Benefit of—Party entitled to.*

On the sale of property subject to encumbrances the vendor gets the price of his interest, whatever it may be, whether the price be settled by private bargain or determined by public competition, together with an indemnity against the incumbrances affecting the land. The contract of indemity may be expressed or implied. If the purchaser covenants with the vendor to pay the incumbrances, it is still nothing more than a contract of indemnity. The purchaser takes the property subject to the burthen attached to it. If the incumbrances turn out to be invalid the vendor has nothing to complain of. He has got what he bargained for. His indemnity is complete. He cannot pick up the burthen of which the land is relieved and seize it as his own property. The notion that after the completion of the purchase, the purchaser is in some way a trustee for the vendor of the amount by which the existence, or supposed existence, of encumbrances has led to a diminution of the price, and liable, therefore, to account to the vendor for anything that remains of that amount after the incumbrances are satisfied or disposed of, is without foundation. After the purchase is completed, the vendor has no claim to participate in any benefit which the purchaser may derive from his purchase.

Property, which was subject to two prior mortgages in favour of a third party, was brought to sale in execution of

EXECUTION SALE—(*Contd.*)

Mortgage—(*Contd.*)

a decree obtained by the third mortgagee, and was by him purchased with leave of court, subject to the two prior mortgages. After the completion of the sale, the prior mortgages were declared invalid, and the question arose as to which party was entitled to the benefit accruing to the property from its having been exonerated from mortgage liability, the mortgagee-purchaser, or the mortgagor. *Held*. that the mortgagee decree-holder puchaser was entitled to that benefit, and that he was not accountable to the mortgagor for the amount thereof as unpaid purchase money or by reason of his being estopped from denying the validity of the mortgages. (*Lord Macnaghten.*) IZZAT-UN-NISA BEGAM *v.* KUNWAR PERTAB SINGH.

(1909) 36 I. A. 203 (208-9) = 31 A. 583 (589-90) = 6 M. L. T. 277 = 10 C. L. J. 313 = 13 C. W. N. 1143 = 11 Bom. L. R. 1220 = 6 A. L. J. 817 = 3 I. C. 793 = 19 M. L. J. 682.

Nullity or irregularity.

———*See* EXECUTION SALE—(1) SETTING ASIDE OF AND (2) VALIDITY OF.

Objections to—Speedy and cheap disposal of.

———*Necessity.*

It is of the utmost importance that all objections to execution sales should be disposed of as cheaply and as speedily as possible (169). (*Lord Macnaghten.*) PROSUNNO COOMAR SANYAL *v.* KASI DAS SANYAL.

(1892) 19 I. A. 166 = 19 C. 683 (689) = 6 Sar. 209.

———*See also* Observations of Lord Hobhouse at pp. 229-30 of L. R. 27 I. A. 216. MALKARJUN *v.* NARAHARI. **(1900) 27 I. A. 216 = 25 B. 337 (352) = 5 C. W. N. 10 = 2 Bom. L. R. 927 = 7 Sar. 739 = 10 M. L. J. 368.**

Officer conducting.

———*Misrepresentations of—Purchase induced by—Setting aside of—Necessity.*

In sales under the direction of the Court it is incumbent on the court to be scrupulous in the extreme and very careful to see that no taint or touch of fraud or deceit or misrepresentation is found in the conduct of its ministers. The Court, it is said, must at any rate not fall below the standard of honesty which it exacts from those on whom it has to pass judgment. The slightest suspicion of trickery or unfairness must affect the honour of the court and impair its usefulness. It would be disastrous, it would be absolutely shocking, if the Court were to enforce against a purchaser misled by its duly accredited agents an illusory and unconscientious bargain. (*Lord Macnaghten.*) MAHOMED KALA MEA *v.* HARPERINK. **(1908) 36 I. A. 32 = 36 C. 323 (334) = 5 M. L. T. 126 = 9 C. L. J. 165 = 13 C. W. N. 249 = 11 Bom. L. R. 227 = 6 A. L. J. 34 = 5 L. B. R. 25 = 1 I. C. 122 = 19 M. L. J. 115.**

———*Representations of—Purchaser's right to rely upon.*

A person who purchases at an execution sale is perfectly justified in relying on what is said by the auctioneer in the presence of the officer of Court who has charge of the sale. (*Lord Macnaghten.*) MAHOMED KALA MEA *v.* HARPERINK. **(1908) 36 I. A. 32 = 36 C. 323 (333) = 5 M. L. T. 126 = 9 C. L. J. 165 = 13 C. W. N. 249 = 11 Bom. L. R. 227 = 6 A. L. J. 34 = 5 L. B. R. 25 = 1 I. C. 122 = 19 M. L. J. 115.**

Persons not parties to proceedings or not properly represented on record—Sale of property of.

———*Nullity or irregularity.*

The Court has no jurisdiction to sell the property of persons who are not parties to the proceedings or properly represented on the record. As against such persons the decrees and sales purporting to be made would be a mere nullity and might be disregarded without any proceeding to set them aside (33). (*Lord Davey.*) KHIARAJMAL *v.* DAIM. **(1904) 32 I. A. 23 = 32 C. 296 (312) = 9 C. W. N. 201 = 2 A. L. J. 71 = 7 Bom. L. R. 1 = 1 C. L. J. 584 = 8 Sar. 734.**

Price of—Enhancement of—Employment of agents merely for purposes of.

———Illegal conspiracy if an. *See* AUCTION SALE—PRICE OF. **(1850) 5 M. I. A. 109 (133).**

Private sale

———*Purchasers at—Rights of—Distinction.*

However nice the distinction between the rights of a purchaser under a voluntary conveyance and those of a purchaser under an execution sale may be, it is clear that a distinction may, and in some cases does, exist between them. It is sufficient to instance the seizure and sale of a share in a trading partnership at the suit of a separate creditor of one of the partners. The partner could not himself have sold his share so as to introduce a stranger into the firm without the consent of his co-partners, but the purchaser at the execution sale acquires the interest sold, with the right to have the partnership accounts taken in order to ascertain and realise its value (255). (*Sir James W. Colvile.*) DEENDYAL LAL *v.* JUGDUP NARAIN SINGH.

(1877) 4 I. A. 247 = 3 C. 198 (208-9) = 1 C. L. R. 49 = 3 Sar. 730 = 3 Suth. 468.

———There is a great distinction between a private sale in satisfaction of a decree and a sale in execution of a decree. In the former the price is fixed by the vendor and purchaser alone ; in the latter the sale must be made by public auction conducted by a public officer, of which notice must be given as directed by the Act, and at which the public are entitled to bid. Under the former the purchaser derives title through the vendor, and cannot acquire a better title than that of the vendor. Under the latter the purchaser, notwithstanding he acquires merely the right, title and interest of the judgment-debtor, acquires that title by operation of law adversely to the judgment-debtor, and freed from all alienations or incumbrances effected by him subsequently to the attachment of the property sold in execution (75). (*Sir Barnes Peacock.*) DINENDRONATH SANNYAL *v.* RAMCOOMAR GHOSE. **(1881) 8 I. A. 65 = 7 C. 107 (118) = 10 C. L. R. 281 = 4 Sar. 213.**

Property passing under.

———*Attachment — Schedule referred to by — Property described in.*

That which is sold in a judicial sale in execution of a money decree can be nothing but the property attached, and that property is conclusively described in and by the schedule to which the attachment refers. (*Lord Moulton.*) THAKUR BARMHA *v.* SIBAN RAM MARWARI. **(1913) 41 I. A 38 = 41 C. 590 = 16 Bom. L. R. 156 = 21 I. C. 936 = 18 C. W. N. 313 = (1914) M. W. N. 118 = 15 M. L. T. 137 = 19 C. L. J. 161 = 12 A. L. J. 155 = 26 M. L. J. 89.**

———Certificate of sale—Description in, of property sold as right, title and interest of judgment-debtor—Effect. *See* EXECUTION SALE — CERTIFICATE OF SALE—RIGHT, TITLE AND INTEREST OF JUDGMENT-DEBTOR.

———*Decrees separate, some against one of, and one against all of, three brothers—Execution of, at same time—Sale in —Property of all brothers if passes under.*

EXECUTION SALE—(*Contd.*)

Property passing under—(*Contd.*)

Three brothers, *C*, *G* and *S*, were in joint possession of certain mouzahs on a jaghire tenure under Rajah *N*, the predecessor in title of the appellant. The Rajah *N*, obtained three decrees for rent, two against *C* alone, and the third against the three brothers. A sale in execution took place at which the decree-holder himself purchased the mouzahs. It appeared from the order confirming the sale that it was made in all the three execution cases, after separate attachments effected in the several cases, and the publication of separate sale proclamations. Before the granting of the certificate, the three brothers filed objections, which were, however, disallowed, for the purpose of having the sale set aside, and these proceedings showed that the three brothers understood that the sale was in all three decrees, and that they were all judgment-debtors, and the property had been sold in execution of at least one judgment against them all.

In a suit by *S* for a declaration that the sale was held in execution of one of the decrees to which he was not a party, and was therefore void against him, the High Court held that, having deliberately elected to execute the decrees against *C* alone, and, having, after the sale, chosen to have the sale treated as made in execution of one of the decrees to which *S* was not a party, the decree-holder and the appellant were estopped from treating the sale as made in execution of the decree against all the brothers.

Held that, the question was not one of estoppel, but of fact, and the evidence in the case clearly showed that the sale was held in execution of all three decrees, and therefore the entire property passed by it.

Held further that, as the truth appeared on the face of the proceedings, and the brothers were not deceived as to the facts, or prevented by any misstatement of the Rajah from asserting any rights they might have conceived themselves to possess, there could be no estoppel either. (*Lord Davey.*) TARA LAL SINGH *v.* SAROBUR SINGH.
(1899) 27 I. A. 33 = 27 C. 407 = 4 C. W. N. 533 = 2 Bom. L. R. 5 = 7 Sar. 657.

———Exonerated defendants—Shares of, if pass—Their names not actually removed from record. *See* EXECUTION SALE—MORTGAGE—DECREE ON FOOT OF—SALE IN EXECUTION OF—EXONERATED DEFENDANTS.
(1904) 32 I. A. 23 (36) = 32 C. 296 (315).

———*Money decree ordinary—Sale in execution of.*

It is established by a long series of decisions that, under a sale in execution of an ordinary money decree, only the right, title, and interest of the judgment-debtor passes (87). (*Sir Andrew Scoble.*) JIBAN KRISHNA ROY *v.* BROJO LAL SEN. **(1903) 30 I. A. 81 = 30 C. 550 = 7 C. W. N. 425 = 5 Bom. L. R. 428 = 8 Sar. 444.**

———*Possession of property—Decree for—Right, title and interest in—Sale of—Execution of decree in part before—Unexecuted portion of decree only or entire decree if passes under sale.*

In or about 1848 the representatives of *R* obtained a decree against the widows of the adopted sons of *B*, as the then representatives of *B*, in respect of a money demand against *B*. In execution of that decree, the representatives of *R* bought, on 16—7—1850, among other things, the right, title and interest of the judgment-debtors in a decree of 11—11—1843. That was a decree obtained by the adopted sons of *B* against *R*. It declared the title of the said adopted sons to the moiety to which *B* was entitled in an eight anna share in a talook called *N*, which had been purchased in the name of *R* but which was claimed by *B* to be joint family property. The decree of 11—11—1843 also awarded possession of that moiety to the adopted sons of *B*.

In the year 1837 the whole of talook *N* was attached by an order of the Civil Court, and remained in the possession

EXECUTION SALE—(*Contd.*)

Property passing under—(*Cantd.*)

of an officer of the Collector until the year 1866. But, notwithstanding that, the Court, upon the representatives of *B* obtaining their decree in November, 1843, attempted to give the decree-holders, at all events, constructive possession of a certain number of the mouzahs, included in the moiety decreed to them, and for that purpose deputed an Ameen to ascertain what belonged to them. The Ameen marked out by sticks and posts certain lands which, according to his view, the decree-holders were entitled to, and he gave them or professed to give them possession of those lands, and he also required the ryots to sign kabuliyats with respect to those lands. Those proceedings were approved by the Court. It was undoubted, therefore, that the Court intended to deliver possession as far as it could, and believed that it had the right to deliver possession effectual for the execution of the decree to the decree-holders of a certain number of mouzahs. The question was whether the representatives of *R*, buying on 16—7—1850, bought with it those mouzahs with respect to which it had been executed in the manner described, or only so much of the property to which it related with respect to which it remained unexecuted?

Held, affirming the Courts below, that what was put up for sale, what was intended and what was understood to be sold, must have been the unexecuted portion only of the decree. GRISH CHUNDER CHUCKERBUTTY *v.* JIBANESWARI DEBIA. **(1880) 6 C. 243 = 3 Suth. 776 = 7 C. L. R. 420.**

Property sold under prior execution sale which had been confirmed—Sale of.

———*Validity.*

Their Lordships consider that the Zillah Judge was in error in granting the order for the second sale under the respondent's attachment, and confirming the purchase by him, when the sale of the same lands had already taken place under *M's* attachment, and the purchase by her under that sale had been confirmed and had not been set aside. This course was not in accordance with the Code of Procedure. Such a course also is in any case clearly contrary to the interests of debtors as well as creditors, as it is obvious that when property is offered at a second sale, with the cloud cast on the title by the subsisting first sale, it would be likely to go for an inadequate price (536-7). (*Sir Montague E. Smith.*) SARODA PROSAUD MULLICK *v.* LUCHMEEPUT SINGH DOOGUR. **(1872) 14 M. I. A. 529 = 17 W. R. 289 = 10 B. L. R. 214 = 2 Suth. 560 = 3 Sar. 77.**

Puffing—Real bidding.

———Distinction. *See* AUCTION SALE—PUFFING.
(1850) 5 M. I. A. 109 (133-4).

Purchase at—Fraud on the public.

———If and when a. *See* CONTRACT—WAGERING CONTRACT—FRAUD OF WINNER.
(1850) 5 M. I. A. 109 (132-3).

Purchaser at.

———*Attached property—Judgment-debtor's interest in—Augmentation or acceleration of, before sale—Benefit of—Right to.*

Their Lordships wish to guard themselves against being supposed to concur in an argument that was presented at the Bar, to the effect that if between the time of attachment and the time of sale events should happen which would have the effect of accelerating or enlarging the interest of the judgment-debtor, that augmented interest would not pass by the sale which purports to convey all that the judgment-debtor has at the time (209-10). (*Lord Hobhouse.*) UMES CHUNDER SIRCAR *v.* MUSSUMMAT ZAHOOR FATIMA.
(1890) 17 I. A. 201 = 18 C. 164 (176-7) = 5 Sar. 507.

EXECUTION SALE—(*Contd.*)

Purchaser at—(*Contd.*)

———Benamidar for judgment-debtor or real purchaser purchasing for his own benefit. *See* BENAMI—EXECUTION SALE.

———Charge on property purchased paid off by—Subrogation in respect of, on setting aside of sale—Right to. *See* SUBROGATION—CHARGE. **(1922) 49 I. A. 351 (356) = 2 P. 10 (17).**

———Conduct of sale—Formalities for—Non-compliance with—Effect. *See* EXECUTION SALE—CONDUCT OF—FORMALITIES FOR. **(1864) 9 M. I. A. 324 (338).**

———Contract antecedent for sale of property when binding on—Notice to purchaser of—What amounts to. *See* SALE—CONTRACT FOR—EXECUTION PURCHASER OF PROPERTY SUBSEQUENT. **(1922) 45 M. L. J. 770.**

———Decree under execution—Reversal of—Effect of—Stranger innocent purchaser—Decree-holder purchaser—Distinction. *See* EXECUTION SALE—VALIDITY OF—DECREE UNDER EXECUTION.

(1877) 15 I. A. 12 (15-6) = 10 A. 166 (172).

———*Decree and order for execution—Correctness of—Inquiry into—No duty as to.*

A purchaser under an execution is surely not bound to go back beyond the decree to ascertain whether the Court was right in giving the decree, or, having given it, in putting up the property for sale under an execution upon it (334). (*Sir Barnes Peacock.*) GIRDHAREE LALL *v.* KANTOO LALL.

(1874) 1 I. A. 321 = 14 B. L. R. 187 = 22 W. R. 56 = 3 Sar. 380.

———A purchaser under a sale in execution is not bound to inquire whether the judgment-debtor had a cross-judgment of a higher amount any more than he would be bound in an ordinary case to inquire whether a judgment upon which an execution issues has been satisfied or not. Those are questions to be determined by the Court issuing the execution. To hold that a purchaser at a sale in execution is bound to inquire into such matters would throw a great impediment in the way of purchases under executions. If the court has jurisdiction, a purchaser is no more bound to inquire into the correctness of an order for execution than he is as to the correctness of the judgment upon which the execution issues (111). (*Sir Barnes Peacock.*) REWA MAHTON *v.* RAM KISHEN SINGH. **(1886) 13 I. A. 106 = 14 C. 18 (24-5) = 4 Sar. 746.**

———Strangers to a suit are justified in believing that the court has done that which by the directions of the Court it ought to do (225). (*Lord Hobhouse.*) MALKARJUN *v.* NARAHARI. **(1900) 27 I. A. 216 = 25 B. 337 (347) = 5 C. W. N. 10 = 2 Bom. L. R. 927 = 7 Sar. 739 = 10 M. L. J. 368.**

———Estoppel against judgment-debtor—Purchaser if affected by. *See* JUDGMENT-DEBTOR.

———Estoppel in favour of decree-holder—Benefit of—Purchaser's right to. *See* MORTGAGE—MORTGAGEE—ESTOPPEL PROTECTING TITLE OF.

(1892) 19 I. A. 203 (220) = 20 C. 296.

———*Eviction from property purchased—Recovery of purchase-money on ground of—Suit for—Right of—Private contract—Sale of free-hold or lease-hold interest in land—English law rule in case of—Applicability.*

The general rule of the law of England governing all sales by private contract between the parties either of a free-hold or of a lease-hold interest in land is: "If the conveyance has been actually executed by all the necessary parties, and the purchaser is evicted by a title to which the covenants do not extend, he cannot recover the purchase-money either at law or in equity" (125).

EXECUTION SALE—(*Contd.*)

Purchaser at—(*Contd.*)

The chief reasons for the rule are that the purchaser by private contract has full means of investigating the title of the vendor, and of either satisfying himself that it is good, or of protecting himself against any apparent or latent defect in it by proper and apt covenants. If he fails to do either, his subsequent eviction is the result of his own negligence. This rule does not govern a case in which the sale, as regards the owner of the thing sold, is *in invitum*, and made under colour of legal process. The purchaser at a sheriff's sale has at best very inadequate means of investigating the title of the judgment-debtor; all that is sold and bought is the right title, and interest of the judgment-debtor with all its defects; and the sheriff who sells, and executes the bill of sale, is never called upon, and if called upon, would refuse, to execute any covenant of title. Therefore, the reasons for the rule failing, the rule itself cannot properly be held applicable to sales by the sheriff, which are governed by rules peculiar to such sales (125). (*Sir James W. Colvile.*) DORAB ALLY KHAN *v.* ABDOOL AZEEZ.

(1878) 5 I. A. 116 = 3 C. 806 (812-3) = 2 C. L. R. 529 = 3 Suth. 520 = 3 Sar. 818.

———*Eviction from property purchased—Recovry of purchase-money from judgment-creditor in case of—Suit for—Cause of action—Defences open—Sale held void for want of jurisdiction—Purchaser in possession for sometime—Eviction by judgment-debtor afterwards.*

The suit was by the executor of *D*, for the recovery from the defendant of a sum of money had and received by the defendant for the use of *D*. The Courts below dismissed the suit on the ground that the plaint disclosed no cause of action, legal or equitable, as against the defendant. And the only question before their Lordships was whether the courts below were right in so holding.

The plaintiff's allegations were: That *D* was the purchaser at a sale by the sheriff under a writ of *fi fa* of certain property for the sum of Rs. 26,000; that the sale was held to be null and void on the ground that the sheriff had no authority to execute the writ at the place where the property was situate; that *D* was in consequence evicted by the judgment-debtor; that the sheriff did so execute the writ under the authority, and by the express direction of the judgment-creditor; and that *D* was therefore entitled to recover from the defendant, the execution creditor, the amount of the purchase-money which was paid by *D* (the amount sought to be recovered in suit), and which sum had been received by the defendant from the sheriff.

Held, reversing the courts below, that the action could not be properly determined without further investigation into the facts, as it could not be said that the plaintiff's allegations did not disclose a *prima facie* case for some relief against the defendant (128).

There is, no doubt, a further question whether the plaintiff has shewn a case which, if proved, would entitle him to recover back the purchase-money as money had and received to his use as upon a total failure of consideration. To that the admitted fact of the possession by his testator for nearly two years of the property in question, and his perception, partial at least, of the rents and profits, might be a fatal objection. It could not, in such a case, be said that the consideration wholly failed. But it is not quite clear on the record that this objection arises since if the sale has been treated as a nullity, the purchaser has been accountable, and may have accounted, for what he received; and in any case the court in India will be competent to mould the relief according to the facts finally established at the hearing. Their Lordships offer no opinion whether the plaintiff will ultimately succeed in establishing his right to any relief. It may turn out that his testator, who never made any claim

EXECUTION SALE—(*Contd.*)
Purchaser at—(*Contd.*)

for a return of the purchase-money in his lifetime, brought with knowledge of the defect in the sheriff's jurisdiction, or has, by acquiescence or in some other way, forfeited any right which he might otherwise have had to relief. They only decide that the plaintiff has not wholly failed to disclose a good cause of action on the face of the record; and that the cause ought to be tried on the other issues that have been, or may be, raised in it (128-9). (*Sir James W. Colvile.*) DORAB ALLY KHAN *v.* ABDOOL AZEEZ.
(1878) 5 I. A. 116 = 3 C. 806 (816-7) = 2 C. L. R. 529 = 3 Suth. 520 = 3 Sar. 818.

———*Eviction from property purchased by judgment-debtor—Refund of purchase-money on—Decree-holder's liability for—Law applicable.*

In a suit by the purchaser, at a sale by the sheriff under a writ of *fi fa*, upon being evicted by the execution debtor, to recover the purchase-money which he had paid from the execution creditor, on the ground that the sheriff had no authority to execute the writ at the place where the property was situate, and that he did so execute it under the authority, and by the express direction of the judgment creditor, the High Court assumed that if the defendant was to be treated as a principal in the transaction the case must be governed by the ordinary rules relating to vendors and purchasers upon voluntary sales of immoveable property. Their Lordships, while agreeing that the defendant was to be treated as a principal in the transaction, *held*, that the rule as to voluntary sales did not apply (128).

The defendant directed the sheriff to sell in his character of sheriff. He did not profess to sell, nor could he have sold, as for himself. He intended the sale should be, as in fact it was, a sale by the sheriff as sheriff, and with the incidents attaching to such a sale (128). (*Sir James W. Colvile.*) DORAB ALLY KHAN *v.* ABDOOL AZEEZ.
(1878) 5 I. A. 116 = 3 C. 806 (816) = 2 C. L. R. 529 = 3 Suth. 520 = 3 Sar. 818.

———*Eviction from property purchased under title paramount—Remedy in case of, against sheriff and judgment-creditor—Sheriff acting within jurisdiction—Sheriff acting* ultra vires—*Distinction.*

When the property has peen soid by the sheriff under a regular execution, and the purchaser is afterwards evicted under a title paramount to that of the judgment-debtor, he has no remedy against either the sheriff or the judgment-creditor. This, however, is because the sheriff is authorised by the writ to seize the property of the execution debtor which lies within his territorial jurisdiction, and to pass the debtor's title to it without warranting that title to be good (126).

The sheriff, however, if he acts *ultra vires*, cannot invoke the protection which the law gives to him when acting within his jurisdiction. He is in the position of an ordinary person who has sold that which he had no title to sell. And his responsibility in respect of the sale must be governed by the law relating to the sale of chattels, rather than by that relating to the sale of real estate (126).

The sheriff may reasonably be held to undertake by his conduct that he has seized and put up for sale the property sold in the exercise of his jurisdiction; although when he has jurisdiction he does not in any way warrant that the judgment-debtor had a good title to it, or guarantee that the purchaser shall not be turned out of possession by some person other than the judgment-debtor (127-8). (*Sir W. James Colvile.*) DORAB ALLY KHAN *v.* ABDOOL AZEEZ.
(1878) 5 I. A. 116 = 3 C. 806 (815-6) = 2 C. L. R. 529 = 3 Suth. 520 = 3 Sar. 818.

———Hindu Law—Impartible estate—Joint ancestral estate subject to Mitakshara law—Sale of, in 1876 in execution

EXECUTION SALE—(*Contd.*)
Purchaser at—(*Contd.*)

of money decree against holder—Rights under. *See* EXECUTION SALE—PURCHASER AT—RIGHTS OF—LAW GOVERNING. **(1903) 31 I. A. 1 = 27 M. 131 (142-3).**

———Judgment-debtor's representative—If and to what extent is. *See* EXECUTION SALE—PRIVATE SALE—PURCHASERS AT. **(1881) 8 I.A. 65 (75) = 7 C. 107 (118).**

———*See* JUDGMENT-DEBTOR—ESTOPPEL AGAINST.

———*See* BENGAL REGULATIONS—ZILLAH COURTS LIMITATION REGULATION III OF 1793, S. 14—APPLICATION OF. **(1869) 12 M. I. A. 366 (378-9).**

———Misrepresentation of judgment-debtor's pleader—Responsibility for. *See* EXECUTION SALE—FRAUD IN OBTAINING—AUCTION PURCHASER.
(1911) 21 M. L. J. 562.

———Mortgage on property purchased turning out to be invalid—Benefit of—Right to. *See* EXECUTION SALE—MORTGAGE—PROPERTY SUBJECT TO,
(1909) 36 I. A. 203 (208-9) = 31 A. 583 (589-90).

———Officer conducting sale—Representations of—Right to rely upon—Misrepresentations of officer—Purchase induced by—Setting aside of—Right of. *See* EXECUTION SALE—OFFICER CONDUCTING. **(1908) 36 I. A. 32 = 36 C. 323.**

———*Possession of property purchased—Right to, on removal of person in possession under* bona fide *apparent title.*

It is the practice of the courts in India not to give possession under a judicial sale by removing one who is in possesion under an apparent *bona fide* title. As a debtor can only assert his title to possession by a suit, so a decree-holder who derives his title through him must assert his title by a regular suit (483). (*Lord Justice Turner.*) TARAKANT BANNERJEE *v.* PUDDAMONEY DOSSEE.
(1866) 10 M. I. A. 476 = 5 W. R. (P. C.) 63 = 1 Suth. 631 = 2 Sar. 184

———Property acquired under purchase by. *See* EXECUTION SALE—PROPERTY PASSING UNDER.

———Purchase-money paid by—Interest on—Right to, on setting aside of sale. *See* C. P. CODE OF 1908, O. 21, R. 93—INTEREST ON PURCHASE-MONEY.

———*Purchase-money paid by—Recovery of, from decree-holders sharing in—Suit for—Dismissal of—Suit subsequent against them for enforcing his remedy by setting aside sale or otherwise—Maintainability.*

A certain sum representing the surplus proceeds of a sale of *A's* estate for arrears of revenue under Bengal Act XI of 1859 and in deposit in the hands of the Collector was purchased by the respondents in execution of a decree obtained against *A* by one *B*. The purchase-money paid by the respondents was applied in satisfaction of *B's* decree debt and of other decrees obtained by other persons against *A*. The revenue sale was, however, set aside in a suit brought by *A* for the purpose, and in consequence, the Collector refused to pay the respondents the surplus proceeds purchased by them. Thereupon the respondents sued for the recovery of the purchase-money paid by them from *B* and the other execution creditors of *A*. It was held that there was no cause of action for the suit for the recovery of the amount claimed.

Quære: whether the dismissal of such a suit would be a bar to a subsequent suit by the respondents against the execution creditors for enforcing their remedy against them by setting aside the execution sale or otherwise (143). (*Sir James W. Colvile.*) RAM TUHUL SINGH *v.* BISESWAR LALL SAHOO. **(1875) 2 I. A. 131 = 15 B. L. R. 208 = 23 W. R. 305 = 3 Sar. 477 = 3 Suth. 136**

EXECUTION SALE—(*Contd.*)

Purchaser at—(*Contd.*)

———*Purchase-money paid by—Recovery of, from decree-holders sharing in—Suit for—Right of—Setting aside of execution sale—Prayer for — Suits containing and not containing—Distinction.*

A's estate was sold for arrears of revenue under Bengal Act XI of 1859, and, after deducting the arrears of Government revenue and sale expenses, a certain sum remained as surplus proceeds in deposit in the hands of the Collector. That sum was purchased by the respondents in execution of a money decree obtained against *A* by one *B*. The revenue sale was, however, subsequently set aside in a suit brought by *A* for that purpose, and thereupon the Collector refused to pay the respondents the sum purchased by him in execution. The purchase-money paid by the respondents was applied in satisfaction of the decree-debt of *B* and of other decrees obtained by other parties against *A*.

In a suit subsequently brought by the respondents for the recovery of the purchase-money paid by him from *B* and the other creditors of *A* who had shared in the same, *held* that the respondents had no cause of action against the defendants.

Quære, whether the respondents could have had any remedy against the execution creditors by a suit for setting aside the execution sale or otherwise (143). (*Sir James W. Colvile.*) RAM TUHUL SINGH *v.* BISESWAR LALL SAHOO. **(1875) 2 I.A. 131 = 15 B.L.R. 208 = 23 W.R. 305 = 3 Sar. 477 = 3 Suth. 136.**

———*Purchase-money paid by — Recovery of, from judgment-debtor — Suit for — Maintainability—Revenue sale—Surplus proceeds of—Execution purchase of, with notice of suit to set aside sale—Sale subsequently set aside.*

The respondents purchased in execution of a money-decree obtained by a third party against *A*, the surplus proceeds of a sale of *A's* estate for arrears of revenue under Bengal Act XI of 1859. The surplus proceeds in the hands of the Collector so purchased by the respondents amounted to a sum of Rs. 35,000, and the price paid by the respondents for their purchase was only a sum of Rs. 8,000. The sum of Rs. 8,000 paid by them was applied in satisfaction of *A's* debts.

The revenue sale was subsequently set aside in a suit which had been instituted by *A* prior to the date of the sale at which the respondents purchased; and the respondents had notice of that suit at least before the sale to them was confirmed. After their purchase, the respondents applied to the Collector for the payment out of them of the surplus sale proceeds in his hands, but he refused to do so on the ground that the sale had been set aside.

In a suit subsequently brought by the respondents against *A* for the recovery of the purchase-money, Rs. 8,000, which had been paid by them, and which had been applied in satisfaction of his debts, *held* that they had no cause of action for the recovery of the money from *A* (142).

The respondents' purchase was subject to the contingency of *A* succeeding in his suit to set aside the revenue sale. There was no warranty or contract on the part of *A*. The sale was had under proceedings *in invitum*, and indeed against his express protest. The respondents bought the chance of getting Rs. 35,000 for Rs. 8,000 dependent on the happening or non-happening of a certain event. They have therefore no equity in their favour (142). (*Sir James W. Colvile.*) RAM TUHUL SINGH *v.* BISESWAR LALL SAHOO. **(1875) 2 I.A. 131 = 15 B.L.R. 208 = 23 W.R. 305 = 3 Sar. 477 = 3 Suth. 136.**

———Purchase-money paid by—Recovery of, on eviction from property purchased. *See* EXECUTION SALE—PURCHASER AT—EVICTION FROM PROPERTY PURCHASED.

EXECUTION SALE—(*Contd.*)

Purchaser at—(*Contd.*)

———Purchase-money of, applied in satisfaction of decree-debts of judgment-debtor—Recovery from latter of, on sale becoming infructuous—Right of. *See* CONTRACT ACT, SS. 69 AND 70—EXECUTION PURCHASER.

(1875) 2 I. A. 131 (139, 143)

———Rights of—Bengal Landlord and Tenant Procedure Act VIII of 1869—Sale under special procedure under—Purchaser at—Rights of—Distinction. *See* EXECUTION SALE—BENGAL LANDLORD AND TENANT, ETC.

———Rights of—Certificate of sale—Description of property sold in, as right, title and interest of judgment-debtor—Effect. *See* EXECUTION SALE—CERTIFICATE OF SALE—RIGHT, TITLE AND INTEREST OF JUDGMENT-DEBTOR.

———*Rights of - Law governing—Law accepted at time of sale—Reversal of, by judicial decisions—Effect—Hindu Law—Impartible estate—Joint ancestral estate subject to Mitakshara law—Sale of, in 1876 in execution of money-decree against holder—Rights under.*

B, the holder of an impartible estate the succession to which was regulated by the custom of primogeniture, was a member of a joint Hindu family governed by the Mitakshara law. In execution of a money decree obtained against *B*, his "right, title and interest" in 12 villages of the zemindari were attached and sold and purchased by the appellant in 1876. According to the then accepted law the holder of an impartible zemindari who was himself a member of an undivided family, could not alienate or encumber the corpus of the estate so as to bind his co-parceners, except for justifiable especial causes. In 1889 this interpretation of the law was reversed by the Judicial Committee which decided that impartible estates are not inalienable in the absence of proof of some special family custom or tenure attaching to the zemindari, and having that effect. *B* died without male issue, and his brother, the respondent, succeeded to the zemindari by survivorship. The appellant instituted a suit in 1893 against the respondent for the recovery of the 12 villages on the ground that he (the appellant) had by his purchase acquired an absolute interest in them.

Held, agreeing with the Courts below, that in 1876, when the sale took place, the parties must be taken to be bound by the law as it was at that time understood, and that the estate purchased by the appellant was only the life interest of *B*, the then zemindar.

The reversal of the previously accepted interpretation of the law does not displace its application to the construction of the contract contained in the certificate of sale now under consideration. (*Sir Andrew Scoble.*) ABDUL AZIZ KHAN *v.* APPAYASAMI NAICKER.

(1903) 31 I.A. 1 = 27 M. 131 (142-3) = 6 Bom. L.R. 7 = 8 C.W.N. 186 = 8 Sar. 568.

———Rights of—Private sale—Purchaser at—Rights of—Distinction. *See* EXECUTION SALE—PRIVATE SALE.

———*Rights of—Question as to—Inquiry in case of—Money decree—Sale in execution of.*

Each case in which the question is raised as to what interest passed to the purchaser of a debtor's right, title and interest in property must depend upon its own circumstances, and "in all the cases, at least the recent cases, the inquiry has been what the parties contracted about if there was a conveyance, or what the purchaser had reason to think he was buying if there was no conveyance, but only a sale in execution of a money decree." In the case of a sale in execution of a money decree, the questions are, what did the Court intend to sell, and what did the purchaser understand that he bought? These are questions of fact, or rather of mixed law and fact, and must be determined accor-

EXECUTION SALE—(*Contd.*)

Purchaser at—(*Contd.*)

ding to the evidence in the particular case. (*Sir Andrew Scoble.*) ABDUL AZIZ KHAN *v.* APPAYASAMI NAICKER.
(1903) 31 I.A. 1=27 M. 131 (141-2)=
6 Bom. L.R. 7=8 C.W.N. 186=8 Sar. 568.

———Rights of—Revenue sale—Purchaser at—Rights of Distinction. *See* REVENUE SALE—EXECUTION SALE.

———*Rights of—Striking off of first execution—Mortgagee of attached property subsequent to—Intervention as objector by, when second attachment taken out sale under second attachment—Mortgagee becoming purchaser at.*

After the first execution was struck off a lady became mortgagee of the attached property. When the second attachment was taken out she intervened in the proceedings as an objector. The result was that the property was put up for sale as subject to her mortgage, and she purchased at the said sale.

Held, that she must be held to have purchased only the equity of redemption and not the property itself (877).

The lady cannot be allowed to say that the original attachment ceased to be operative so as to give her the power of acquiring the mortgage interest subject to which she has purchased, and yet to claim the benefit of it, in order to defeat conveyances which would unquestionably have been binding between the judgment-debtors, from whom she took her mortgage, and the respondents in this case, if there had been an end of the execution altogether (877). PUDDOMONEE DOSSEE *v.* ROY MUTHCORANATH CHOWDRY. (1872) 2 Suth. 873=
20 W.R. 133=12 B L.R. 411=3 Sar. 268.

———Rights of—Zurpeshgi lease—Lessee under—Right and title of—Execution sale of—Decree on lease for possession and mesne profits—Lessee's right to mesne profits under—Purchaser's right to—Decree on lease neither attached nor sold. *See* ZURPESHGI LEASE—LESSEE UNDER—RIGHT AND TITLE OF. (1880) 6 C. 213.

———Setting aside of sale at instance of, and recovery of purchase-money by him from decree-holder—Effect of—Decree-holder's rights against judgment-debtor—Revival of. *See* EXECUTION SALE—SETTING ASIDE OF—RIGHTS OF PARTIES ON—PURCHASER. (1875) 2 I.A. 131 (143).

———Setting aside of sale on ground that he had been induced by fraud of judgment-debtor to pay higher price—Suit for—Maintainability. *See* C. P. C. OF 1908, O. 21, R. 91. (1892) 19 I.A. 154=20 C. 8.

———Stranger innocent purchaser—Decree-holder purchaser—Reversal of decree under execution—Effect of, on their rights—Distinction. *See* EXECUTION SALE—VALIDITY OF—DECREE UNDER EXECUTION.
(1887) 15 I.A. 12 (15 6)=10 A. 166 (172).

———*Stranger innocent purchaser—Fraudulent decree-holder purchaser—Rights of—Distinction.*

The proposition that no difference is to be made between an innocent purchaser and one tainted by the fraud which has brought about the execution sale is wholly untenable. The question is, in the former case, which of two innocent parties shall suffer; in the latter, whether he who has wronged the other party shall be allowed to enjoy the fruits of his wrong-doing. A Court exercising equitable jurisdiction may withhold its hand in the one case, and yet set aside the sale with or without terms in the other (473-4). (*Sir James W. Colvile.*) LALLA BUNSEEDHUR *v.* KOONWAR BINDESEREE DUTT SINGH.
(1866) 10 M.I.A. 454=2 Suth. 39=2 Sar. 167.

———Stranger innocent purchaser—Regularity of decree and execution proceedings—Right to assume. *See* EXECUTION SALE—PURCHASER AT—DECREE AND ORDER FOR EXECUTION.

EXECUTION SALE—(*Contd.*)

Purchaser at—(*Contd.*)

———*Stranger innocent purchaser—Title of—Protection of—Necessity—Decree-holder purchaser—Case of—Distinction.*

Their Lordships are quite sensible of the importance of upholding the title of persons who buy under a judicial sale; but in the present case the real purchaser was the judgment-creditor, who must be held to have had notice of all the facts (36). (*Lord Davey.*) KHIARAJMAL *v.* DAIM.
(1904) 32 I A. 23=32 C. 296 (315)=9 C.W.N. 201=
2 A. L. J. 71=7 Bom. L. R. 1=1 C. L. J. 584=
8 Sar. 734.

———Testator—Fraudulent deed by—Creditor of testator—Personal decree obtained against residuary legatee by—Sale of property in execution of—Rights under. *See* T. P. ACT, S. 53—CASES UNDER—TESTATOR—FRAUDULENT TRANSFER BY. (1856) 6 M. I. A. 510 (524).

Revenue sale—Purchasers at.

———Rights of—Distinction. *See* REVENUE SALE—EXECUTION SALE.

Sacrifice of property involved in.

———A mischief of frequent occurrence in India is the ruinous sacrifice of property which an execution sale is apt to involve (141). (*Sir James W. Colvile.*) RAM TUHUL SINGH *v.* BISESWAR LALL SAHOO. (1875) 2 I. A. 131=
15 B. L. R. 208=23 W. R. 305=3 Sar. 477=
3 Suth. 136.

Sale proclamation.

———Irregularity in—Proof of—Onus. *See* Privy Council—PRACTICE—QUESTION OF FACT—CONCURRENT FINDINGS—INTERFERENCE WITH—CASES UNDER HEAD OF—EXECUTION SALE. (1881) 8 I. A. 197 (205)=
8 C. 178 (187-8).

———*Records of—Service of—Inaccuracy of—Proof of by person challenging sale—Right of.*

It would be open to persons challenging an execution sale to show that the records of the service of the sale proclamations were inaccurate (440). (*Lord Buckmaster.*) MADHU SUDAN CHOWDHRI *v.* CHANDRABATI CHOWDHRAIN.
(1917) 6 L. W. 437=21 C. W. N. 897=
(1917) M. W. N. 518=42 I. C. 527.

———*Service of—Records of—Preservation of, as official documents.*

In the ordinary course the record of the service of the sale proclamations will be returned to the court and there preserved as an official document (439). (*Lord Buckmaster.*) MADHU SUDAN CHOWDHRI *v.* CHANDRABATI CHOWDHRAIN. (1917) 6 L. W. 437=21 C. W. N. 897=
42 I. C. 527=(1917) M. W. N. 518.

———Service of—Regularity of—Presumption as to. *See* EVIDENCE ACT, S. 114, ILL. (*e*)—EXECUTION SALE.
(1917) 6 L. W. 437 (439-40).

———*See also* under C. P. C. OF 1908—(1) O. 21, RR. 68, 67; (2) O. 21, R. 69; AND (3) O. 21, R. 90.

Setting aside of.

———(*See* C. P. C. OF 1908, O. 21, R. 90 AND EXECUTION SALE—VALIDITY OF.)

———*Application for—Parties to—Auction purchaser.*

It was admitted that it was the common practice to make the auction purchaser a party to an application for setting aside an execution sale (169). (*Lord Macnaghten.*) PROSUNNO COOMAR SANYAL *v.* KASI DAS SANYAL.
(1892) 19 I. A. 166=19 C. 683 (688)=6 Sar. 209.

———*Auction purchaser—Right of—Remedy—Fraud of judgment-debtor—Purchaser induced to pay a larger sum by.*

EXECUTION SALE—(*Contd.*)

Setting aside of—(*Contd.*)

An execution purchaser, who has been induced by the fraud of the judgment-debtor to pay a larger sum for the property purchased than he would have had to pay if he had not been so deceived, is not without remedy ; but he must select the appropriate remedy. Not having a remedy under the code, which provides only for the particular cases named therein, he still has the right to have the sale set aside. (*Lord Hannen.*) BIRJ MOHUN THAKOOR *v.* RAI UMA NATH CHOWDHRY. **(1892) 19 I.A. 154 = 20 C. 8 = 6 Sar. 245.**

———Charge on property paid by purchaser—Subrogation to rights of holder of, on setting aside of sale—Purchaser's right of. *See* SUBROGATION—CHARGE.

(1922) 49 I.A. 351 (356) = 2 Pat. 10 (17).

———Interest on purchase-money—Payment of—Order for—Power to make—C. P. C., O. 21, Rr. 90 and 91—Sale set aside under. *See* C. P. C. OF 1908, O. 21, R. 93.

(1920) 40 M. L. J. 141.

———*Mesne profits on—Recovery by judgment-debtor of—Mode of—Decree-holder purchaser.*

The appellant purchased certain property put up to sale by auction in execution of a decree obtained by him against the predecessor in title of the respondents, and obtained possession of the same. The purchase-money was set off against the amount due under the decree, which contained no provision for future interest on the amount decreed. The sale was ultimately set aside for irregularity. Subsequently, the respondents paid to the appellant the sum found due to him by the decree, and possession of the property was restored to them. Then the respondents applied in execution proceedings for mesne profits with interest. The appellant contended that a separate suit was necessary.

Held, that the claim of the respondents to have the questions in dispute determined in the execution proceedings was justified by Ss. 583 and 244 of C. P. C. of 1882. (*Lord Macnaghten.*) PRAG NARAIN *v.* KAMAKHIA SINGH.

(1909) 36 I. A. 197 = 31 A. 551 = 6 M.L.T. 303 = 10 C. L. J. 257 = 14 C. W. N. 55 = 11 Bom L.R. 1200 = 3 I. C. 798 = 13 O.C. 180 = 19 M.L.J. 599.

———Misrepresentation of officer conducting sale—Setting aside on ground of. *See* EXECUTION SALE—OFFICER CONDUCTING.

———Necessity—Declaration that it does not affect plaintiff's interests—Sufficiency of—Sale invalid and ineffectual against plaintiff. *See* LIMITATION ACT OF 1908, ART. 12 (*a*)—EXECUTION SALE—SETTING ASIDE OF—NECESSITY. **(1897) 24 I.A. 170 = 25 C. 179.**

———*Necessity—Irregular sale.*

An execution sale, though irregular, is valid until it is set aside by a decree of a competent court in a suit properly framed for the purpose. MUSST. WASIR DOOLHAN *v.* NAWAB ASHRAF-UD-DOWLAH AHMED HUSAIN KHAN. **R. & J.'s No. 28 (Oudh).**

———*Necessity — Irregularity and illegality of sale—Cases of—Distinction.*

The Judge proceeded, it is said, in reversing the sale, on the ground of irregularity alone. The real objection, however, to this sale (of property not liable to attachment and sale in execution), if sustainable in law, is not one of irregularity ; it is one which, from its nature, as founded on a want of power in the court, affects equally, if it be valid in law, the title of a purchaser under a strictly regular sale. Assuming the decision under appeal to be correct, the sale would be simply inoperative, though uncancelled (47). (*Lord Justice James.*) SYUD TUFFUZZOOL HOSSAIN KHAN *v.* RUGHOONATH PERSHAD. **(1871) 14 M.I.A. 40 = 7 B.L.R. 186 = 2 Suth. 434 = 2 Sar. 656 = R. & J.'s No. 10 (Oudh).**

EXECUTION SALE—(*Contd.*)

Setting aside of—(*Contd.*)

———Necessity—Persons not parties to proceedings or not properly represented on record—Sale affecting. *See* EXECUTION SALE—PERSONS NOT PARTIES TO PROCEEDINGS, ETC. **(1904) 32 I.A. 23 (33) = 32 C. 296 (312).**

———*Prior suit—Fraud in matter of—Setting aside of decree therein and of sale in execution thereof on ground of—Suit for—Maintainability—Applications prior under O. 9, R. 13 and O. 21, R. 90—Dismissal of—Effect.*

The suit by the respondent was for setting aside a decree and auction sale, on finding them to be illegal, fraudulent and collusive. The plaint alleged that the defendants-appellants procured a person represented by the minor appellants to institute a groundless suit for monies which were not due ; that, in order to get the respondent out of the way, they, by a collusive suit, got him declared a lunatic and by threats forced him to leave his home and stay elsewhere in secrecy ; that they concealed the money suit, got a false return of service, and carried through the decree and sale of the respondent's properties behind his back.

Held, that the dismissal of applications by the respondent under Ss. 108 and 311 of C.P.C. of 1882 to have the decree and sale set aside was no bar to the maintainability of the suit.

The allegations in the plaint are plainly an attack, not on the regularity or sufficiency of the service or the proceedings, but on the whole suit as a fraud from beginning to end. Ss. 108 and 311 of C.P.C. of 1882 limit the attention of the tribunal to specific matters, and, instead of subjecting to enquiry the radical question now involved, they assume the existence of a real suit. But here the suit itself is attacked as a fraud ; and the fraudulent and violent incidents of its progress, as, for instance, at the stage of service and in the abduction of the respondent, while they may individually have founded an application under Ss. 108 and 311, are here treated as parts and *indicia* of a whole. (*Lord Robertson.*) KHAGENDRA NATH MAHATA *v.* PRAN NATH ROY.

(1902) 29 I. A. 99 = 29 C. 395 = 6 C.W.N. 473 = 4 Bom. L. R. 363 = 8 Sar. 266.

———Puffers—Employment by vendor of—Setting aside of sale on ground of. *See* AUCTION SALE—PUFFERS.

(1850) 5 M. I. A. 109 (133-4).

———Purchaser's suit for, on ground that he had been induced by fraud of judgment-debtor to pay a higher price—Maintainability. *See* C.P.C. OF 1908, O. 21, R. 91.

(1892) 19 I.A. 154 = 20 C. 8.

———*Rights of parties on—Purchaser—Setting aside of sale at instance of, and recovery of purchase-money by him from decree-holder — Effect of — Decree-holder's rights against judgment-debtor—Revival of.*

A's estate was sold for arrears of revenue under Bengal Act XI of 1859, and, after deducting the arrears of Government revenue and sale expenses, a certain sum remained as surplus proceeds in deposit in the hands of the Collector. That sum was purchased by the respondents in execution of a money decree obtained against *A* by one *B*, and the purchase-money paid by the respondents was applied in satisfaction of the decree of *B* and of other decrees obtained by other persons against *A*. The revenue sale was, however, subsequently set aside in a suit brought by *A* for that purpose, and, in consequence, the Collector refused to pay the respondents the amount purchased by them.

Quære whether, assuming that the respondents had recovered from *B* and the other execution creditors the purchase-money paid by the respondents on the ground that their purchase had become infructuous, the right of the execution creditors would not have been revived against *A* (143).

EXECUTION SALE—(*Contd.*)

Setting aside of—(*Contd.*)

(*Sir James W. Colvile.*) RAM TUHUL SINGH *v.* BISESWAR LALL SAHOO. **(1875) 2 I.A. 131 = 15 B.L.R. 208 = 23 W. R. 305 = 3 Sar. 477 = 3 Suth. 136.**

———*Rights of parties on—Restoration of property sold to judgment-debtor—Condition of—Deposit paid into Court by auction purchaser to complete sale—Amount paid by him to discharge debt charged on property—His right to refund of—Distinction—C. P. C. of* 1908, *S.* 144—*Effect.*

B, the predecessor in title of the appellants 1-5 (the judgment-debtors), was the owner of a full sixteen annas share of a village. Ten of the said shares were encumbered and six were unencumbered, save that two bonds had been executed by *B* in favour of one *G*, which purported to create a charge on a three annas share in the said mahal as security for the said *G* for two sums of money.

In execution of a decree obtained against *B*, some of the respondents (auction-purchasers) purchased the six unencumbered annas share, and a sale certificate was granted to them, which declared their respective interest in the six annas share, and also declared that such share was subject to the charge created by the afore-mentioned bonds, but was outside the ten annas share hereinbefore described as the encumbered property. The purchase-money was paid into Court and eventually distributed to various mortgagee decree-holders and others holding money decrees against the judgment-debtor whose debts were thereby discharged to the extent of such payments. The auction purchasers were duly put into possession of the six annas share purchased by them and paid off the amounts covered by the two bonds in favour of *G*.

The auction sale was however set aside by the Privy Council on appeal. Thereupon the judgment-debtors applied claiming restoration to them of the said six annas share of the property together with mesne profits. The auction-purchasers resisted the said claim, and contended that they could not be asked to restore the property until (*a*) the amount which they had deposited in Court to complete the sale; and (*b*) the sum paid by them to satisfy the bonds given by *B* in favour of *G* had been refunded.

Held that, the auction purchasers were entitled to re-payment of the deposit paid into court as a condition precedent to their handing over possession to the judgment-debtors (355-6); but that the payments made by them to clear off the bonds in favour of *G* could not be made a condition of restoration to the judgment-debtors (356).

The auction-purchasers have parted with their purchase-money which they paid into court on the faith of the order of confirmation and certificate of sale already referred to. This money has been distributed amongst creditors of the judgment-debtor who had attached the unencumbered property in question and could have realised their judgment-debts by a sale of this property in execution and it would be inequitable and contrary to justice that the judgment-debtor should be restored to this property without making good to the auction-purchaser the moneys which have been applied for his benefit. It is the duty of the Court, both under S. 144 of Civil Procedure Code of 1908 and in the exercise of its inherent power to place the parties in the position which they would have occupied, but for such decree or such part thereof as has been varied or reversed. The remedy of the auction purchasers was not merely to apply for a certificate of sale of the unencumbered property or to obtain from the judgment-creditors re-payment of the sums paid out to them under the orders of the Court (355-6).

As regards the sums paid by the auction-purchasers to *G*, this payment stands on a different footing from the deposit of the purchase-money. It was an optional payment, made without any order of the Court, and as it entitled them to

EXECUTION SALE—(*Contd.*)

Setting aside of—(*Contd.*)

stand in the shoes of *G*, as holders of the bonds, it entails no hardship; but however that may be, these payments cannot be made a condition of restoration to the judgment-debtors (356). (*Lord Carson.*) JAI BARHAM *v.* KADAR NATH MARWARI. **(1922) 49 I. A. 351 = 2 Pat. 10 (16-7) = 27 C. W. N. 582 = 21 A. L. J. 490 = 37 C. L. J. 351 = 32 M. L. T. (P. C.) 10 = 4 Pat. L. T. 61 = 18 L. W. 802 = 25 Bom. L. R. 643 = L. R. 4 P. C. 117 = (1923) M. W. N. 368 = 69 I. C. 278 = A. I. R. 1922 P. C. 269 = 44 M. L. J. 735.**

———*Suit by judgment-debtor for, based on fraud of decree-holder—Maintainability.*

The decree-holder and the judgment-debtor mutually agreed to postpone the execution sale for two months and the judgment-debtor prepared a petition counter-signed by the pleader for the decree-holder acting under his instructions, praying for the postponement of the sale but presented it to the wrong court. The executing court, not having any petition for postponement on its file, proceeded with the sale in the absence of the judgment-debtor and his advisers who left the court under the belief that the sale was postponed. The decree-holder was present, allowed the sale to proceed, himself became the purchaser, and was put in possession. In a suit filed by the judgment debtor for setting aside the sale, *held*, affirming the judgment of the court below, that it would be breach of faith on the part of the decree-holder to retain the advantage of his purchase, and that the sale ought to be set aside.

Terms on which it ought to be set aside indicated. (*Sir Barnes Peacock.*) GANGA PERSHAD SAHU *v.* GOPAL SINGH. **(1884) 11 I. A. 234 = 11 C. 136 = 4 Sar. 572.**

———S. 244 of the Code of Civil Procedure, 1882, is no bar to a suit by a judgment-debtor to have an execution sale set aside on the ground that the decree in execution of which the sale was held and the order for sale therein had been fraudulently obtained by the decree-holder inasmuch as the suit is in effect one to set aside the decree and the order for sale on the grounds alleged (271-2). (*Sir John Edge.*) JALANDHAR THAKUR *v.* JHARULA DAS. **(1914) 41 I. A. 267 = 42 C. 244 (249) = 16 M. L. T. 210 = (1914) M. W. N. 636 = 12 A. L. J. 1176 = 16 Bom. L. R. 845 = 20 C. L. J. 360 = 18 C.W.N. 1029 = 24 I. C. 501 = 27 M. L. J. 100.**

———*Suit by judgment-debtor in a representative capacity for—Sale of his estate not authorised by decree—Suit on ground of.*

S. 11 of Civil Procedure Code of 1861 is no bar to a suit by a person against whom a decree has been obtained in a representative character to set aside a sale purporting to be in execution of that decree in a case in which the decree does not authorise an execution against the plaintiff's estate and the sale in question was really under orders which had not the support of any decree. CHOWDHRY WAHED ALI *v.* MUSSUMAT JUMAEE. **(1872) 11 B. L. R. 149 = 18 W. R. 185 = 2 Suth. 680 = 3 Sar. 139.**

———*Suit by some of judgment-debtors for, based on fraud of other judgment-debtors, decree-holder and auction-purchaser.*

The respondent obtained a decree for possession of some lands and for mesne profits and costs against the appellants and certain other persons who were co-sharers with them in Futtehpore. In execution of that decree Futtehpore was attached. Thereupon, appellants and two others paid their quota of the judgment-debt and came to an arrangement with the decree-holder that their shares should be exempted from sale. The shares of the other co-sharers were alone put up for sale, and were sold. That sale was afterwards

EXECUTION SALE—(*Contd.*)

Setting aside of—(*Contd.*)

set aside and the attachment revived, and a fresh sale took place at which the whole of Futtehpore was sold.

The appellants and the other persons interested thereupon instituted the suit out of which the appeal arose for setting aside the second sale, alleging the above facts and that the setting aside of the first sale, the revival of the attachment, and the second sale were brought about by fraud and collusion in the part of the other co-sharers, the judgment-creditor, and the auction-purchasers, who were all made defendants. The plaint was in effect based on the footing that the judgment-creditor broke his alleged agreement with the plaintiffs, and that the other persons alleged to have been implicated, being aware of the circumstances, took some part in the transaction.

Both the courts below held that the question which the plaint sought to raise could only have been determined by the order of the Court which executed the decree, and that in such a case a separate suit for the purpose of setting aside an execution sale was expressly forbidden by S. 244 of C. P. C. of 1882.

Held, that the decision appealed from was in accordance with the construction which the courts in India had uniformly placed on S. 244. (*Lord Macnaghten.*) PROSUNNO COOMAR SANYAL *v.* KASI DAS SANYAL.

(1892) 19 I. A. 166 = 19 C. 683 = 6 Sar. 209.

Stay of.

———Power and duty of executing Court—Insolvency of judgment-debtor and vesting order subsequent to attachment and before sale. *See* EXECUTION OF DECREE—INSOLVENCY OF JUDGMENT-DEBTOR PENDING PROCEEDINGS FOR—ATTACHMENT IN EXECUTION.

(1914) 41 I. A. 251 (255) = 42 C. 72 (80).

Time fixed for.

———(*See also* CIVIL PROCEDURE CODE OF 1908, O. 21, R. 68.)

———*Postponement of—Discretion of Court.*

The appellants complain only of that which is discretionary in the Judge, of ordering the sale (in execution) to take place at the time fixed or to postpone it (10). (*Sir Arthur Hobhouse.*) BISHENMUN SINGH *v.* LAND MORTGAGE BANK OF INDIA. **(1884) 12 I. A. 7 = 11 C. 244 (248) = 4 Sar. 588.**

Validity of.

———*See also* EXECUTION SALE—SETTING ASIDE OF.

———Attachment—Schedule to—Misdescription of property in—Effect. *See* EXECUTION SALE—ATTACHMENT—SCHEDULE TO. **(1913) 41 I. A. 38 = 41 C. 590.**

———Award—Future award—Claim under—Attachment and sale of. *See* CIVIL PROCEDURE CODE OF 1908, S. 60—AWARD. **(1871) 14 M. I. A. 40 (51).**

———C.P.C., O. 21, R. 23—Notice under—Service on legal representative of—Failure—Effect.

(1914) 41 I.A. 251 (257) = 42 C. 72 (82-3).

———*Decree under execution — Reversal of — Effect — Stranger purchaser—Decree-holder purchaser—Distinction.*

There is a great distinction between decree-holders who come in and purchase under their own decree, which is afterwards reversed on appeal, and *bona fide* purchasers who come in and buy at the sale in execution of the decree to which they are no parties, and at a time when that decree is a valid decree and when the order for sale is a valid order. They have nothing to do further than to look to the decree and to the order for sale. The former lose the benefit of their purchase on the reversal of their decree; but the latter are entitled to retain it (15-6). (*Sir Barnes Peacock.*) NAWAB ZAIN-UL-ABDIN KHAN *v.* MAHOMED ASHGHAR ALI KHAN. **(1887) 15 I. A. 12 = 10 A. 166 (172) = 5 Sar. 129.**

EXECUTION SALE—(*Contd.*)

Validity of—(*Contd.*)

———Insolvency of judgment-debtor pending execution proceedings—Sale in case of. *See* EXECUTION OF DECREE—INSOLVENCY OF JUDGMENT-DEBTOR, ETC.

———Jurisdiction—Erroneous order in exercise of—Sale in execution of—Nullity or irregularity. *See* MORTGAGE—USUFRUCTUARY MORTGAGE — REDEMPTION OF — DECREE FOR—AMOUNT PAYABLE UNDER.

(1915) 43 I. A. 43 (47) = 38 A. 163 (168).

———Land outside jurisdiction—Sale of. *See* EXECUTION SALE—LAND OUTSIDE JURISDICTION.

———Legal representative. For cases relating to, *see* EXECUTION SALE—LEGAL REPRESENTATIVE.

———Maintenance—Property allotted for, without power of transfer—Sale of—Validity. *See* HINDU LAW—MAINTENANCE—PROPERTY ALLOTTED FOR, WITHOUT POWER OF TRANSFER. **(1925) 52 I. A. 262 = 47 A. 385.**

———Minor. For cases relating to, *see* EXECUTION SALE—MINOR.

———Persons not parties to proceedings or not properly represented on record—Sale of property of. *See* EXECUTION SALE—PERSONS NOT PARTIES TO PROCEEDINGS, ETC.

(1904) 32 I.A. 23 (33) = 32 C. 296 (312).

———*Procedure in obtaining decree or in executing it—Irregularity in—Effect.*

Execution sales cannot be treated as void or be avoided in a suit brought for the purpose on the grounds of any mere irregularities of procedure in obtaining the decrees or in the execution of them (33). (*Lord Davey.*) KHIARAJMAL *v.* DAIM. **(1904) 32 I. A. 23 = 32 C. 296 (312) = 9 C. W. N. 201 = 2 A. L. J. 71 = 7 Bom. L. R. 1 = 1 C.L.J. 584 = 8 Sar. 734.**

———Property sold under prior execution sale which had been confirmed—Sale of. *See* EXECUTION SALE — PROPERTY SOLD UNDER PRIOR EXECUTION SALE WHICH HAD BEEN CONFIRMED. **(1872) 14 M. I. A. 529 (536-7).**

———Testator—Fraudulent deed by—Creditor of testator—Personal decree obtained against residuary legatee by—Sale of property in execution of. *See* T. P. ACT, S. 53—TESTATOR—FRAUDULENT TRANSFER BY.

(1856) 6 M. I. A 510 (524).

———Trust property—Sale of *corpus* of, in execution of personal decree against trustee—Validity—Property devised upon trust for performance of religious duties — Beneficial interest in surplus income—Trustee having. *See* TRUST—RELIGIOUS TRUSTS—PROPERTY DEVISED UPON TRUSTS FOR. **(1887) 15 I. A. 1 (9-10) = 15 C. 329 (339-40).**

——— *Warrant for execution and order of attachment signed by Munsarium of Court and not by Judge.*

In this case the High Court held that an execution sale of the right, title and interest in land was rightly set aside on the ground that the warrant for the execution of the decree and order of attachment of the property sold had not been signed by the judge, as required by S. 222 of the Code of 1859, but by the Munsarium of the Court. Their Lordships, on appeal, affirmed the judgment of the High Court. RAM DAYAL *v.* MAHTAB SINGH. **(1884) 7 A. 506.**

———Will—Residue of property bequeathed by—Life interest in—Sale of—Validity — Residue unascertained and not easily ascertainable. *See* C. P. C. OF 1908, S. 60 (1) (*m*)—WILL. **(1856) 6 M. I. A. 510 (522-3).**

Wrongful attachment and—Money paid to avert—Recovery of.

———Right of—Suit for — Maintainability. *See* CONTRACT ACT—(1) SS. 69, 70 AND (2) S. 72.

Wrong property—Attachment and order for sale of.

———Decree-holder's remedy in case of. *See* EXECUTION OF DECREE—ATTACHMENT—WRONG PROPERTY.

(1913) 41 I. A. 38 = 41 C. 590.

EXECUTOR.

ADMINISTRATION ACCOUNT AGAINST.
ADMINISTRATION OF ESTATE BY— LEGATEE'S RIGHT TO QUESTION—ESTOPPEL.
ADMINISTRATION SUMMONS AGAINST—INQUIRY IN—SCOPE OF.
ADVERSE TITLE TO PROPERTY DISPOSED OF BY WILL.
ALIENATION BY.
APPOINTMENT BY IMPLICATION OF.
CO-EXECUTORS.
CONVEYANCE BY.
DIRECTION TO LET TESTATOR'S SONS INTO POSSESSION IF THEY SHOWED A DISPOSITION TO MEND THEIR MANNERS—EFFECT.
EXECUTION AGAINST—ATTACHMENT OF PORTION OF REAL ESTATE OF TESTATOR IN—VALIDITY.
EXECUTION OF WILL BY TESTATOR—ADMISSION OF —WHAT AMOUNTS TO.
FUNERALS OF DECEASED—EXPENDITURE UPON.
GHAT OR LANDING PLACE — CONSECRATION OF — EXPENDITURE UPON.
HEIR-AT-LAW.
HINDU WILL—EXECUTOR UNDER.
LEGATEE.
MAHOMEDAN WILL—EXECUTOR UNDER.
MORTGAGE BY.
POOJA EXPENSES—PAYMENT FOR, UNDER DIRECTION IN WILL—REASONABLENESS OF—INQUIRY INTO — ORDER FOR, IN ADMINISTRATION SUIT.
PROPERTY OF TESTATOR.
PURCHASE BY, OF PROPERTY HELD BY HIM IN TRUST FOR BENEFIT OF HIMSELF AND OTHERS, FROM CO-EXECUTOR.
RESIDUARY LEGATEE—EXECUTOR WHO IS ALSO A.
SALE BY.
TEMPLE—ERECTION OF—POWER UNDER TESTATOR'S WILL AS TO.
TITLE OF TESTATOR — ADMISSION OF — WHAT AMOUNTS TO.
TRANSFER BY, OF SHARES OF LAND TO BENEFICIARIES.
TRANSFER OF ESTATE TO ADMINISTRATOR-GENERAL BY.
WILL OF TESTATOR.

Administration account against.

———*Payments alleged to have been made by executor on account of estate—Dates assigned in "Schedule" to answer, and in "discharge" to—Errors in — Effect — Executor's right to prove real dates of payments.*

In an administration account directed against an executor, *held*, that errors in the dates assigned in the "Schedule" to the answer, and in the "discharge," to certain payments alleged to have been made by the executor on account of the estate for debts due, did not preclude the executor from proving, if he could, that those payments had been made at other dates than those stated in the schedule and discharge.

Though the inaccuracy of the statement as to dates might affect the costs, those who are interested in the estate are not entitled to say that, because a payment was not made at the date assigned to it, therefore it ought to be taken as not made at all. AGA MAHOMED ROHIM SHERAZEE *v.* MEERZA ALLY MAHOMED SHOOSTRY.

(1857) 1 Suth. 281 (282-3) = 4 W. R. 106 = 1 Sar. 884.

———*Property possessed by executor and not forthcoming—Value in money of—Charging of executor with—Propriety.*

It cannot be laid down that, in all cases where an ordinary administration account has been directed, the value in money of a specific chattel shown to have been possessed by the executor, and not forthcoming, is to be charged

Administration account against—(*Contd.*)

against him. But, where the parties on both sides acted on the common basis that the executor had possessed the property, that for every practical purpose it had ceased to belong to the estate, and that for every material purpose it was to be considered as represented in money, the question being only one of *quantum*, it is competent to the master in taking the accounts, and competent to the Court upon the report, to charge the executor as for their value in money. AGA MAHOMED ROHIM SHERAZEE *v.* MEERZA ALLY MAHOMED SHOOSTRY. **(1857) 1 Suth. 281 (282) = 4 W. R. (P. C.) 106 = 1 Sar. 884.**

———*Property possessed by executor and not forthcoming—Value in money of—Evidence of—Inventory of estate filed by executor's executor—Value given in—Evidentiary value of.*

Where, in an administration account directed against an executor, the question arose as to the value in money with which he was to be charged in respect of property possessed by him and not forthcoming and accounted for, *held* that the value set upon the property in an inventory of the estate filed by the executor of that executor was *prima facie* evidence of the real value, and that, though that value was very far from being conclusive, and was far from being, under ordinary circumstances, satisfactory evidence, the court was entitled to act upon it, on failure of the executor's executor to adduce evidence of the real value. AGA MAHOMED ROHIM SHERAZEE *v.* MEERZA ALLY MAHOMED SHOOSTRY. **(1857) 1 Suth. 281 (282) = 4 W. R. (P. C.) 106 = 1 Sar. 884.**

Administration of estate by—Legatee's right to question—Estoppel.

———*Minority of legatee—Distribution made during—Minor acting upon, after attaining age—Re-distribution made impossible by him—Effect.*

By his will a testator directed that his business should be carried on for 16 years after his death and that there should then be a distribution, and he gave to the appellant's grandfather a share of the residue. The appellant became entitled to the share of the residue in right of her grandfather.

The estate of the testator was not wound up at the end of 16 years. The appellant executed a power of attorney in favour of her husband authorizing him, *inter alia*, to represent her in all matters connected with the estate of the testator and to execute deeds in her name. At the instance of appellant's husband, the estate was divided into portions, a portion was allotted as and for the share to which the appellant was entitled under the will, and her husband executed a release to the executors.

In a suit instituted by the appellant years after for the administration of the estate of the testator, she alleged that she was under age when she executed the power of attorney, and that she was therefore not bound by it or by the release executed on her behalf under it.

Held that, assuming that the appellant was an infant when she executed the power of attorney, she had failed to show sufficient ground for re-opening the division already effected.

In their Lordships' opinion the appellant had, after coming of age, adopted the division of the property which was in fact made, and made by independent arbitrators. She had valuable property allotted to her under it, which she sold at a profit sometime after she came of age, and it was only when the greater part of what she had received had been dissipated that she complained. She has been acting throughout with her husband and has not complained of his acts. It is impossible now for the appellant to restore the property she has received, and a general re-distribution

EXECUTOR—(*Contd.*)

Administration of estate by—Legatee's right to question—Estoppel—(*Contd.*)

of the property divided could not possibly be ordered. (*Sir Arthur Channel.*) CHUAH HOOI GNOH NEOH *v.* KHAW SIM BEE. **(1915) 19 C. W. N. 787 (790-1) = 31 I. C. 637.**

Administration summons against—Inquiry in—Scope of.

———*Moneys actually received by executor—Moneys not received by him owing to negligence and wilful default—Inquiry into.*

Under a summons for an administration of the assets of an estate the executor could not be charged with negligence and wilful default. The only order which could be made under that petition is one directing an account of the assets which the executor had received, and not an order directing an inquiry as to whether more could have been made by the executor if he had not been guilty of wilful default (25-6). (*Sir Barnes Peacock.*) MOOKERJEE *v.* MOOKERJEE. **(1874) 2 I. A. 18 = 14 B. L. R. 276 = 22 W. R. 6 = 3 Sar. 408 = 3 Suth. 53.**

Adverse title to property disposed of by will.

———*Setting up of—Permissibility.*

Appellant, the only son of a deceased Hindu, was one of the executors and trustees named in his will and sole residuary legatee. He joined in obtaining probate. He took upon himself the management of the estate and possessed himself of all the assets. For some years he acted in execution of the trusts of the will. Called upon to account and charged with various breaches of trusts he asserted that the will was wholly inoperative and that the entire estate was joint family property, and that it belonged to him in his individual capacity by right of survivorship.

Held, to such a contention advanced under such circumstances it would be a sufficient answer to say that no person who has accepted the position of trustee and has acquired property in that capacity can be permitted to assert an adverse title on his own behalf until he has obtained a proper discharge from the trust with which he has clothed himself. (*Lord Macnaghten.*) SRINIVASA MOORTHY *v.* VENKATA VARADA AYYANGAR. **(1911) 38 I. A. 129 = 34 M. 257 (265) = 15 C. W. N. 741 = 13 Bom. L. R. 520 = 8 A. L. J. 774 = 14 C. L J. 64 = 11 I. C. 447 = (1911) M. W. N. 375 = 21 M. L. J. 669.**

Alienation by.

———*See* EXECUTOR—CONVEYANCE BY.

Appointment by implication of.

———*Intention of testator—Minor devisees—Partition contemplated with—Effect.*

The will of a Mahomedan testator was in the following terms:—"In respect of taluqa *G*, the following conditions will be observed: My four grandsons will be the owners and possessors of the taluqa in equal shares after me and will manage it in union. The sanad of the taluqa shall be in the name of my eldest grandson. After him in the name of every eldest in order of succession and the same order will continue in the family. After deducting the lambardari dues and proper and necessary expenses (which will be incurred in consultation of the four grandsons) the total profits and other entire incomes of mal and servai will be divided equally. If the other grandsons make a request to the holder of the sanad for the partition, then it will be incumbent on him to divide (the property) in equal shares in spite of the sanad." After a devise of the village *D*, the incumbrance on which was to be discharged by the said grandsons, to the testator's daughter, the will proceeded in paragraph 3 as follows:—"Besides the property specified and detailed above, my four grandsons will be owners, in equal shares, of the property which is mine or which I

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Appointment by implication of—(*Contd.*)

may or will acquire." Then followed provisions for various expenses to be borne in future, and the will concluded in paragraph 9 as follows:—"The burden of the whole debt which may be found due from me after my death will be upon my entire property, moveable and immoveable, excepting the village *D*, and my four grandsons will be responsible for the liquidation."

Held, that there was nothing in the will to justify the view that the four grandsons were entitled to act as executors under it (54).

The testator did not expressly appoint any executors of his will or guardians of his minor grandchildren. It was argued that an express appointment was not necessary if the testator had clearly shewn by his will an intention to entrust the administration to particular individuals, but on a fair construction of this will no such intention can be gathered from it. He left his property to his grandsons so that each share thereof vested at once in the devisee, subject to the obligations attaching thereto, and there appears to be no necessity for any act of an executor to complete the operation of the will. No doubt the testator contemplated a partition by the grandsons themselves of the property devised to them, and in that case it would be necessary for his grandson, if still an infant, to have a guardian, but there is nothing whatever to show that he intended all or any one of the brothers to act in that capacity. So far as his intention is concerned, it may well have been that if, and when, the necessity for a guardian arose, the selection should be made by the court (54). (*Lord Robson.*) MATA DIN *v.* AHMAD ALI.

(1911) 39 I. A. 49 = 34 A. 213 (220-1) = (1912) M. W. N. 183 = 16 C. W. N. 338 = 13 I. C. 976 = 11 M. L. T. 145 = 9 S. L. J. 215 = 15 C. L. J. 270 = 14 Bom. L. R. 192 = 15 O. C. 49 = 23 M. L. J. 6.

Co-executors.

———*Accounts against—Principle of taking—Difference in—Permissibility.*

In this case, one of the judges below observed: "I see no reason why an account should not be taken against one executor on one principle and against another in respect of a separate wrong committed by him or separate relief sought against him."

Held that that remark was not applicable to the case before their Lordships (27). (*Sir Barnes Peacock.*) MOOKERJEE *v.* MOOKERJEE. **(1874) 2 I. A. 18 = 14 B. L. R. 276 = 22 W.R. 6 = 3 Sar. 408 = 3 Suth. 53.**

———*Suit by one of, on behalf of estate—Maintainability.*

It is doubtful whether one of two joint executors can properly institute proceedings on behalf of their estate (120). (*Lord Parker.*) MEYAPPA CHETTY *v.* SUPRAMANIAN CHETTY. **(1916) 43 I. A. 113 = 20 C. W. N. 833 = (1916) 1 M. W. N. 455 = 35 I. C. 323 = 18 Bom. L. R. 642.**

Conveyance by.

———*Heir's suit to set aside, and to recover property—Maintainability—Administration summons prior by heirs against executor—Order in, directing executor to account for proceeds of same sale—Effect.*

The plaintiffs took out an administration summons against *M*, as one of the executors of their father, for administration of the assets of the estate of their father. In the affidavit, and also in the petition which was filed in order to obtain that summons, the plaintiffs alleged that *M* had, as such executor, relinquished their one-fifth share in a decree for Rs. 1,70,000, by executing a deed of assignment of the said share for Rs. 5,000 only, and thereby caused a loss to the plaintiffs of the balance of Rs. 23,333. An order was made on that petition referring the matter to the Master and

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Conveyance by—(*Contd.*)

directing him to take an account of the assets which *M* had received. The master found what *M* had received, and stated that a small balance was due from him to the estate. He did not, as, under the order, he could not, enter at all into the question of whether *M* had committed waste.

In a suit subsequently instituted by the plaintiffs to set aside the assignment of their share in the decree aforesaid, as having been made for an inadequate consideration, upon returning the amount paid by the assignee, *held* that the administration summons aforesaid was no bar to the maintainability of the suit.

The two causes of action are quite distinct. (*Sir Barnes Peacock.*) MOOKEKJEE *v.* MOOKERJEE.

(1874) 2 I. A. 18 (26) = 14 B. L. R. 276 = 22 W. R. 6 = 3 Sar. 408 = 3 Suth. 53.

———*Heir's suit to set aside, and to recover property—Parties to—Executor if necessary party.*

Semble to a suit brought by the heirs for setting aside an improper sale of the testator's property by his executor, and for the recovery of the property from the purchaser, the executor is not a necessary party (26-7). (*Sir Barnes Peacock.*) MOOKERJEE *v.* MOOKERJEE.

(1874) 2 I. A. 18 = 14 B. L. R. 276 = 22 W. R. 6 = 3 Sar. 408 = 3 Suth. 53.

———*Invalid sale—Ejectment suit by transferee based on, against heirs-at-law beneficially entitled to property—Right of latter to resist suit on strength of their beneficial title—No transfer of property to them by executor—Effect.*

In a suit in ejectment brought by a transferee of the suit property under a conveyance thereof executed by the executor under the will of a deceased person, which conveyance was, however, invalid against the defendants, the heirs-at-law of the deceased and as such persons beneficially entitled to the property, *held* that, even without a formal conveyance of the property executed by the executor in their favour, the defendants could as defendants rely on their beneficial title and resist the suit on the strength thereof (288). (*Lord Phillimore.*) VERTANNES *v.* ROBINSON.

(1927) 54 I. A. 276 = 5 Rang. 427 = 102 I. C. 639 (2) = 29 Bom. L.R. 1017 = 46 C. L. J. 126 = 25 A. L. J. 713 = 31 C. W. N. 1078 = 39 M. L. T. 134 = 26 L. W. 417 = A. I. R. 1927 P. C. 151 = 53 M. L. J. 71.

———*Mortgage by—Validity—Creditors of deceased—Rights of—Effect on.*

It is a general rule of law and equity than an executor or administrator has an absolute power of disposal over the whole personal effects of his testator or intestate, and that they cannot be followed by creditors into the hands of the alienee. The principle is, that the executor or administrator in many instances must sell in order to perform his duty in paying debts, etc., and no one would deal with an executor or administrator if liable afterwards to be called to account (221). As an executor may absolutely dispose of the testator's assets for the general purposes of the will, there is no reason why, in the exercise of a sound discretion, and presuming the language of the will does not peremptorily require an absolute sale, the executor may not raise the money required by a partial sale or mortgage of the assets (221). (*Sir Barnes Peacock.*) SYUD BAZAYET HOSSAIN *v.* DOOLI CHUND.

(1878) 5 I. A. 211 = 4 C. 402 (407) = 3 Sar. 853.

———*Right and title in property—Conveyance of all—Interest in property as executor when passes under.*

Where *A*, the sole surviving executor under the will of a certain person, was along with others beneficially entitled to the property devised and bequeathed by the will and, for purposes for which he could have validly sold the property as executor, *A* and those others executed a sale-deed conveying all the right and title that they possessed in the

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Conveyance by—(*Contd.*)

property, *A*, however, not doing so in terms as executor, and it appeared that the purchaser was, at the time of the purchase, desirous of a clear title free from all entanglements and that the position of *A* as the sole surviving executor was viewed as material by the parties to the conveyance, *held* that there was direct evidence that the deed was executed by *A* in his capacity as executor as well as beneficial owner and that even in the absence of such direct evidence, the deed would in law include the right and title which *A* had as executor. (*Lord Moulton.*) BIJRAJ NOPANI *v.* PURA SUNDARY DASSEE.

(1914) 41 I. A. 189 = 42 C. 56 (64) = 24 I. C. 296 = 1 L. W. 555 = 16 M. L. T. 338 = (1914) M. W. N. 679 = 20 C. L. J. 368 = 18 C. W. N. 1313 = 16 Bom. L. R. 797 = 12 A. L. J. 1185 = 27 M. L. J. 93.

———*Validity of—Heir's right to dispute—Estoppel—Conditions.*

A widow who had been appointed executrix under the will of her husband, but who had no power to convey the property after 1904, as she had then completely wound up the estate, conveyed the suit property to the plaintiff-respondent in 1918 in discharge of an equitable mortgage with which she had charged it. In a suit in ejectment brought by the plaintiff the defendants, the younger sons of the testator, who claimed to be entitled to the suit property as heirs of their father as upon an intestacy, disputed the validity of the conveyance to the plaintiff. The question was whether they were estopped from doing so.

There was no representation by the younger sons to the plaintiff that the property was wholly their mother's, or that she had the title to dispose of it as executrix. The truth was that all the parties were under a misapprehension that the property was the widow's and it was under that misapprehension that the plaintiff purchased the property.

Held that, under the circumstances, the younger sons were not estopped from disputing the validity of the conveyance (288). (*Lord Phillimore.*) VERTANNES *v.* ROBINSON.

(1927) 54 I. A. 276 = 5 Rang. 427 = 102 I. C. 639 (2) = 29 Bom. L. R. 1017 = 46 C.L.J. 126 = 25 A. L. J. 713 = 31 C. W. N. 1078 = 39 M. L. T. 134 = 26 L. W. 417 = A. I. R. 1927 P. C. 151 = 53 M. L. J. 71.

———*Winding up of estate—Conveyance after—Power of—Neglect to transfer shares to legatees—Effect.*

By S. 4 of the Probate and Administration Act, all the property of the testator vested in the executrix as such, and if it had been necessary in the course of winding up the estate to part with or charge this property (property not disposed of by the will), the executrix could have made a good title to it. But the estate had been wound up by the year 1904, completely wound up, unless it be said that the executrix had not discharged her duty by transferring to the children of the testator their various shares. Her neglect to discharge that duty did not confer on her a title nor give a good title to one who took from her with knowledge of the circumstances (286). (*Lord Phillimore.*) VERTANNES *v.* ROBINSON.

(1927) 54 I. A. 276 = 5 R. 427 = 102 I. C. 639 (2) = 29 Bom. L. R. 1017 = 46 C.L.J. 126 = 25 A. L. J. 713 = 31 C. W. N. 1078 = 39 M. L. T. 134 = 26 L. W. 417 = A. I. R. 1927 P. C. 151 = 53 M. L. J. 71.

Direction to let testator's sons into possession if they showed a disposition to mend their manners—Effect.

———*Sons let into possession by executor—Subsequent interference by him with their possession—Power of.*

K died leaving *M* and *D* his sons, who, upon the death of their father, entered into possession of his shop, continued his business, and in that character paid and received money. Two years after *K's* death, *B* produced a will

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Direction to let testator's sons into possession if they showed a disposition to mend their manners—Effect—(*Contd.*)

executed by *K*, appointing *B* as his executor, and obtained probate, after which he (*B*) sued *M* and *D* to recover the property of the testator which they succeeded to and possessed themselves of. *B's* suit was dismissed on the ground that, taking the will and the codicil to be proved, the plaintiff had no right to institute a suit to be let into possession of the unadministered effects of the testator, and that, when the sons were let into possession, there was an end of the right of the executor to interfere, the will providing "in every respect they (testator's sons) are foolish and ignorant, and they throw away all the property, like dust; if they mend their manners it is well, and if you (executor) think proper, you may place them in the shop to carry on the business; but if they do anything improper, they are not to be placed."

Held, affirming the courts below, that the power given to the executor by the will was not a power of control to be exercised by the executor from time to time, according to the conduct of the children; that the right construction of the will was that if the sons showed a disposition to amend, it was for the executor to consider whether they would be let into possession, but that, if they were once let in, the power of the executor was at an end; and that the executor, who might have come to administer the trust immediately after the death of *K*, having permitted the sons of *K* to take the actual management, his control was at an end. (*Mr. Baron Parke.*) KHOORSHEDJEE MANIKJEE *v.* MEHRWANJEE KHOORSHEDJEE. **(1837) 1 M. I. A. 431 = 5 W. R. (P. C.) 57 = 1 Suth. 73 = 1 Sar. 138.**

Execution against—Attachment of portion of real estate of testator—Validity.

———*Equitable charge over estate in respect of unpaid legacy—Existence of—Effect.*

A legacy of 12,000 star pagodas, which was reserved by a testator from his estate, and devised in favour of his great grand-daughter, was, in pursuance of the directions contained in the will, put in strict settlement by the executors, and subsequently secured by a mortgage of the real estate of the testator to the trustee of the settlement. *Held*, that the legacy constituted an equitable charge upon the whole of the real estate of the testator, and there being no evidence of the payment off of such charge, the sale of a portion by the sheriff under a writ of execution against the executor was invalid. (*Lord Denman.*) STEPHEN LAZAR *v.* COLLA RAGHAVA CHETTY. **(1838) 2 M. I. A. 83 = 5 W. R. 126 = 1 Suth. 90 = 1 Sar. 157.**

Execution of will by testator—Admission of—What amounts to.

———Collector's certificate—Application by executor for, pursuant to will—Effect. *See* EXECUTOR—TITLE OF TESTATOR—ADMISSION OF.

(1921) 15 L. W. 404 (406-7).

Funerals of deceased—Expenditure upon.

———*Propriety of—Test—Will confering authority to perform funerals, without indicating amount to be spent for the purpose—Effect.*

Where the will of a Hindu authorised his executors to perform his obsequies, but gave no directions how they were to be performed, and the question arose as to what amount should be allowed as and for the performance of such obsequies, *held* that the proper inquiry to make was to ascertain, not what had been actually expended by the executors in such obsequies, but what, according to the usages of the Hindoos, should be expended in the obsequies of a person of the caste and fortune of the deceased. If the sums expended by the executors for the performance of the said obsequies are more than have usually been expended at

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Funerals of deceased—Expenditure upon—(*Contd.*)

the funerals of persons of the same rank and fortune as the deceased, and some members of the family object to them, the court ought not to sanction the expenditure (247-248, 250). (*Lord Wynford.*) RAMTONOO MULLICK *v.* RAMGOPAUL MULLICK. **(1829) 1 Knapp. 245 = 1 Sar. 6.**

———*Unlimited power of—Grant of—What amounts to.*

The will of *N*, a Hindu, addressed to the respondents, who were his eldest and fourth sons, and whom he constituted his executors, provided as follows:—"You will from my estate perform my obsequies and those of my wife, and constantly perform religious acts in a suitable manner. Whenever you perform any religious, or other acts, you two brothers will inform the other six brothers; and if they acquiesce in your opinions, you eight brothers will perform the act collectively; otherwise, whatever you two brothers think proper, you will do; and should any one raise objections, it is inadmissible."

Held that, on the right construction of the will, it did not authorise the executors to expend whatever sum they liked on the obsequies of the deceased, however ruinous such expenditure might be to those who had the property bequeathed to them (248).

The meaning of the words "otherwise, whatever you two brothers think proper, you will do; and should any one raise objections, it is inadmissible" is this: If you (the six brothers) do not think proper to attend the obsequies of your father you shall not be heard afterwards to find fault with the manner in which the ceremonies were performed, or to raise trifling objections to the expense incurred; but these words do not give the executors an unlimited authority to waste the property of the deceased, and to leave his children destitute (249). (*Lord Wynford.*) RAMTONOO MULLICK *v.* RAMGOPAUL MULLICK.

(1829) 1 Knapp. 245 = 1 Sar. 6.

Ghat or landing place—Consecration of—Expenditure upon.

———*Power as regards.*

A Hindu testator directed his executors to make a ghat on the bank of the Ganges but did not expressly provide for its being consecrated. But whenever he intended that a building should be consecrated, he had expressed that intention in his will.

Held that, in the absense of any usage among the Hindoos, that a ghat or landing place should always be consecrated, the executors would not be justified in spending money on the consecration of the ghat in question (249-50). (*Lord Wynford.*) RAMTONOO MULLICK *v.* RAMGOPAUL MULLICK. **(1829) Knapp. 245 = 1 Sar. 6.**

Heir-at-law.

———For all cases, *see* under EXECUTOR—CONVEYANCE BY.

Hindu Will—Executor under.

———Position of, at time of Administrator-Generals' Act XXIV of 1867—Change in, effected by Hindu Wills Act of 1870—Position after that Act. *See* ADMINISTRATOR-GENERALS' ACT OF 1867, S. 30.

(1895) 22 I. A. 107 = 22 C. 788.

———Transfer of estase to Administrator-General by—Validity—Probate obtained by executor. *See* ADMINISTRATOR-GENERALS' ACT II OF 1874, S. 31.

(1895) 22 I.A. 107 = 22 C. 788.

Legatee.

———Administration of estate by executor—Right to question—Estoppel—Minority of legatee—Distribution made during—Minor acting upon, after attaining age—Redistribution made impossible by him—Effect. *See* EXECUTOR—ADMINISTRATION OF ESTATE BY.

(1915) 19 C.W.N. 787 (790-1).

EXECUTOR—(*Contd.*)

Legatee—(*Contd.*)

———*Gifts inchoate by executor to—Purchase by executor for legatee in case of—Purchase out of legacy—Purchase out of sum representing inchoate gifts—Presumption.*

By his will, *B* bequeathed a legacy of a lakh of rupees to *M*, his grand-daughter and a minor. After *B's* death, his widow, who was appointed executrix under his will, made certain incomplete gifts to *M*. Subsequently *B's* widow laid out Rs. 90,000 in buying a house for *M*, which was actually bought and in which she resided till she died. The question arose whether that sum of Rs. 90,000 was provided out of the incomplete gifts, or out of the legacy of a lakh, to *M*, under her grandfather's will, which formed part of his estate in his widow's hands.

Held, that the presumption was strong that *B's* widow paid for the house out of the legacy, for which she clearly was liable, and not out of inchoate gifts, for which she had not yet made herself liable at all.

Her (*B's* widow's) interest was to discharge old obligations, not to perfect new ones. (*Viscount Sumner.*) HARIRAM *v.* MADAN GOPAL. **(1928) 33 C.W.N. 493 = 49 C.L.J. 335 = 27 A.L.J. 406 = 114 I.C. 565 = 31 Bom. L.R. 710 = A.I.R. 1929 P.C. 77 = 57 M.L.J. 581.**

———Purchase by executor in name of—Investment of legacy—Purchase if by way of—Evidence—Solicitors employed by executor for purposes of purchase—Evidence of—Admissibility. *See* EVIDENCE ACT, S. 21—EXECUTOR. **(1928) 33 C. W. N. 493.**

———*Residuary legatee—Release in favour of executor by—Validity of—Effect of—Estate partly administered—Proviso in release in respect of trusts to be performed.*

In a case in which a Hindu testator had, after dedicating a portion of the properties covered by the will to charitable purposes, bequeathed the residue to his nephew, the latter, upon his receipt of the residue, passed a deed of release and ratification of the acts done by the executors under the will with a proviso to the following effect:—"Provided always that nothing herein contained shall operate to release the said executors from any liability arising under either any covenant herein contained or any of the trusts appertaining to the property hereinbefore mentioned." *Held* that the proviso had not the effect of cutting down the general ratification of those actions of the executors with which the nephew stated he was entirely satisfied.

The case is the ordinary case of a property not wholly administered, but so far administered that the executors are entitled to a release from the residuary legatee. The proviso is the ordinary proviso which conveyancers, perhaps needlessly, are apt to put into a deed of release of this kind merely for the purpose of showing that the residuary legatee does not release, and does not affect to release, the executors from those trusts which yet remain to be performed (93-4). (*Sir Arthur Hobhouse.*) PURMANUNDASS JEEVUNDASS *v.* VENAYAKRAO. **(1882) 9 I.A. 86 = 7 B. 19 (28 9) = 12 C. L. R. 92 = 4 Sar. 366.**

Mahomedan will—Executor under.

———*Commission to—Nature of, legacy or debt—Provision for—Validity—Payment out of third of testator's estate passing by will.*

Where an executor is empowered by the will to charge a commission on the proceeds of sale of the testator's real and personal property and cash, the commission, though given by way of remuneration, is a gratuitous bequest and nothing more than a legacy to the executor and certainly not in any sense a debt. Where the testator is a Mahomedan the commission can be paid only out of the one-third part of the testator's estate which passes by his will (201). (*Lord Davey.*) AGA MAHOMED JAFFER BINDANEEM *v.* KOOL-SOM BEE BEE. **(1897) 24 I.A. 196 = 25 C. 9 (18) = 1 C.W.N. 449 = 7 Sar. 199 = 7 M. L. J. 115.**

EXECUTOR—(*Contd.*)

Mahomedan will—Executor under—(*Contd.*)

———*Position and rights of—Probate of will—Grant of, under Probate and Administration Act—Effect.*

The title conferred upon every executor who has obtained probate under the Probate and Administration Act is obviously convenient, as tending to facilitate the administration of the estate of the deceased and the adjustment of the rights of all parties concerned connected with it. But in the case of every Mahomedan will it establishes a somewhat peculiar state of things (256).

A Mahomedan testator has not an unlimited power of disposition by will; he can only deal with one-third of his property; the remaining two-thirds pass to his heirs whatever the terms of the will may be. Thus the executor, when he has realized the estate, is a bare trustee for the heirs as to two-thirds, and an active trustee as to one-third for the purposes of the will; and of these trusts one is created by the Act; and the probate irrespective of the will, the other established by the probate. There are thus two trusts for different sets of persons of different properties and based upon different titles. And this state of things does not arise from any accidental conflict of laws such as gave rise to a somewhat similar complication in the case of *Concha* v. *Concha*, (1886) 11 A.C. 541, but by the deliberate action of the Legislature. In giving effect to a system of so peculiar a nature as that described their Lordships think it necessary to proceed with great caution. (*Sir Arthur Wilson.*) MIRZA KURRATULAIN BAHADUR *v.* PEARA SAHEB. **(1905) 32 I.A. 244 (256-7) = 33 C. 116 (128-9) = 1 C. L. J. 594 = 9 C.W.N. 938 = 2 A.L.J. 758 = 7 Bom. L.R. 876 = 8 Sar. 839 = 15 M.L J. 336.**

———*Title to property of—Probate—Grant of—Effect of, before and after Probate and Administration Act.*

Prior to the Probate and Administration Act a Hindu or Mahomedan executor took no title to property merely as such by virtue of the probate. In the case of Mahomedan executors such a title was created for the first time by that Act (258). (*Sir Arthur Wilson.*) MIRZA KURRATULAIN BAHADUR *v.* PEARA SAHEB. **(1905) 32 I.A. 244 = 33 C. 116 (130) = 1 C.L.J. 594 = 9 C.W.N. 938 = 2 A.L.J. 758 = 7 Bom L.R. 876 = 8 Sar. 839 = 15 M.L.J. 336.**

Mortgage by.

———*See* EXECUTOR—CONVEYANCE BY AND EXECUTOR—RESIDUARY LEGATEE—EXECUTOR WHO IS ALSO A.

Pooja expenses—Payment for, under direction in will—Reasonableness of—Inquiry into—Order for, in administration suit.

———*Form of.*

By his will a Hindu gave two-thirds of his estate to his two brothers, and, with regard to the remaining one-third, directed that it should be "looked after" by his executors. They were to pay out of it a great many minor bequests, and of those one was the following: "And for the poojas, etc., that shall be performed by my brothers in our own house you shall give my share of the expenses."

In an administration suit brought by the testator's widow who was entitled, *inter alia*, to the interest of part of his estate, *held* that the order directing inquiry should be as follows:—

"Whether the sums appearing to have been expended by the executors out of the said trust estate for the expenses of pooja rites and ceremonies performed by them year by year since the death of the testator were reasonable and proper to be allowed to the said executors having regard to the

EXECUTOR—(*Contd.*)

Pooja expenses—Payment for, under direction in will—Reasonableness of—Inquiry into—Order for, in administration suit—(*Contd.*)

terms of the said testator's will and all the circumstances of the case, and if not what sums ought to be allowed them for the purposes aforesaid" (201). (*Lord Davey.*) BENODE BEHARI BOSE *v.* SRIMATI NISTARINI DASSI.
(1905) 32 I.A. 193=33 C. 180 (192)=2 C.L.J. 189=9 C.W.N. 961=7 Bom. L.R. 887=15 M.L.J. 331.

Property of testator.

———*Coming to executor of, as executor—Test.*

Property of the testatrix could be said to come to her executor as executor whenever by virtue of the grant of probate he became able to exercise in respect of the realty any disposing power belonging to the legal personal representative. Whether the realty came to the hands of the executor as such is not the decisive question (442). (*Sir Henry Duke.*) UNITED STATES FIDELITY GUARANTY CO. *v.* KING.
(1923) 33 M. L. T. 438 (P. C.).

———Suit on behalf of—Limitation—Starting point—Administrator—Suit by—Distinction. *See* STRAITS SETTLEMENTS LIMITATION ORDINANCE, S. 17 (1)—LAW ENACTED BY. **(1916) 43 I. A. 113 (120).**

———*Suit on behalf of—Right of—Probate—Grant of—Necessity—Decree in suit—Right to—Distinction.*

An executor can institute an action in the character of executor before he proves the will. He cannot, it is true, obtain a decree before probate, but this is not because his title depends on probate, but because the production of probate is the only way in which, by the rules of the Court, he is allowed to prove his title (119). (*Lord Parker.*) MEYAPPA CHETTY *v.* SUBRAMANIAN CHETTY.
(1916) 43 I. A. 113=20 C.W.N. 833=(1916) 1 M.W.N. 455=35 I.C. 323=18 Bom. L. R. 642.

———Title to—Basis of—Probate of will not—Hindu and Mahomedan Wills. *See* PROBATE—GRANT OF—HINDU AND MAHOMEDAN WILLS. **(1905) 32 I. A. 244 (258)=33 C. 116 (130).**

———*Title to—Basis of—Probate of will—Grant of—Necessity.*

It is quite clear that an executor derives his title and authority from the will of his testator and not from any grant of probate. The personal property of the testator, including all rights of action, vests in him upon the testator's death (119). (*Lord Parker.*) MEYAPPA CHETTY *v.* SUBRAMANIAN CHETTY. **(1916) 43 I. A. 113=20 C.W.N. 833=(1916) 1 M. W.N. 455=35 I.C. 323=18 Bom. L.R. 642.**

Purchase by, of property held by him in trust for benefit of himself and others, from co-executor.

———*Validity of—Setting aside of, in suit by those others—Refund of plaintiffs' share of consideration paid—Necessity.*

As executor under the will of his father, *S*, *J* held a decree for a certain sum in trust for the benefit of himself, and his brothers, and the plaintiffs, the sons of another deceased brother, *H*. *M* had been appointed by *H* as one of his executors, and, in that capacity, *M* sold the interest of the plaintiffs in the said decree to *J*. No adequate consideration was given for the purchase.

In a suit brought by the plaintiffs for a declaration of the invalidity of the said sale by *M* to *J*, *held* that *J* held in a fiduciary character the share in the decree which belonged to the plaintiffs, and that the sale of the said share by *M* to *J* being for an insufficient consideration, the sale could not stand as an absolute sale, but that *J* was bound to return the share of the plaintiffs in the said decree upon

EXECUTOR—(*Contd.*)

Purchase by, of property held by him in trust for benefit of himself and others, from co-executor—(*Contd.*)

receiving back the purchase-money which he had given for it (23-4). (*Sir Barnes Peacock.*) MOOKERJEE *v.* MOOKERJEE.
(1874) 2 I. A. 18=14 B. L. R. 276=22 W.R. 6=3 Sar. 408=3 Suth. 53.

Residuary legatee—Executor who is also a.

———*Legacy—Property charged with—Mortgage of—Validity of, against legatee—Delay on part of legatee in recovering legacy—Effect.*

The sons of a deceased Hindu by his first wife were, under his will, executors and residuary legatees of all his property, subject to a legacy to the deceased's second wife and her sons charged upon the property. To secure a debt advanced by the appellant Bank to the said executors and residuary legatees for the purposes of a business started and carried on by them after the testator's death for their own benefit, the said executors and residuary legatees deposited with the appellant Bank by way of equitable mortgage the title-deeds of a portion of the property charged with the legacy. By the terms of the will the legacy was to be made up and paid within 6 years after the testator's death, which period had expired 8 years before the date of the mortgage.

In a suit by the junior wife of the deceased and her sons to establish the priority of their charge over the mortgage to the Bank, the Bank contended that, assuming notice of the will on their part, they were entitled to assume that the executors were acting with the consent of the legatees.

Held that, though lapse of time was a circumstance that might be taken into consideration in such cases, yet, in view of the fact, that two of the sons by the junior wife were still minors when the title deeds were deposited with the Bank, and that continued possession by the executors and residuary legatees was not inconsistent with the purposes of the will, the rights of the parties were unaffected by that circumstance. (*Sir Andrew Scoble.*) BANK OF BOMBAY *v.* SULEMAN SOMJI.
(1908) 35 I.A. 139=33 B. 1 (21)=4 M. L. T. 201=8 C. L. J. 345=12 C. W. N. 993=10 Bom. L. R. 1065=5 A. L.J. 661=1 I. C. 369=18 M. L. J. 435.

———*Mortgage by—Legacy charged upon property by will—Priority—Mortgage with constructive notice of will—Effect.*

By his will a Hindu bequeathed his entire property to his sons by his first wife subject to a charge in respect of a legacy given to his second wife and her sons. To secure a debt of their own, the sons of the first wife, executors and residuary legatees under the will, mortgaged a portion of the property to the appellant, who took the mortgage with constructive notice of the will.

In a suit brought by the legatees, the 2nd wife of the testator and her sons, to establish the priority of their charge over the mortgage to the appellant, *held* that the claim of the legatees must prevail over the mortgage to the appellant. (*Sir Andrew Scoble.*) BANK OF BOMBAY *v.* SULEMAN SOMJI. **(1908) 35 I. A. 139=33 B. 1=8 C. L. J. 345=4 M.L.T. 201=12 C.W.N. 993=5 A.L.J. 661=10 Bom.L.R. 1065=1 I. C. 369=18 M. L. J. 435.**

———*Mortgage by—Validity—Legatees—Creditors of testator—Validity against—Distinction.*

If an executor who is also residuary legatee sells or mortgages an asset of the testator for valuable consideration to a person who has no notice of the existence of unsatisfied debts of the testator, or of any ground which rendered it improper for the executor so to deal with the asset, that person's purchase or mortgage is valid against any unsatisfied creditor of the testator. There is, however, a distinction in this respect between creditors and legatees. A mortgage

EXECUTOR—(*Contd.*)

Residuary legatee—Executor who is also a—(*Contd.*)

by an executor who is also residuary legatee to secure his private debt may be set aside even at the suit of a pecuniary legatee, for the nature of the claims of legatees, they taking under the will, may be ascertained. But as to creditors it is different. If a reasonable time has elapsed since the death of the testator, and then the executor deals with the residue as his own, the purchaser may, in the absence of notice to the contrary, assume that the debts have been paid, or that there are other assets for payment of the debts, if any; therefore the mortgagee would be safe as against creditors. (*Sir Andrew Scoble.*) BANK OF BOMBAY *v.* SULEMAN SOMJI. **(1908) 35 I. A. 139 (148-9)= 33 B. 1 (20-1)=4 M. L. T. 201=8 C. L. J. 345= 12 C.W. N. 993=10 Bom. L. R. 1065=5 A. L. J. 661= 1 I. C. 369=18 M. L. J. 435.**

———*Mortgage by, as absolute owner and not as executor —Mortgagee's rights in case of.*

In a case in which a will bequeathed the entire property of the testator subject to a charge thereupon in respect of a legacy, and the appellant took a mortgage of a portion of the property from the executor and residuary legatee for a debt advanced to him for his own purposes treating the mortgagor as absolute owner of the property mortgaged, *held*, following the case of *In re* Queale's Estate, (1886) Ir. L. R. 17 Ch. D. 361, that the appellant having dealt with the executor and residuary legatee as, and in his capacity of, an individual owner—not an executor -the appellant had no better title than that which the mortgagor really had in his capacity as beneficial owner, *i.e.*, as residuary legatee. (*Sir Andrew Scoble.*) BANK OF BOMBAY *v.* SULEMAN SOMJI. **(1908) 35 I. A. 139=33 B. 1 (21-2)= 4 M. L. T. 201=8 C. L. J. 345=12 C. W. N. 993= 10 Bom. L. R. 1065=5 A. L. J. 661=1 I. C. 369= 18 M. L. J. 435.**

Sale by.

———*See* EXECUTOR—CONVEYANCE BY.

Temple—Erection of—Power under testator's will as to.

———What amounts to. *See* HINDU LAW—WILL—CONSTRUCTION—TEMPLE.

(1829) 1 Knapp. 245 (249-50)

Title of testator—Admission of—What amounts to

———*Collector's certificate—Application by executor for, pursuant to will—Effect.*

In a suit by the reversionary heir of one *P*, the plaintiff pleaded that the maternal grandfather of *P* agreed to give *P* a share in his family properties along with his sons, and that the sons had assented to that arrangement.

P had left a will which recited the agreement and the assent pleaded by plaintiff. The executors appointed under the will were members of *P's* maternal grandfather's family. On the death of *P*, the executors under his will applied to the Deputy Collector and Deputy Registrar of Grants and Certificates, Madras, for a transfer from *P's* name of property which had been purchased with the joint funds of the maternal grandfather's family in the name of *P*, and for the issue of a certificate. In the application it was stated that the property had been acquired by inheritance, the grantee or registered holder being the brother-in-law of the petitioners, and that the registered holder had left a will stating that the petitioners might take a fresh certificate after his death. There was a clause in the will to that effect. The certificates were issued as prayed.

The plaintiff contended that the will had been acted upon by the executors, who were members of the maternal grandfather's family, and that that fact showed that the statement in the will was true.

Held, over-ruling the plea, that, though the conduct of

EXECUTOR—(*Contd.*)

Title of testator—Admission of—What amounts to—(*Contd.*)

the executors in applying for a transfer in pursuance of the will might properly be regarded as an assent by them that the will was duly executed, it could not be treated as an admission by the members of the family that the statement in the will was true.

What was done by the executors was a requisite or at any rate convenient step for the purpose of procuring a transfer in the Registry, but cannot be deemed an admission of title in the sense urged by the plaintiff. (*Sir Lawrence Jenkins.*) NALAM PATTABHIRAMA RAO *v.* NARAYANAMOORTHY. **(1921) 15 L. W. 404 (406-7)= 26 C.W.N. 273=L.R. 3 P.C. 29=A.I.R. 1922 P. C. 102.**

Transfer by, of shares of land to beneficiaries.

———*Not in common use except perhaps in old Presidency towns.*

No doubt, to perfect their title, the defendants, the persons beneficially entitled to the property vested in the executrix, in strictness, might require conveyances thereof from the executrix (S. 113 of the Probate and Administration Act not applying). But it is well known that except, perhaps, in the old Presidency towns, such niceties of conveyancing as transfers by executors of shares of lands are not in familiar use (288). (*Lord Phillimore.*) VERTANNES *v.* ROBINSON. **(1927) 54 I. A. 276= 5 Rang. 427=102 I. C. 639 (2)=29 Bom. L. R. 1017= 46 C. L. J. 126=25 A. L. J. 713=31 C. W. N. 1078= 39 M.L.T. 134=26 L.W. 417=A.I.R. 1927 P. C. 151= 53 M. L. J. 71.**

Transfer of estate to Administrator-General by.

———*Beneficiary's suit for declaration of invalidity of, and for accounts against executor—Decree in, upholding transfer and dismissing suit—Subsequent suit by beneficiary for accounts of dealings with estate by executor—Maintainability.*

The executors nominated by a testator accepted and retained office for two years and a half after his death, when they executed a transfer of the estate and its management to the Administrator-General, bearing to be in pursuance of the provisions of the Administrator-Generals' Act of 1874. The petitioner, the ultimate beneficiary under the will, instituted a suit based wholly on the illegality of the transfer by the executors to the Administrator-General. His plaint prayed (1) for the appointment of a receiver; (2) for an injunction to restrain the Administrator-General from interfering with the estate or its management; (3) for removal of the executors-nominate, and the appointment of new executors or trustees, and a judicial scheme for their administration; (4) for an account of the dealings of the executors-nominate with the estate; and (5) to have the maintenance payable to the petitioner and his mother fixed by the Court.

Their Lordships held the transfer to the Administrator-General to be valid, and dismissed the petitioner's suit. The petitioner contended that the dismissal of his suit might deprive him of his remedy against the executors-nominate in respect of charges of malversation in their office made by him against them, and that the dismissal of the suit might afford the executors-nominate a good defence of *res judicata* in respect of a new action brought by him against them for an account of their dealings with the estate.

Held, that there was no room for any such apprehension (207).

The conclusions for accounting, which are directed, not against the Administrator-General, but against the executors-nominate who made the transfer to him, are simply ancillary to the leading conclusions of the plaint which precede them. They are aptly framed for the purpose of ascertaining the

EXECUTOR—(*Concld.*)

Transfer of estate to Administrator General by—(*Contd.*)

details of the property, which these executors-nominate were to pay or deliver to the trustees whom the court were asked to appoint in their stead. The dismissal of conclusions, brought for such a special and limited purpose, cannot afford any ground of defence to the executors-nominate in an action by the ultimate beneficiary against them for an account of their dealings with the estate (207). (*Lord Watson.*) ADMINISTRATOR-GENERAL OF BENGAL *v.* PREM LAL MULLICK. **(1895) 22 I. A. 203 = 22 C. 1011 (1015) = 6 Sar. 660 = 5 M. L. J. 157.**

———*Property or portion of it wrongfully retained by executor in case of—Recovery of—Administrator-General's right of—Failure by him to recover—Beneficiary's remedy in case of.*

Where the executors-nominate under a will, after accepting office and retaining it for a number of years, executed a transfer of the estate and its management to the Administrator-General, bearing to be in pursuance of the provisions of the Administrator-Generals' Act of 1874, *held* that the Administrator-General, in whom the whole estate of the testator was vested by the transfer, had the right, and was under a duty, to recover the estate or any portion of it, whether it was in the hands of the executors-nominate, or of other persons (207).

Held further, that if the executors-nominate failed to make over to the Administrator-General funds or property which they had no right to retain, it would be open to the person, who had the ultimate beneficial interest in the estate, to call them to account, in order that such funds or property should be paid or transferred to the Administrator-General (207). (*Lord Watson.*) ADMINISTRATOR-GENERAL OF BENGAL *v.* PREM LAL MULLICK. **(1895) 22 I. A. 203 = 22 C. 1011 (1016) = 6 Sar. 660 = 5 M. L. J. 157.**

———Validity of—Hindu will—Executor under, who had obtained probate—Transfer by. *See* ADMINISTRATOR-GENERALS' ACT II OF 1874, S. 31. **(1895) 22 I.A. 107 = 22 C. 788.**

Will of testator.

———Execution of—Admission of—What amounts to. *See* EXECUTOR—TITLE OF TESTATOR.
(1921) 15 L. W. 404 (406 7).

———Property disposed of by—Adverse title to—Setting up of—Permissibility. *See* EXECUTOR—ADVERSE TITLE, ETC. **(1911) 38 I. A. 129 = 34 M. 257 (265).**

———Validity of—Right to dispute. *See* EXECUTOR—ADVERSE TITLE, ETC.
(1911) 38 I. A. 129 = 34 M. 257 (265).

EXEMPTIONS IMMEMORIAL.

———Proof of—Presumption of, from proof for some years back. *See* CUSTOM—IMMEMORIAL CUSTOM.
(1849-50) 4 M. I. A. 466 (499).

EX-KING OF DELHI.

———*See* DELHI, EX-KING OF.

EX-PARTE ORDER.

———*See* ORDER—*Ex parte* ORDER.

EXPECTANT HEIR.

———Who is an. *See* CONTRACT ACT, S. 16—EXPECTANT HEIR—WHO IS AN.
(1918) 35 M. L. J. 614 (624-5).

FACTORS' ACT XX OF 1844.

———*English Act extended to India by.*

The Factors' Act, 5th and 6th Vict., c. 39, is extended to India, by the Act of the Indian Legislature, No. XX of 1844 (Factors' Act). (*Lord Justice Knight Bruce.*) GOBIND CHUNDER SEIN *v.* RYAN.
(1861) 9 M. I. A. 140 (160) = 1 W.R. (P.C.) 43 = 15 Moo. P. C. 230 = 8 Jur. (N. S.) 343 = 5 L. T. 559 = 10 W. R. (Eng.) 155 = 1 Suth. 471 = 1 Sar. 831.

———**Ss. 1 and 3**—*Taking case out of former section and bringing it under latter—Findings necessary for*

To bring a case within the third, and take it out of the first section, of the Factors' Act, the Court must categorically find the facts of want of good faith, and of notice to the lender of want of authority in the agent, or that he is acting *mala fide* in the transaction against his principal (161). (*Lord Justice Knight Bruce.*) GOBIND CHUNDER SEIN *v.* RYAN. **(1861) 9 M. I. A. 140 = 1 W. R. (P. C.) 43 = 15 Moo. P. C. 230 = 8 Jur. (N. S.) 343 = 5 L. T. 559 = 10 W.R. (Eng.) 155 = 1 Suth. 471 = 1 Sar. 831.**

———**S. 3**—*Inquiry under—Manner of—Evidence required.*

S. 3 of the Act, though it insists upon a conclusion as to the want of good faith, and of notice to the lender of want of authority in the agent, or that he is acting *mala fide* in the transaction against his principal, prescribes nothing as to the nature of the evidence on which it is to be founded, or the manner in which the inquiry is to be conducted. The question must be dealt with as any other question of fact, by a due consideration of all the circumstances (165). (*Lord Justice Knight Bruce.*) GOBIND CHUNDER SEIN *v.* RYAN. **(1861) 9 M. I. A. 140 = 1 W. R. (P. C.) 43 = 15 Moo. P. C. 230 = 8 Jur. (N. S.) 343 = 5 L. T. 559 = 10 W. R. (Eng.) 155 = 1 Suth. 471 = 1 Sar. 831.**

———*Want of good faith and notice to lender—Issue as to—Question to be considered in case of.*

In deciding the issue of want of good faith, and notice to the lender that the agent has no authority, or is acting *mala fides*, the proper question to be considered is whether the circumstances under which the pledge was made were such as that a reasonable man, and a man of business, applying his understanding to them, would certainly know that the agent had no authority to make the pledge, if not also that he was acting *mala fide* in respect thereof against his principal (160-1). (*Lord Justice Knight Bruce.*) GOBIND CHUNDER SEIN *v.* RYAN. **(1861) 9 M. I. A. 140 = 1 W. R. (P. C.) 43 = 15 Moo. P. C. 230 = 8 Jur. (N. S.) 343 = 5 L. T. 559 = 10 W.R. (Eng.) 155 = 1 Suth. 471 = 1 Sar. 831.**

FALSE IMPRISONMENT.

———*Action for—Maintainability—Actual detention and complete loss of freedom—Necessity.*

Nothing short of actual detention and complete loss of freedom will support an action for false imprisonment (158). (*Lord Macnaghten.*) SYED MAHAMAD YUSUF-UD-DIN *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL.
(1903) 30 I.A. 154 = 30 C. 872 (879) = 7 C. W. N. 729 = 5 Bom. L. R. 490 = 8 Sar. 503.

———Contract—Movement in violation of—Prevention of—If and when false imprisonment. *See* FALSE IMPRISONMENT—WHARF. **(1909) 14 C. W. N. 410.**

———Damages for—Liability for—Military Cantonment—Commanding officer of—Arrest and imprisonment of alleged dangerous lunatic—Liability for. *See* DAMAGES—ARREST WRONGFUL. **(1882) 9 I. A. 152 (172) = 9 C. 341.**

FALSE IMPRISONMENT—(*Contd.*)

———*Malicious prosecution—Distinction—Test.*

One *G* was convicted of having attempted to obtain official information by bribery. Subsequently, the officiating resident at Hyderabad applied to the District Magistrate at Simla for a warrant to arrest the appellant on the charge of having abetted *G* in the commission of that offence. The Magistrate granted the application, and issued a warrant for the appellant's arrest. The appellant was arrested in pursuance of the warrant, and was taken to the court of the District Magistrate. He was released on bail, undertaking to appear on a day named at the Court of the District Magistrate. On an application by the appellant to set aside the warrant, the warrant was cancelled, and the proceedings thereon were set aside by an order of Her Majesty in Council.

In a suit brought by the appellant against the Secretary of State for India, alleging that the warrant was issued without jurisdiction and that the charge against him was unfounded, and claiming compensation for the injury inflicted upon him, and the sufferings, expense, and loss which he had sustained in consequence, *held*, that the case was one of false imprisonment or nothing, and that no question of malicious prosecution was involved (157).

All or almost all the elements required to found a case of malicious prosecution are wanting (157). (*Lord Macnaghten.*) SYED MAHAMAD YUSUF-UD-DIN *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL.

(1903) 30 I. A. 154 = 30 C. 872 (879) = 7 C. W. N. 729 = 5 Bom. L. R. 490 = 8 Sar. 503.

———*Wharf—Exit from, conditioned on payment—Exit without payment—Preventing by force of—If and when false imprisonment.*

Plaintiff entered a wharf belonging to the defendants and paid a penny to stay there till the boat should start and then be taken by the boat to the other side. The defendants were always ready and willing to carry out their part of this contract. Then the plaintiff changed his mind, and wished to go back. The rules as to the exit from the wharf by the turnstile required a penny for any person who went through. This the plaintiff refused to pay, and he was by force prevented from going through the turnstile. In a suit by him for damages for assault and false imprisonment, it was not suggested that there was any excessive violence at all.

Held, that there was no false imprisonment at all.

The plaintiff was merely called upon to leave the wharf in the way in which he contracted to leave it. There is no law requiring the defendants to make the exit from their premises gratuitous to people who come there upon a definite contract which involves their leaving the wharf by another way. And the defendants were entitled to resist a forcible passage through their turnstile. (*Lord Loreburn, L. C.*) ROBERTSON *v.* BALMAIN NEW FERRY CO., LTD.

(1909) 14 C. W. N. 410 = 5 I. C. 842.

FAMILY.

———*Meaning of.*

The word "family" is elastic and capable of different interpretations (1030).

Held that, on the true construction of the will in question, the words "members of my family" therein, meant the members of the testator's family who were existing at the date of his death, and that there was no reason why the words should be extended to include people other than those existing when the testator died (1030). (*Lord Buckmaster.*) GNANENDRA NATH DAS *v.* SURENDRA NATH DAS.

(1920) 24 C. W. N. 1026 = (1921) M. W. N. 550 = 28 M. L. T. 453 = 61 I. C. 323.

———*Members of my (testator's) family—Meaning of—Members existing at date of testator's death — Members other than those existing at that time.*

FAMILY—(*Contd.*)

The word "family" is elastic and capable of different interpretations.

Where a will, which made a good bequest of the income of a house for religious purposes, provided: "The said house shall remain under the control and the supervision of the shebait for the time being, but shall be available to all the members of my" (testator's) "family both male and female, for temporary residence and use," *held* that the phrase "members of my family" in the will meant the members of the testator's family who were existing at the date of his death and the bequest was valid.

Their Lordships see no reason why the word "family" in this will should be extended to include people other than those existing when the testator died (1029-30). (*Lord Buckmaster.*) GNANENDRA NATH DAS *v.* SURENDRA NATH DAS. **(1920) 24 C. W. N. 1026 = (1921) M.W.N. 550 = 61 I.C. 323 = 28 M.L.T. 453.**

FAMILY ARRANGEMENT.

———*See* (1) COMPROMISE; (2) HINDU LAW—COMPROMISE; AND (3) HINDU LAW—FAMILY ARRANGEMENT.

FAMILY LIFE.

———Ties of—Strictness of — England and India—Distinction. *See* INDIA—FAMILY LIFE.

(1892) 19 I.A. 108 (129) = 19 C. 513 (533).

FATAL ACCIDENT.

———*Compensation for—Claims for, by different members of family—Total amount—Fixing of, before considering question of apportionment of same—Necessity.*

On a claim for compensation by members of the family of a person killed by accident, under an enactment which corresponded to the Fatal Accidents Act, 1846, ordinarily known as Lord Campbell's Act, *held* that it was advisable to proceed on the principle of assessing the total amount in the first instance, and then to apportion it (318). (*Lord Parmoor.*) ROYAL TRUST CO. *v.* CANADIAN PACIFIC RAILWAY CO. **(1922) 31 M. L. T. 317 (P.C.).**

———*Compensation for, to family of person killed—Measure of—Elements to be taken into account.*

When a claim for compensation to families of persons killed through negligence is made, the right to recover is restricted to the amount of actual pecuniary benefit which the family might reasonably have expected to enjoy had the deceased not been killed. It is not competent for a Court or a jury to make in addition a compassionate allowance. The principle, as stated by Lord Watson in *Grand Trunk Railway Company of Canada* v. *Jennings* is applicable in cases where the loss, in respect of which compensation is claimed, is based on the cessation of an income derived from professional skill :—

"It then becomes necessary to consider what, but for the accident which terminated his existence, would have been the reasonable prospects of life, work and remuneration; and also how far these, if realized, would have conduced to the benefit of the individual claiming compensation" (318). (*Lord Parmoor.*) ROYAL TRUST CO. *v.* CANADIAN PACIFIC RAILWAY CO. **(1922) 31 M.L.T. 317 (P.C.).**

———*Compensation for, to family of person killed—Principle of fixing—Application of to particular cases—Difficulty in.*

In a case of a claim for compensation to families of persons killed through negligence, the difficulty arises not in the statement of the principle on which the amount of compensation is to be arrived at, but in its application to a case in which the extent of the actual pecuniary loss is largely a matter of estimate, founded on probabilities, of which no accurate forecast is possible (319). (*Lord Parmoor.*) ROYAL TRUST CO. *v.* CANADIAN PACIFIC RAILWAY CO. **(1922) 31 M. L. T. 317 (P.C.).**

FATAL ACCIDENT—(*Contd.*)

———*Damages sustained by relatives in consequence of—Suit for—Right of—Railway Act of Canada*, 1919, *S.* 385.

The question was whether S. 385 of the Railway Act of Canada, 1919, established in respect of acts and omissions to which it applied a new principle of responsibility; new in the sense that independently of provincial legislation it created a liability to pay damages in a civil action for causing the death of a human being and new in the sense that the liability so created extended to consequences which were neither the immediate or the direct result of the act or omission complained of nor within the intention actual or presumed of the Railway Company.

Held, affirming the Courts below, that the operation of the section was subject to the rule of the common law that an action does not lie for damages suffered in consequence of the death of a human being, that the section did not establish any such liability as that contended for; and that the absence of anything specifying the class or classes of persons entitled to indemnity in such circumstances was significant (221-2).

Since Lord Campbell's Act was enacted in 1846, similar legislation has been passed by many legislatures in the United States as well as in British Dominions, and it appears to be the general practice in enacting such statutes to define the class or classes for whose benefit an action may be brought; and the fact that the Railway Act in question is silent upon this matter affords, their Lordships agree, an indication that the section is not addressed to the subject of indemnity for damages arising from death (222). (*Mr. Justice Duff.*) AMELIA MCCOLL *v.* CANADIAN RAILWAY CO. **(1922) 33 M.L.T. 219 (P.C.).**

———*Legal personal representative of deceased—Right to compensation of.*

Under the Fatal Accidents Act of Saskatchewan, which correspondens to the Fatal Accidents Act in England, otherwise known as Lord Campbell's Act, the legal personal representative of a person whose death has been caused by the negligence of another is entitled to sue for damages only in cases where the deceased himself, if he had lived, would have been entitled to maintain an action and recover damages (207). (*Viscount Cave.*) EDITH MAY WALPOLE *v.* CANADIAN NORTHERN RAILWAY CO.
(1922) 32 M. L. T. 205 (P. C.).

———*Professional man—Accident to—Compensation to widow and son of—Amount of—Ascertainment of—Principle.*

C, an eye, ear and throat specialist thoroughly competent and reliable in his professional work, was killed in a railway accident on the line of the respondents. He was said to have been one of the best men in his profession at the place. He was in good physical condition at the time of his death. He was 46 years old, and his expectation of life, calculated on an actuarial basis, was, at the time of his death, 23 years.

On a claim for compensation by his widow and his son, *held* that the duty of the Court was first to estimate as nearly as possible the capitalised value to the widow and child of the share which they would have enjoyed in the future earnings and probable savings of the deceased, and then to deduct from the sum so ascertained the amount received for accident insurance, with proper allowances in respect of the life policies and in respect of the acceleration, by reason of the death, of the benefits coming to the dependents under the will of the deceased (319). (*Lord Parmoor.*) ROYAL TRUST CO. *v.* CANADIAN PACIFIC RAILWAY CO. **(1922) 31 M.L.T. 317 (P.C.).**

FATAL ACCIDENTS ACT, 1846.

———*See* FATAL ACCIDENT.

FELONY.

———*See* CRIMINAL CASE—FELONY.

FEMALE.

———Chastity of—Issue as to—Unchastity found against—Conduct "suspicious"—Opinion as to—Propriety. *See* PRACTICE—ISSUE—FEMALE.
(1910) 37 I. A. 152 (158) = 32 A. 410 (412-3).

FERRY.

———Co sharers — Joint estate — Ferry on —Exclusive right of one sharer to set up—Conditions. *See* CO SHARERS—JOINT ESTATE—FERRY ON—EXCLUSIVE RIGHT OF ONE SHARER TO SET UP.
(1891) 19 I. A. 48 (55-6) = 19 C. 253 (262).

———Co-sharers—Joint estate—Ferry on—Setting up of, by one co-owner—Effect of, on rights of others. *See* CO-SHARERS—JOINT ESTATE—FERRY ON—SETTING UP OF, ETC. **(1891) 19 I. A. 48 (56-7) = 19 C. 253 (263-4).**

———*Right in—Evidence—Free passage by it—Right of—If evidence of right in ferry.*

To ply a ferry taking the full profits is one thing, and to be allowed to pass free by it is another. A finding that *A* has been allowed to cross free of tax a ferry set up by *B* does not point to any arrangement between *A* and *B*, or to any right of *A* in the ferry (55). (*Lord Hobhouse.*) MAHARAJAH SIR LUCHMESWAR SINGH BAHADOOR *v.* SHEIK MANOWAR HOSSEIN. **(1891) 19 I. A. 48 = 19 C. 253 (262) = 6 Sar. 133.**

———*Right to set up—Acquisition of—Modes of — Ferry on one's own property—Ferry on property of others.*

It is recognised law in India that a man may set up a ferry on his own property, and take toll from strangers for carrying them across, and may acquire such a right by grant or by user over the property of others; and, except as affecting the proof of his acquisition of title, it can make no difference whether he is a co-sharer with those others or not (55). (*Lord Hobhouse.*) MAHARAJAH SIR LUCHMESWAR SINGH BAHADOOR *v.* SHEIK MANOWAR HOSSEIN.
(1891) 19 I. A. 48 = 19 C. 253 (262) = 6 Sar. 133.

FIDUCIARY RELATIONSHIP.

———Agent of ladies in management of property—Gift obtained from ladies by—Duty in case of.

———Haji was the agent of the ladies in the management of the property, and he was bound, before taking anything in the nature of a gift from them, to make it clear that they knew exactly what they were doing and acted of their own free will (150). (*Viscount Haldane.*) DAING SOHARAH *v.* CHABAK BINTE. **(1927) A.I.R. 1927 P.C. 148 = 103 I.C. 239 = 39 M.L.T. 105.**

———*Duties attached to—Delegation of—Rule against—Applicability of, to trustee and to person in representative capacity—Lease by agent of such person—Validity.*

Fiduciary duties cannot be made the subject of delegation. This is so whether the person under a fiduciary duty is a trustee in the strictest language, or whether his position is merely a representative one.

Held, therefore, that a lease granted by a person as attorney for one who was either a trustee or manager of the property leased and who did not negotiate or consider the lease or know of it until after its execution, was invalid, and that the result was the same whether the executant acted under a general power of attorney, or under a power specially relating to the management of the property (52-3). (*Lord Buckmaster.*) BONNERJI *v.* SITHANATH DAS.
(1921) 49 I.A. 46 = 49 C. 325 (333) = 66 I. C. 140 = (1922) M.W.N. 98 = 26 C.W.N 236 = 30 M.L.T. 182 =

FIDUCIARY RELATIONSHIP—(*Contd.*)

15 L. W. 452 = 20 A. L. J. 294 = 35 C.L.J. 320 = 24 Bom. L.R. 565 = A. I. R. 1922 P. C. 209 = 42 M.L.J. 403.

———Person in—Accounts—Mode of keeping—Mixing up of accounts by him—Effect—Expenses incurred in fiduciary capacity—Credit for—Right to—Effect on. *See* PARTNERSHIP—ACCOUNTS. **(1900) 27 I.A. 189 (196-7) = 28 C. 53 (62-3).**

———Person in—Accountability of, in India — Rule as to —Trustee—Accountability to *cestui que trust* of—English strict rules as to—Applicability. *See* HINDU LAW—JOINT FAMILY—MANAGER—ACCOUNTABILITY OF—TRUSTEE. **(1921) 48 I. A. 280 (287) = 44 M. 656 (663).**

———*Person in—Gift obtained by—Validity of—Onus of proof of—Solicitors—Onus in case of.*

The relief given by a Court of Equity is a secondary consequence of the principle that a person, standing in a relationship in which authority or influence may be supposed to exist, cannot hold a mere gift without making it clear that the intention to make it was not the result of his influence. The relationship itself does not necessarily preclude the making of the gift ; but the burden lies on the donee to show that there was no such influence as to the source of the gift. The courts have refused to enumerate exhaustively the cases in which the presumption of undue influence will *prima facie* be made. Religious influence is included, and so are many other classes of influence in which the donee may from his position be presumed to be likely to have exercised special influence over the mind of the donor. But he can discharge the burden incumbent on him by showing that, the relationship notwithstanding, the donor knew completely what he was doing, and acted of his own complete free will. With certain kinds of fiduciary relations, such as that of a solicitor taking a gift from his client, this is obviously, much more difficult to establish than in others where the duty is less definite. Courts of Equity have, therefore, exercised a certain freedom in their decisions as to where and how the principle is to be applied. (*Viscount Haldane.*) DAING SOHARAH *v.* CHABAK BINTE.

(1927) A. I. R. 1927 P. C. 148 (150) = 103 I. C. 239 = 39 M. L. T. 105.

———*See also* cases under CONTRACT ACT, S. 16.

———Person in—Office—Removal from—Rules applicable to. *See* HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT—OFFICE—REMOVAL FROM.

(1921) 48 I. A. 258 (264-5) = 48 C. 1019 (1026 7).

———Person in—Purchase by. *See also* TRUSTS ACT, S. 88.

———Person in—Purchase by, of property in respect of which he is in that position—Invalidity of—Setting aside of, in suit of beneficiaries—Refund of consideration paid—Necessity. *See* EXECUTOR — PURCHASE BY, OF PROPERTY HELD BY HIM, ETC. **(1874) 2 I. A. 18 (23-4).**

———*Person in—Purchase by, of property in respect of which he is in that position—Rule against—Basis of—Applicability of—Company—Debenture-holder in — Sale by, on behalf of company as well as of debenture-holders—Purchase at, by debenture-holder (seller) himself—Validity of.*

When any one is in a fiduciary position he cannot sell to himself. Thus an ordinary trustee cannot buy trust property nor can an official appointed to conduct a sale for creditors be himself the purchaser. This rule is, however, inapplicable to a case in which a seller sold not on behalf of the debenture-holder alone but on behalf of the company, and it was his duty and interest to secure as high a price as possible, so that the balance—after meeting secured debts —should go to the company, and such a balance was in fact received. In such a case the fact that the buyer was himself a holder of the debentures became irrelevant. There

FIDUCIARY RELATIONSHIP—(*Concld.*)

was no merging of the two positions which is what is prohibited, namely, that the interest of the seller to get the highest price, and of the buyer to get the lowest price, is centered in the same person. (*Lord Dunedin.*) KANHAYA LAL *v.* NATIONAL BANK OF INDIA, LTD. **4 Lah. 284 = (1923) 50 I.A. 162 (171-2) = 33 M. L T. 349 = 25 Bom. L. R. 1248 = A. I R. 1923 P. C. 114 = 28 C.W.N. 689 = 40 C.L.J. 1 = 75 I. C. 7 = 45 M. L. J. 497.**

FIRM.

———*Manager or employee entrusted with business of—Acts of—Firm's responsibility for.*

If a firm allows its business to be transacted in its name by a manager or employee, it assumes responsibility for what their manager or employee does (106). (*Lord Dunedin.*) THORNES *v.* BROWN.

(1922) 31 M. L. T. 104 (P. C.).

FISHERY RIGHT.

———Bheel—Fishery right in — Right to soil of — Evidence—Mehalwari register made in accordance with survey —Value of. *See* EVIDENCE—MEHALWARI REGISTER.

(1880) 3 Suth. 809 (811).

———*Bheel—Fishery right in—Right to soil of — Evidence—Settlement papers of Pergunnah showing perpetual settlement was in respect of fishery right only—Effect.*

The suit out of which the appeal arose was brought by the owner of a talook called K. A., who sought a declaration of his right to and to be restored to possession of a certain quantity of land appertaining to a mouzah named Julkur Khuluk Shajai, part of the talook, his case being that that was a mouzah originally covered with water, and so forming a large bheel or lake ; but that in recent times a portion of the land so covered had become dry and cultivable during, at least, a part of the year. The defendant, who was the owner of a neighbouring talook called Gobindpore, denied the plaintiff's title to the soil of that Julkur Khuluk Shajai, and he made some claim to it himself.

There was no question of the plaintiff's title to talook K. A. The only question was whether the right of the plaintiff in the Julkur Khuluk Shajai was, as the defendant contended, merely a right of fishery in the bheel, or whether it was, as the plaintiff contended, the right to a mouzah covered with water.

Certain butwarra papers were put in as old as 1799, whereby the Julkur in question, which was certainly then called a mouzah, was described as belonging to Pergunnah Bhatia Gopalpore ; but inasmuch as no area was given to it in the description, it was contended that it was treated merely as a fishery right. The original settlement papers of Pergunnah Bhatia Gopalpore were not on the record.

Held, that if it had appeared from the settlement papers of the Pergunnah that all which at the time of the perpetual settlement had been settled for with the then Zemindars of the Pergunnah was a right of fishery, that might afford an inference that the soil of the bheel remained in the Government ; or that, at all events, any land reclaimed therefrom would be subject to a fresh assessment of revenue ; but that that circumstance would give no title to the proprietor of one part of the Pergunnah against the proprietor of another part of it (811). (*Sir Robert P. Collier.*) RADHA GOBIND ROY SAHEB ROY BAHADOOR *v.* INGLIS.

(1880) 3 Suth. 809 = 7 C. L. R. 364 = Bald. 377.

———*Decennial Settlement—Government grant of separate estate of jalkar before—Evidence of—Secondary evidence—Admissibility of—Legal origin—Inference of, from long user.*

Although when Government has created a separate estate of jalkar prior to the Decennial Settlement, it is usual to

FISHERY RIGHT—(*Contd.*)

find some entry of it in the Decennial Settlement papers, in practice such original grants are but rarely forthcoming, and resort must be had to secondary evidence of them or to the inference of a legal origin to be drawn from long user (227.) (*Lord Sumner.*) SRINATH ROY *v.* DINABANDHU SEN. **(1914) 41 I. A. 221 = 42 C. 489 (510-1) = 16 M. L. T. 319 = 1 L. W. 733 = 18 C.W.N. 1217 = (1914) M. W. N. 654 = 16 Bom. L. R. 901 = 20 C. L. J. 385 = 25 I. C. 467 = 27 M. L. J. 419.**

———Legal origin for—Inference of, from long user. *See* FISHERY RIGHT—DECENNIAL SETTLEMENT.

(1914) 41 I. A. 221 (227) = 42 C. 489 (510-1).

———*Nature of, in India.*

Julkur, or the right of fishing, may exist in India as an incorporeal hereditament and a right to be exercised upon the land of another (868.) (*Sir James Colvile.*) FORBES *v.* MEER MAHOMED HOSSEIN. **(1873) 2 Suth. 865 = 20 W. R. 45 = 12 B. L. R. 210 = 3 Sar. 264.**

———*Tidal navigable river—Jalkar right of several fishery in—Crown grant prior to permanent settlement of—Proof of.*

The plaintiffs claimed, as proprietors of a several fishery in certain tidal navigable waters in Eastern Bengal, a decree for possession of an exclusive fishery in a portion of a river channel, of which the principal defendants owned both the bed and the banks. The river channel in question was broken through the defendants' chur-land in 1897. Though relatively small, it was of considerable size and was navigable for small craft. The plaintiffs claimed the exclusive fishery in that new navigable channel as falling within the upstream and downstream limits of their several fishery. The defendants justified their claim to fish in a portion of that channel as part of the rights of owners of the subjacent soil. The actual grant, if any, under which the plaintiffs claimed the right in question was not forthcoming, but they produced documentary evidence on the strength of which the trial Judge decided that they had próved a Government grant or settlement about the end of the 18th century.

Held that, though the evidence of a Government grant of an exclusive fishery in navigable waters ought to be conclusive and clear, yet, in so far as such evidence could be expectcd to be forthcoming as to particular grants more than a century old, the evidence in the case was sufficient to show that the competent authority—the Government of India in right of the Crown—did actually grant to the plaintiffs' predecessors in title, or settle with them so as in effect to grant, a Jalkar right of several fishery in certain of the waters of the portion of the Ganges system in question (227-8). (*Lord Sumner.*) SRIMATH ROY *v.* DINABANDHU SEN. **(1914) 41 I. A 221 = 42 C. 489 (511) = 16 M. L. T. 319 = 1 L. W. 733 = 18 C. W. N. 1217 = (1914) M W. N. 654 = 16 Bom. L. R. 901 = 20 C. L. J. 385 = 25 I. C. 467 = 27 M. L. J. 419.**

———*Tidal navigable river in Bengal—Jalkar right in—Grantee from Government of—River forming new channel—Right of grantee to follow river where subjacent soil belongs to a riparian proprietor—English Law—Distinction.*

It must now be taken as decided in Bengal that the Government's grantee can follow the shifting river for the enjoyment of his exclusive fishery so long as the waters form part of the river system within the upstream and downstream limits of his grant, whether the Government owns the soil subjacent to such waters as being the long-established bed, or whether the soil is still in a riparian proprietor as being the site of the river's recent encroachment (235).

Their Lordships would in any case be slow to disturb decisions by which rules have been established for Bengal

FISHERY RIGHT—(*Contd.*)

governing extensive and important rights such as rights of Jalkar, and unless they could be shown to be manifestly unjust or flagrantly inexpedient, their Lordships would not supersede them (238).

The common law of England as such does not apply in the mofussil of Bengal. The Indian Courts have, however, in many respects followed the English law of waters. But far as it has gone in the adoption of English rules, there is one step which the Indian law has never taken. Often as the opportunity for so doing has arisen, it has never been held that the capacity of the Government of India to grant to or settle with a private owner the exclusive right of fishing in tidal navigable waters is so indissolubly bound up with its ownership of the soil subjacent to those waters that, no matter how those waters may subsequently change their course, while still remaining part of the same river system within the upstream and downstream limits of the grant, the enjoyment of the right so granted cannot extend beyond the limits of the Government's ownership of the soil lying perpendicularly underneath them, as it may vest from time to time (238, 239-40). In truth the rule which in the United Kingdom connects the right to an exclusive fishery in tidal navigable waters with the limits of the Crown's ownership of the subjacent soil is itself the result of conditions partly historical and partly geographical which have no counter-part in Lower Bengal (241). (*Lord Sumner.*) SRINATH ROY *v.* DINABANDHU SEN.

(1914) 41 I.A. 221 = 42 C. 489 (521-2, 525, 526-7, 528) = 16 M. L. T. 319 = 1 L. W. 733 = 18 C. W. N. 1217 = (1914) M. W. N. 654 = 16 Bom. L. R. 901 = 20 C. L. J. 385 = 25 I. C. 467 = 27 M. L. J. 419.

———*Tidal navigable river in Bengal—Jalkar right in—Grantee's right to "follow the river" if extends to new channel formed not gradually but suddenly and rapidly—English law—Inapplicability of.*

It was urged that the established rule with regard to alluvion should be applied to rights of jalkar; that since the right to accretions and the liability to derelictions of soil attached only to gradual accretions or to erosious taking place by imperceptible degrees, so too the right of the owner of the fishery to "follow the river" ought to be limited to cases where the river's encroachments were gradual, and ought not to be extended to an irruption sudden and accomplished rapidly. But here too Indian law, doubtless guided by local physical conditions, has adopted a rule varying somewhat from the rule established in England where under English conditions the rule applies to "imperceptible" alterations. Regulation XI of 1825, Arts. 1 and 4, speak of "gradual accession." The analogy of the English law can hardly be prayed in aid when Indian legislation has thus an established and different rule on the same subject. The Indian rule is established now beyond question (244-5.) (*Lord Sumner.*) SRINATH ROY *v.* DINABANDHU SEN.

(1914) 41 I. A. 221 = 42 C. 489 (533) = 16 M.L.T. 319 = 1 L. W. 733 = 18 C. W. N. 1217 = (1914) M. W. N. 654 = 16 Bom. L. R. 901 = 20 C. L. J. 385 = 25 I. C. 467 = 27 M. L. J. 419.

———*Zemindari—Under-tenants in—Rights of, and of Zemindar—Limits of.*

Although under-tenants in a zemindary would presumably have the right of fishing in waters lying wholly within the limits of their dependent talook, they would not presumably have the exclusive right of fishing in the waters dividing their lands from those of the Zemindar, or any right of fishing in places where the property in the soil is wholly in the Zemindar (868). (*Sir James Colvile.*) FORBES *v.* MEER MAHOMED HOSSEIN. **(1873) 2 Suth. 865 = 20 W.R. 45 = 12 B. L. R. 210 = 3 Sar. 264.**

FOREIGN COUNTRIES.

———Settlement in—Law applicable to settlors and original inhabitants. *See* SETTLEMENT IN FOREIGN COUNTRIES.

FOREIGN COURTS.

———Decisions of—Reference by Indian Courts to—Propriety. *See* DECISIONS—FOREIGN DECISIONS.

(1918) 45 I. A. 73 (93)=45 C. 878 (904).

———Judgments of. *See* JUDGMENT—FOREIGN JUDGMENT.

———*Jurisdiction of—Foreigner owing no allegiance or obedience to Power which legislates.*

As between different provinces under one sovereignty (*e. g.*, under the Roman Empire) the legislation of the sovereign may distribute and regulate jurisdiction; but no territorial legislation can give jurisdiction which any foreign Court ought to recognise against foreigners, who owe no allegiance or obedience to the Power which so legislates (185). (*Earl of Selborne.*) SIRDAR GURDYAL SINGH *v.* RAJAH OF FARIDKOTE. **(1894) 21 I. A. 171=22 C. 222 (238)=112 P. R. 1894=6 Sar. 503=4 M. L. J. 267.**

FOREIGN DECISIONS.

———Reference by Indian Courts to—Propriety. *See* DECISIONS—FOREIGN DECISIONS.

(1918) 45 I. A. 73 (93)=45 C. 878 (904).

FOREIGN JUDGMENT.

———*See* JUDGMENT—FOREIGN JUDGMENT.

FOREIGN JURISDICTION ACT, 1890.

———*Effect—Protected country—Jurisdiction of Crown in.*

The Foreign Jurisdiction Act appears to make the jurisdiction acquired by the Crown in a protected country indistinguishable in legal effect from what might be acquired by conquest. (*Viscount Haldane.*) SOBHUZA II *v.* MILLER. **(1926) A I. R. 1926 P. C. 131 (133)=30 C. W. N. 961=99 I. C. 265.**

———**S. 4 (1)**—*Jurisdiction by "usage, sufferance, or other lawful means"—Evidence of—Admissibility—Conditions.*

The appellant was a natural-born subject of the Ameer of Afghanistan, who was duly enlisted and enrolled in 1911 in the 126th Beluchistan Regiment of His Majesty's Indian Forces. He took the oath of allegiance to His Majesty and made a solemn declaration undertaking, among other things, to go wherever ordered by land or sea. On September 4th, 1912, he was a private serving with the detachment of that regiment which was encamped on Shameen or Shameen island at Canton. On Shameen were situated the various European settlements including the British. The appellant was charged with the murder of his Subadar on that date, tried before the Supreme Court of Hongkong and convicted.

On appeal to the Privy Council, the appellant contended that the jurisdiction of the Supreme Court was not established.

The British Vice-Consul who, in September 1912, was also acting consul at Canton, was Judge of a Provincial Court, held at Canton under Article XIX of the China and Corea Order in Council, 1904, which was a Court of Record, and by Article XXII exercised "all His Majesty's jurisdiction, civil and criminal, not under this order vested exclusively in the Supreme Court." He was called as a witness at the appellant's trial and deposed that the place of the murder was entirely within his jurisdiction; that the jurisdiction exercised at Canton on Shameen was the same ex-territorial jurisdiction as was exercised throughout China

FOREIGN JURISDICTION ACT, 1890 S. 4 (1)— (*Contd.*)

by the Supreme Court; that it was then in force; that "The Indian Soldiers enjoy His Majesty's protection in Shameen, Canton, and the court exercises jurisdiction over them"; and that "consular protection extends to trying persons and protecting them if they are improperly arrested." The witness went on to say that he conducted the preliminary examination in that case (appellant's) and considered it expedient that the case should be sent for trial to Hongkong, thus satisfying the provisions of Article *L* of the Order with regard to the transfer of the case from Shameen to Hongkong.

Held, that S. 4 (1) of the Foreign Jurisdiction Act, 1890, did not prevent the witness's evidence from being admissible upon the question and that, in the absence of contradiction and of any grounds for real doubt, his evidence by itself satisfied all the conditions of proof requisite to establish the jurisdiction of the Supreme Court at Hongkong. (*Lord Sumner.*) IBRAHIM *v.* EMPEROR.

(1914) 1 L. W. 989 (993-4)=18 C. W. N. 705=23 I. C. 678=15 Cr. L. J. 326=(1914) A. C. 599=4 Cr. L. R. 225=3 Con. L. R. 187.

FOREIGN JURISDICTION ACT, 1890 AND CHINA AND COREA ORDER IN COUNCIL, 1904.

———**Art. III**—*British subject—Alien enlisted in British forces along with British subject and subject to same service, loyalty, etc., if a—By virtue of Foreign Jurisdiction Act or otherwise enjoys His Majesty's Protection—Meaning.*

When the Crown lawfully enlists in its forces aliens along with British subjects and requires of them the same service, loyalty and allegiance as are the duties of British enlisted subjects, it extends to them the same protection in a foreign country, where all are serving together in the armed forces of His Majesty.

The appellant was a natural-born subject of the Ameer of Afghanistan, who was duly enlisted and enrolled in 1911 in the 126th Beluchistan Regiment of His Majesty's Indian Forces. He took the oath of allegiance to His Majesty and made a solemn declaration undertaking, among other things, to go wherever ordered by land or sea. On September 4th, 1912, he was a private serving with the detachment of that regiment which was encamped on Shameen or Shameen is land at Canton. On Shameen were situated the various European settlements including the British. The appellant was charged with the murder of his Subadar on that date, tried before the Supreme Court of Hongkong and convicted.

On appeal to the Privy Council, *held* that the appellant as of right "enjoyed His Majesty's protection in China, and in virtue thereof was subject also to the jurisdiction of the Supreme Court of China."

He was a British-protected person within the meaning of Article III of the China and Corea Order in Council, 1904, because "by virtue of the Foreign Jurisdiction Act, or otherwise he enjoys His Majesty's protection in China." (*Lord Sumner.*) IBRAHIM *v.* EMPEROR.

(1914) 1 L. W. 989 (994)=18 C. W. N. 705=23 I. C. 678=15 Cr. L. J. 326=(1914) A. C. 599=4 Cr. L. R. 225=3 Con. L. R. 187.

———**Art. III**—"*Or otherwise*"—*Meaning of.*

The words "or otherwise" in Article III of the China and Corea Order in Council, 1904, must at least include the operation of other Statutes, Imperial or Indian, applicable to the person in question. (*Lord Sumner.*) IBRAHIM *v.* EMPEROR. **(1914) 1 L. W. 989 (994)=18 C. W. N. 705=23 I. C. 678=15 Cr. L. J. 326=(1914) A. C. 599=4 Cr. L. R. 225=3 Con. L. R. 187.**

———**Art. V (3) (2)**—"*And not otherwise*"—*Meaning and effect of.*

FOREIGN JURISDICTION ACT, 1890 AND CHINA AND COREA ORDER IN COUNCIL, 1904, Art. V (3) (2)—(*Contd.*)

The words "and not otherwise" in Article V (3) (2) of the China and Corea Order in Council, 1904, do not import that, if a person is in fact a foreigner, he can only he brought under the Jurisdiction set forth in the Order "in the cases and according to the conditions specified therein." They are not words limiting other provisions by which a person is clearly brought within the jurisdiction. They mean that when a "foreigner," as such, is to be brought within the jurisdiction, he can be so dealt with only in the cases and according to the provisions specified, but when a person is brought under the jurisdiction as "a British-protected person," and the fact that he is a foreigner is only accidental, the limitation contained in the words "and not otherwise" in Art. V (3) (2) does not apply. (*Lord Sumner.*) IBRAHIM *v.* EMPEROR. **(1914) 1 L. W. 989 (994-5) = 18 C. W. N. 705 = 23 I. C. 678 = 15 Cr. L. J. 326 = (1914) A. C. 599 = 4 Cr. L. R. 225 = 3 Con. L. R. 187.**

———**Art. V (4)**—*Foreigners with respect to whom any state, king . . . consents to the exercise of power or authority by His Majesty—Ameer's consent—Implication of, from public recruitment of Afghans.*

It may be reasonably inferred from the practice of enlisting native Afghans in Indian Native Regiments, whereby they are *de facto* brought under the authority of His Majesty, a practice which is a matter of public knowledge, that the Ameer does in fact consent to such enlistment with its consequences. *Quære*, whether this suffices to bring such enlisted Afghans within the terms of Article V (4) of the Order in Council, "foreigners, with respect to whom any state, king, Chief or Government whose subjects . . . they are . . . consents to the exercise of power or authority by His Majesty". (*Lord Sumner.*) IBRAHIM *v.* EMPEROR. **(1914) 1 L. W. 989 (993) = 18 C. W. N. 705 = 23 I. C. 678 = 15 Cr. L. J. 326 = (1914) A. C. 599 = 4 Cr. L. R. 225 = 3 Con. L. R. 187.**

———**Art. 35 (2)**—*Evidence—Admissibility—English Criminal law and practice—Applicability—Limitations.*

Article XXXV (2) of the China and Corea Order in Council, 1904, provides that "subject to the provisions of this order criminal jurisdiction under this order shall, as far as circumstances admit, be exercised on the principles of and in conformity with English law for the time being." In cases in which there are no provisions in the Order material on a point as modifying or excluding the principles and practices of English law, the matter may be justly treated as if English Criminal law and practice applied to the Criminal Jurisdiction of the Supreme Court at Hongkong. Such law and practice are not, however, in all respects and particulars binding on that court, because of the necessary distinction that must, sometimes, be drawn between the criminal procedure of a European country, whose jurisprudence has a defined history extending over many centuries, and that applicable to a British possession in the Far East where a mixed and fluctuating population is subject to the administration of the law by European Judges, whose duty it is to have regard alike to the principles of British justice, and to the necessities of local order. (*Lord Sumner.*) IBRAHIM *v.* EMPEROR. **(1914) 1 L. W. 989 (996) = 18 C. W. N. 705 = 23 I. C. 678 = 15 Cr. L. J. 326 = (1914) A. C. 599 = 4 Cr. L R. 225 = 3 Con. L R. 187.**

———**Art. 35 (2)**—*Statement by accused while in custody—Admissibility in evidence.*

The appellant was a natural-born subject of the Ameer of Afghanistan, who was duly enlisted and enrolled in 1911 in the 126th Beluchistan Regiment of His Majesty's Indain Forces. He took the oath of allegiance to His Majesty and made a solemn declaration undertaking, among other things to go wherever ordered by land or sea. On September 4th, 1912, he was a private serving with the detachment of that regiment which was encamped on Shameen or Shameen island at Canton. On Shameen were situated the various European settlements including the British. The appellant was charged with the murder of his Subadar on that date, tried before the Supreme Court of Hongkong and convicted.

Some 10 or 15 minutes after the Subadar was shot, Major Barrett, the officer commanding the detachment, who had been summoned from a little distance, arrived at the camp. He found the appellant in custody and in bonds. The Major put certain questions to the appellant, to which the latter replied: "Some three or four days he" (the Subadar who was murdered) "has been abusing me; without a doubt I killed him."

On appeal to the Privy Council the appellant contended that his statement to the Major was inadmissible—(*a*) as not being a voluntary statement but obtained by pressure of and fear of consequences; and (*b*) in any case as being the authority and answer of a man in custody to a question put by a person having authority over him as his commanding officer and having custody of him through the subordinates who had made him prisoner. The evidence of the Major, which was uncontradicted, showed that the appellant's statement was not induced either by hope or fear.

Held that, in the circumstances of the case, the trial Judge did not exercise his discretion improperly in admitting the evidence of the appellant's statement.

The words "as far as circumstances admit" in Article XXXV (2) of the China and Corea Order in Council, 1904, may well be applicable to such circumstances in the present case as the facts, that the facilities for formal proof of statutes passed and administrative orders made in various parts of His Majesty's dominions cannot be as copious in Hongkong as they are in this country (England), and further, when, as in the present case, a force detailed for the protection of Europeans resident beyond His Majesty's dominions in the midst of a population, often turbulent and at the particular time disturbed, is itself disturbed by such a crime as the murder of a Subadar by a native private in the ranks, such word may well cover and be designed to cover some necessary departure from the formalities only, as distinguished from the essentials, of English justice. (*Lord Sumner.*) IBRAHIM *v.* EMPEROR.

(1914) 1 L. W. 989 (995-6, 1000) = 18 C. W. N. 705 = 23 I. C. 678 = 15 Cr. L. J. 326 = (1914) A.C. 599 = 4 Cr. L. R. 225 = 3 Con. L. R. 187.

———**Art. 35 (2)**—*Words. "So far as circumstances admit—"—Effect of—Proof—Formalities of—Defect in—Effect of.*

Nor do their Lordships fail to observe that the words "so far as circumstances admit" in Article 35 (2) of the China and Corea Order in Council, 1904, may well be applicable to such circumstances in the present case as the facts, that the facilities for formal proof of Statutes passed and administrative orders made in various parts of His Majesty's dominions cannot be as copious in Hongkong as they are in this country, and further that when, as in the present case, a force detailed for the protection of Europeans resident beyond His Majesty's dominions in the midst of a population, often turbulent and at the particular time disturbed, is itself disturbed by such a crime as the murder of a Subadar by a native private in the ranks, such words may well cover and be designed to cover some necessary departure from the formalities only, as distinguished from the essentials, of English justice (996). (*Lord Sumner.*) IBRAHIM *v.* EMPEROR. **(1914) 1 L, W. 989 = 18 C.W.N. 705 = 23 I. C. 678 = 15 Cr. L. J. 326 = (1914) A. C. 599 = 4 Cr. L. R. 225 = 3 Con. L. R. 187.**

FOREIGN SETTLEMENT.

———*See* SETTLEMENT IN FOREIGN COUNTRIES.

FOREST ACT (VII of 1878).

———*Object and effect of.*

Act VII of 1878 has not the effect of taking away from private owners, and vesting in Government, any rights to drift and stranded timber which they possessed before and at the date of its passing, except in so far as these rights may be affected by their failure to prefer their claims in the manner and within the time prescribed by the Act. The object of the Act is not confiscation, but regulation; and these rights remain as they were, but subject to the important qualification that they can no longer be exercised by proprietors at their own hand and at their own discretion (43). (*Lord Watson.*) AMRITESWARI DEBI *v.* SECRETARY OF STATE FOR INDIA. **(1897) 24 I. A. 33 = 24 C. 504 (515) = 1 C. W. N. 249 = 7 Sar. 101.**

———**S. 45**—*Drift and stranded timber—Government's right to—Neglect to follow procedure prescribed by Act—Effect.*

S. 45 of the Indian Forest Act of 1878 does not transfer to the Government and divest private owners of the right of property in drift und stranded timber which they previously possessed. The provisions of the Act do not affect the right of the Government to take possession of and dispose of drift or stranded timber of which it is the undisputed owner; but the Government has, under these provisions, no title given it to collect timber which may possibly be claimed either by the true owner, or by a riparian proprietor having a julkur right, except upon the condition of its storing such timber and of giving the notices required by the Act. In cases where it neglects to follow that procedure, and treats the timber as its own property, the Government, in the event of its being found that the property does not belong to it, is in no better position than any other trespasser. (*Lord Watson.*) AMRITESWARI DEBI *v.* SECRETARY OF STATE FOR INDIA. **(1897) 24 I.A. 33 (45) = 24 C. 504 (517-8) = 1 C. W. N. 249 = 7 Sar. 101.**

FOREST TRACTS.

———Government's absolute title to—Presumption—Onus of rebutting. *See* CROWN—FOREST TRACTS, ETC.
(1924) 51 I. A. 257 (264-5) = 47 M. 572.

FORFEITURE.

———*Alienation—Forfeiture on—Condition of—Importing of—Permissibility.*

In the compromise there are no words of forfeiture of the estate of the widow on an alienation by her, and it would be a very strong thing and a very unusual thing to import a forfeiture where the parties have not provided for one, and where there is no rule of law attaching forfeiture to a particular act (214). (*Sir Arthur Hobhouse.*) MUSSUMMAT DEBEA SAHODRA *v.* ROY JUNG BAHADOOR.
(1881) 8 I. A. 210 = 8 C. 224 (229) = 6 I. J. 108 = 4 Sar. 294.

———Conviction—Forfeiture accruing upon—Confiscation if implies. *See* CONFISCATION—MEANING OF.
(1872) Sup. I. A. 119 (125).

———*English doctrine of—Basis of.*

The doctrine of forfeiture in England is founded on tenure (239). (*Sir James Colvile.*) JUGGOMOHUN BUKSHEE *v.* R. M. CHOWDRY. **(1867) 11 M. I. A. 223 = 7 W. R. (P. C.) 18 = 1 Suth. 673 = 2 Sar. 246.**

———*Law of—Applicability—Natives convicted of crimes within and beyond limits of Supreme Courts.*

The law of forfeiture was not in force in the case of natives of India convicted of crimes beyond the limits of the Supreme Court, whatever might have been the case within those limits. (*Sir Barnes Peacock.*) RAJAH SALIG RAM *v.* SECRETARY OF STATE FOR INDIA.
(1872) Sup. I. A. 119 (124) = 12 B. L. R. 167 = 18 W. R. 389 = 3 Sar. 191 = 2 P. R. 1872 = 2 Suth. 726.

———Right to declare a—Deed evidencing—Terms of—Constructive enlargement of—Permissibility. *See* TENURE—FORFEITURE. **(1869) 13 M. I. A. 104 (111-2).**

———Suicide—Forfeiture for. *See* SUICIDE—FORFEITURE FOR.

FORFEITURE ACT (XL OF 1857).

———*Forfeiture under—Hindu Law—Reversioner presumptive—Interest of—Effect on.*

The suit was brought by the appellant to recover the property of one *S*, who died in 1853, leaving a widow and daughter, but no male issue. The widow died in 1886, and the appellant, who claimed to be entitled as nearest reversionary heir of *S* to succeed to his estate after his widow's death, brought his suit in the same year. The respondents, who claimed the suit property under a gift by the widow of *S*, pleaded *inter alia*, that, as the appellant's father had been convicted in 1862 of offences under Act XL of 1857, and his whole property and rights were forfeited to the Government, the appellant had no right to sue. It was found, however, that *S* died separate in estate from the appellant's branch of the family.

Held, that the plea based on the forfeiture of the property and rights of the appellant's father was without substance (150-1).

The appellant's father, when he was convicted, had no property or right in the estates that could be forfeited. He could only be entitled as heir to *S* upon the death of his widow if he survived her (151). (*Sir Richard Couch.*) BEJAI BAHADUR SINGH *v.* BHUPENDAR BAHADUR SINGH. **(1895) 22 I. A. 139 = 17 A. 456 (473) = 6 Sar. 593.**

FORFEITURE ACT (IX OF 1859).

———*Possession — Decree of Special Commissioner—Recognition by Government officials of propriety of—Effect—Decree-holder's right to property.*

Where, by a decree of the Special Commissioner's Court, established under Act IX of 1859, a decree was made directing property to be made over to a claimant, the proceedings of officials making over that property were, when followed by a suit against Government to obtain possession of a portion of that property, in which suit the Government raised no question as to the propriety of the decree, or of the making over of the bulk of the property under it, *held* to bind the Government as to the right of the decree-holder to the property. SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* MUSSAMMAT KHAN ZADI. **(1870) 5 B. L. R. 312 = 2 Sar. 570 = 2 Suth. 322.**

———Provisons of—Nature of—General and special provisions—Distinction. *See* FORFEITURE ACT IX OF 1859—PURPOSE OF. **(1874) 1 I. A. 167 (174-5).**

———*Purpose of—Provisions of—Nature of — General and special provisions—Distinction.*

The Forfeiture Act IX of 1859 was passed for the special purpose of providing a Court for the adjudication of claims by innocent persons upon the property of rebels which had been forfeited to the Government. It established a special Court, consisting of three Commissioners, and suspended the action of all other Courts in respect of such claims. Special modes of proceeding are established, and various clauses in the Act relate to that special course of procedure. But there are provisions in the Act which relate not merely to the Court so established and the procedure under it, but

FORFEITURE ACT (IX OF 1859)—(*Contd.*)

are of a general character, and apply to the property forfeited in whatever Court the claims may be made regarding it. One of those clauses is cl. 16. Ss. 17 and 18 are also clauses of a general nature, and so is cl. 20 (174-5). (*Sir Montague E. Smith.*) MOHUMMUD BAHADOOR KHAN *v.* THE COLLECTOR OF BAREILLY. **(1874) 1 I. A. 167 = 13 B. L. R. 392 = 21 W. R 318 = 3 Sar. 363.**

———*Repeal of, by subsequent legislation—Extent of.*

It was contended that the Forfeiture Act IX of 1859 was of a temporary nature, and that its provisions fell with the purpose for which it was passed. But the Act is not made temporary by any enactment. It was in part repealed by the general repealing statute of 1868, that is Act VIII of 1868, and the mode of repeal is significant. It is not altogether repealed, for the general clauses of the Act, Ss. 16, 17, 18, and 20, are saved from the operation of the repealing Act. The repeal and saving are both found in the schedule to Act VIII (175). (*Sir Montague E. Smith.*) MOHUMMUD BAHADOOR KHAN *v.* THE COLLECTOR OF BAREILLY.

(1874) 1 I. A 167 = 13 B. L. R. 392 = 21 W. R. 318 = 3 Sar. 363.

———*Retrospective operation of—Hardship in particular cases.*

It was urged that this Act (Forfeiture Act IX of 1859) was not retrospective. Undoubtedly counsel was able to suggest cases in which hardships might arise to persons who would not have a full year to claim before they would be barred under the provisions of this Act, or even when the year might have elapsed between the date of the confiscation and the passing of the Act. Although hard cases may arise, their Lordships consider that the Act is plainly retrospective in its operation, and includes claims to forfeited property which had been confiscated previously to its passing. (176-7) (*Sir Montague E. Smith.*) MOHUMMAD BUHADOOR KHAN *v.* COLLECTOR OF BAREILLY.

(1874) 1 I. A. 167 = 13 B. L. R. 392 = 21 W. R. 318 = 3 Sar. 363.

———**S. 20, Proviso**—*Innocent party aggrieved by forfeiture or seizure—Suit by—Applicability of proviso to.*

It was argued that the limitation prescribed by S. 20 of the Forfeiture Act IX of 1859 could be held only to apply to some right, title, and interest—using the words of the ordinary execution Acts—of the rebel himself. It is obvious that this cannot be the right construction of the Act. It would be a wholly insensible enactment if it were, because the Act assumes that the interest of the rebel is forfeited, and it is only in respect of claims other than his that this limitation could operate. The Act is declared not to affect the rights of parties in respect of the property seized. "The property" is the thing seized as forfeited, whether it be land or a jewel, and the right referred to is the right of an innocent party, other than the right of the rebel, in that property (175-6). (*Sir Montague E. Smith.*) MOHUMMUD BUHADOOR KHAN *v.* THE COLLECTOR OF BAREILLY.

(1874) 1 I. A. 167 = 13 B. L. R. 392 = 21 W.R. 318 = 3 Sar. 363.

———*Limitation prescribed by—Exemption in favour of persons under disabilities—Implication by equitable construction of.*

It was argued that a saving with respect to parties under disabilities must be taken to be by equitable construction implied in this clause (S. 20 of Forfeiture Act IX of 1859). It is impossible that any Court can add to the statute that which the Legislature has not done. The limitation is enacted in plain and absolute terms. The Legislature has not thought fit to extend the period which it has prescribed to persons under disability. Where such enlargements have been intended, they are found in the Acts containing the limitation, as in the general Act (XIV of

FORFEITURE ACT (IX OF 1859)—(*Contd.*)

1859). This Act contains no such saving, and their Lordships would be legislating and not interpreting the statute if they were to introduce it (176). (*Sir Montague E. Smith.*) MOHUMMUD BUHADOOR KHAN *v.* COLLECTOR OF BAREILLY. **(1874) 1 I. A. 167 = 13 B. L. R. 392 = 21 W. R. 318 = 3 Sar. 363.**

———*Limitation prescribed by—Limitation Act of 1859—Provisions of, relating to disabilities—Importation into S. 20 of Act IX of 1859.*

It was said that the clauses in the general statute, the Limitation Act of 1859, relating to disabilities might be imported into this Act (Forfeiture Act IX of 1859), but this cannot properly be done. Act XIV of 1859 is a Code of limitation of general application. This Act is of a special kind and does not admit of those enactments being annexed to it (176). (*Sir Montague E. Smith.*) MOHUMMUD BUHADOOR KHAN *v.* COLLECTOR OF BAREILLY.

(1874) 1 I. A. 167 = 13 B. L.R. 392 = 21 W. R. 318 = 3 Sar. 363.

———*Nature of—Substantive enactment and not mere proviso.*

It is true that this limitation (the limitation prescribed by S. 20 of the Forfeiture Act IX of 1859) is introduced by way of proviso. But their Lordships think that, looking at the various parts of the Act and gathering the purpose and intention of the Legislature from the whole, this was a substantive enactment; and that, although it appears under the form of a proviso, it was a limitation intended by the Legislature to apply to all suits bronght by any persons in respect of forfeited property (175). (*Sir Montague E. Smith.*) MOHUMMUD BUHADOOR KHAN *v.* COLLECTOR OF BAREILLY.

(1874) 1 I.A. 167 = 13 B.L.R. 392 = 21 W.R. 318 = 3 Sar. 363.

———*Suit in Civil Court in respect of forfeited property—Applicability of proviso to.*

It was suggested that this limitation (the limitation prescribed by the Proviso to S. 20 of the Forfeiture Act of 1859) was meant to apply only to claims prosecuted before the Court of Commissioners established by the Act, and it was contended that the Act was of a temporary nature, and that its provisions fell with the purpose for which it was passed, But the Act is not made temporary by any enactment. It was in part repealed by the general repealing statute of 1868, that is Act VIII of 1868, and the mode of repeal is significant. It is not altogether repealed, for the general clauses of the Act, Ss. 16, 17, 18 and 20, are saved from the operation of the repealing Act. The repeal and saving are both found in the Schedule to Act VIII. It is clear from their being thus saved that these clauses were at that time considered by the Legislature to be of a general nature, affecting claims to property which had been forfeited before whatever Court those claims might be prosecuted (175). (*Sir Montague E. Smith.*) MOHUMMUD BUHADOOR KHAN *v.* COLLECTOR OF BAREILLY. **(1874) 1 I.A. 167 = 13 B.L.R. 392 = 21 W. R. 318 = 3 Sar. 363.**

———*Suit in Civil Court in respect of forfeited property by third party aggrieved by forfeiture—Applicability of proviso to—Limitation for—Plaintiff under disability.*

The suit was brought by the appellants against the Collector of Bareilly and the purchasers from the Government, to recover certain landed property in Bareilly, and the question for decision was whether the suit was barred by limitation.

The appellants claimed the property as the heirs of their father, *T*, who died on 22—4—1854. The father of the appellants was on his death entitled to the property sued for,

FORFEITURE ACT (IX OF 1859)—(*Contd.*)

Before and at the time of his death of *T*, however, one *B* was in the actual possession of the property. *B* became a rebel, and in May, 1858, his property was seized by the Government as forfeited on the ground of his rebellion, At the time of their father's death, and of the forfeiture of the property, the appellants were minors. The elder appellant became ot age in 1861, and the younger in February, 1864. The suit was brought on the 1st of May, 1865, and at that time the elder appellant had been of age for 4 years, and the younger appellant for upwards of a year.

The Government relied upon the proviso to S. 20 of the Forfeiture Act IX of 1859, and the question was whether it applied to the case, and barred the suit.

Held, affirming the High Court, that the proviso to S. 20 of Act IX of 1859 applied to the case, and that the suit was barred under it. (*Sir Montague E. Smith.*) MOHUMMUD BUHADOOR KHAN *v.* COLLECTOR OF BAREILLY.

(1874) 1 I.A. 167 = 13 B.L.R. 392 = 21 W. R. 318 = 3 Sar. 363.

FOUJDARY COURT.

———*See* BENGAL ACTS—AFFRAYS ACT; AND CRIMINAL PROCEDURE CODE, S. 145.

———*Nature and jurisdiction of.*

The Foujdary Court is simply a Police Court, and so far deals with the possession that it prevents the occupation being disturbed by violence (423). (*Mr. Pemberton Leigh.*) KADIR BUKHSH KHAN *v.* MUSSUMATAIN FUSSEEH-OON-NISSA.

(1853) 5 M. I. A. 413 = 1 Suth. 241.

———*Possession proceedings — Jurisdiction in—Title—Possession—Fact of—Decision of.*

The jurisdiction of the Foujdary Court is confined to cases of possession only. It is beyond their province to inquire into and ascertain the title to landed property (309). (*Dr. Lushington.*) MAHARAJAH MOHESHUR SING *v.* THE BENGAL GOVERNMENT. (1859) 7 M.I.A. 283 = 3 W.R. 45 = 1 Suth. 325 = 1 Sar. 645.

FRAUD.

———*Argument against, founded on omission to observe precautions simple and obvious against its discovery—Force of.*

It is asked with force, "could a guilty person have elaborated a fraud on the face of the deed and have left the key to it on the back?" This is a familiar argument whenever frauds for any reason can be readily penetrated, and it is common experience that persons, from haste or overconfidence or lack of imagination or what not, do omit sometimes the most simple and obvious precautions (111-2). (*Lord Sumner.*) SOLICITOR, *In the matter of a.*

(1922) 31 M.L.T. 107 (P.C.).

———*Assumption of, and of dishonesty, on conjecture only—Propriety of.*

Fraud and dishonesty are not to be assumed upon conjecture, however probable (18). (*Mr. Justice Erskine.*) SHEIKH IMDAD ALI *v.* MUSSUMAT KOOTBY BEGUM.

(1842) 3 M.I.A. 1 = 6 W.R. (P.C.) 24 = 1 Suth. 124 = 1 Sar. 227.

———Auction sale—Purchase at—Fraud on the public—If and when a. *See* CONTRACT—WAGERING CONTRACT—FRAUD OF WINNER

(1850) 5 M.I.A. 100 (132-3).

———*Charges of, and of collusion—Proof of—Complete unravelling and clearing up of every artifice or contrivance resorted to unnecessary.*

Charges of fraud and collusion must, no doubt, be proved by those who make them—proved by established facts or inferences legitimately drawn from those facts taken together as a whole. Suspicions and surmises and conjecture are not permissible substitutes for those facts or those inferences, but that by no means requires that every puzzling artifice or contrivance resorted to by one accused of fraud must necessarily be completely unravelled and cleared up and made plain before a verdict can be properly found against him. If this were not so, many a clever and dexterous knave would escape. (*Lord Atkinson.*) SATISH CHANDRA CHATTERJI *v.* KUMAR SATISH KANTHA ROY.

(1923) 33 M.L.T. 325 (P.C.) = A.I.R. 1923 P.C. 73 = 73 I. C. 391 = 45 M. L. J. 363 (369).

———*Claim founded upon, against defrauded party—Court if and when will give effect to.*

It must be observed at the outset, that the suit to be dealt with is one in which the plaintiffs (respondents) seek to establish a right against the principal defendant (appellant), and that they invoke the aid of the Court to give effect against equity and good conscience to a claim founded upon fraud. It must be conceded, that it is only by force of positive statutory law that it can be obligatory upon the Courts to give their assistance in such a case to the fraudulent plaintiffs against the defrauded defendants (521). (*Sir Montague E. Smith.*) MUSSUMUT BUHUNS KOWAR *v.* LALLA BUHOREE LALL. (1872) 14 M.I.A. 496 = 18 W.R. 157 = 10 B.L.R. 159 = 2 Suth. 575 = 3 Sar. 69.

———Compromise—Execution of, procured by fraud. *See* COMPROMISE—EXECUTION OF.

———Compromise—Fraud vitiating. *See* COMPROMISE—FRAUD VITIATING.

———Contract—Fraud. *See* CONTRACT—FRAUD.

———Contract—Setting aside of, on ground of fraud. *See* CONTRACT—SETTING ASIDE OF.

———Decree—Fraud vitiating. *See* DECREE—FRAUD VITIATING.

———Deed — Execution of—Fraud in procuring. *See* DEED—EXECUTION OF.

———Deed—Fraud in regard to. *See* DEED—FRAUD IN REGARD TO.

———*Imputation of, against deceased person—Propriety.*

P is dead; and, after his death, is it to be presumed that he put the answer of the plaintiff, without her authority, on record; that is, that he committed a fraud on the Court, and continued a fraud on her? A court should not impute fraud (105). (*Sir James Colvile.*) SOORENDRONATH ROY *v.* MUSSUMAT HEERAMONEE BURMONEAH.

(1868) 12 M. I. A. 81 = 10 W. R. 35 = 1 B. L. R. (P. C.) 26 = 2 Suth. 147 = 2 Sar. 372.

———*Imputation of gross, upon suspicion only—Propriety.*

Gross fraud is not to be imputed upon suspicion only. Unless the charge be proved parties are not to be released from agreements entered into by their solemn acts (246). (*Mr, Justice Bosanquet.*) RAJUNDER NARAIN RAE *v.* BIJOY GOVIND SING. (1839) 2 M. I. A. 181 = 1 Moo. P. C. 117 = 1 Sar. 175.

———*Penalty for—Consequences direct of fraud in question—Making party liable for other penalties than those which are the—Propriety.*

Their Lordships are certainly not prepared to assist in providing any possible benefit for a course of conduct so dishonest as that revealed in this case, but, on the other hand, it is not right to punish a man for fraudulent behaviour by making him suffer other penalties than those which are the direct consequence of his fraud. (*Lord Buckmaster.*) TARINI CHARN SARKAR *v.* BISHEN CHAND.

(1917) 23 M. L. T. 147 = 7 L.W. 315 = 27 C. L. J. 303 =

FRAUD—(*Contd.*)

22 C. W. N. 505=(1918) M. W. N. 295=4 P. L. W. 249=16 A. L J. 271=20 Bom. L. R. 553=44 I. C. 304=34 M. L. J. 361 (368).

———Plea of. *See* PRACTICE—PLEADINGS—FRAUD.

———Presumption of—Decision based merely on—Propriety. *See* HINDU LAW—WILL—VALIDITY—FRAUD.

(1847) 4 M. I. A. 259 (284).

———*Presumption of—Propriety.*

Courts are not to presume that parties would commit a crime (350). (*Lord Campbell.*) RAMLOLL THACKOORSEYDASS *v.* SOOJUMNULL DHONDMULL.

(1848) 4 M. I. A. 339=6 Moo. P. C. 300=Perry, O. C. 193=1 Sar. 361.

———Courts cannot presume fraud (165). (*Dr. Lushington.*) BUNWAREE LAL *v.* MAHARAJAH HETNARAIN SINGH. **(1858) 7 M. I. A. 148=4 W. R. 128=1 Suth. 307=1 Sar. 610.**

———*Presumption without evidence of—Propriety.*

Fraud is not to be presumed, and must be proved by satisfactory evidence (792). NAWAB SYED ALLEE SHAH *v.* MUSST. AMANEE BEGUM. **(1873) 2 Suth. 790=19 W. R. 149.**

———Public sale—Fraud vitiating—Effect of—Sale reduced to private sale. *See* SALE OF LAND FOR REVENUE ARREARS ACT I OF 1845—REVENUE SALE—FRAUDULENT PURCHASE AT.

(1866) 10 M. I. A. 540 (555-6, 559).

———*Public sale—Fraudulent purchase at—Effect of, on purchaser's rights.*

Fraud vitiates the most solemn proceedings of courts of justice. Though therefore a Government sale for arrears of revenue gives a title against all the world, yet a fraudulent purchase at such sale by a mortgagee will not defeat the equity of redemption. The principle embodying this distinction pervades the law. Under sales in market overt, the purchaser acquired a good title against all the world; but this protection did not extend to a fraudulent buyer who knew that the seller had no real authority to sell. If the thief who sold in market overt purchased the article, the defrauded owner could then assert his title against such reacquisition. The same principle applies to Bills of Exchange and other negotiable instruments, made or which become payable to bearer, and pass by delivery (556-7). (*Sir Edward V. Willams.*) NAWAB SIDHEE NUZUR ALLY KHAN *v.* RAJAH OJOODHYARAM KHAN.

(1866) 10 M. I. A. 540=5 W. R. (P. C.) 83=1 Suth. 635=2 Sar. 198.

———*Suspicion of, everywhere—Tendency of judges in India as to.*

Judges in India are perhaps somewhat too apt to see fraud everywhere (602). (*Sir James W. Colvile.*) MOONSHEE BUZLOO RUHEEM *v.* SHUMSOONNISSA BEGUM.

(1867) 11 M. I. A. 551=8 W.R. (P. C.) 3=2 Suth. 59=2 Sar. 259.

———*Transaction tainted by—Court's duty in case of.*

A court will strip off all disguises from a case of fraud, and look at the transaction as it really is (557). (*Sir Edward Williams,*) NAWAB SIDHI NUZUR ALLY KHAN *v.* RAJAH OJOODHYARAM KHAN.

(1866) 10 M. I. A. 540=5 W. R. (P. C.) 83=1 Suth. 635=2 Sar. 198.

———*Unconscientious means and unfair advantage if imply.*

Unconscientious means are mentioned and unfair advantage is mentioned. *Quaere*, whether this implies fraud (153). (*Lord Shaw.*) BAL GANGADHAR TILAK *v.* SHRINIVASA PANDIT. **(1915) 42 I. A. 135=39 B. 441 (469)=17 Bom. L. R. 527=19 C. W. N. 729=22 C. L. J. 1=13 A. L. J. 570=18 M. L. T. 1=(1915) M.W.N. 554=2 L. W. 611=29 I. C. 639=29 M. L. J. 34.**

FRAUDULENT.

———*Meaning—Transaction not at all dishonest in its nature if fraudulent.*

The term "fraudulent" has, by rather an happy use of language, been applied by Courts of Equity to transactions which are not at all dishonest in their nature, but are only such as the law will not allow (18). (*Lord Hobhouse.*) KHOO KWAT SIEW *v.* WOOI TAIK HWAT.

(1891) 19 I. A. 15=19 C. 223 (231)=6 Sar. 98.

FRAUDULENT TRANSFER.

———*See* TRANSFER OF PROPERTY ACT, S. 53.

FUNERALS.

———*Amount allowed for—Difference in various countries as regards.*

The sums which have been allowed for the obsequies of the deceased and religious acts exceed a sixth of the property of the deceased, although he left behind him eight sons and two daughters. This will not surprise persons who are acquainted with the history of countries where the Roman Catholic religion has been established; in those countries a much larger proportion of men's substance was frequently directed to what we should now call superstitious uses. By the laws, for instance, now existing in Spain, a person, whatever his family may be, may give to the Church one-fifth of his fortune. I cannot, however, find upon the evidence, any case in which in India more than 3 per cent. has been expended in obsequies and works, and the persons on account of whom in those cases such allowances have been made were men of superior caste and larger fortune than the deceased (247-8). (*Lord Wynford.*) RAMTONOO MULLICK *v.* RAMGOPAUL MULLICK.

(1829) 1 Knapp. 245=1 Sar. 6.

GARO HILLS ACT XXII OF 1869.

———Intra vires *of Governor-General in Council.*

Act XXII of 1869 was, in its general scope, within the legislative power of the Govenor-General in Council (1902). (*Lord Selborne.*) QUEEN *v.* BURAH.

(1878) 5 I. A. 178=4 C. 172 (179)=3 C. L. R. 197=3 Suth. 556=3 Sar. 834.

———**S. 4**—*Courts of Civil and Criminal Judicature—Meaning of.*

Quaere, whether "the Courts of Civil and criminal Judicature" mentioned in S. 4 were only the courts of original jurisdiction established under the Indian Regulations and Acts (189). (*Lord Selborne.*) QUEEN *v.* BURAH.

(1878) 5 I. A. 178=4 C. 172 (176)=3 C. L. R. 197=3 Sar. 834=3 Suth. 556.

———**Ss. 5 and 4**—*High Court of Calcutta—Jurisdiction of, over territories within operation of Act—Effect on—Jurisdiction excluded.*

Act XXII of 1869, according to its true construction, excludes the jurisdiction of the Calcutta High Court as to the territories brought within the operation of the Act (Garo Hills, and Khasi and Jaintia Hills) (189).

The contention that the jurisdiction of the High Court was not so excluded is founded on the proposition that S. 4 of Act XXII of 1869 purports to remove the Garo Hills, not from the jurisdiction of the High Court, established by Her Majesty's letters patent under the authority of Imperial statutes, but only from that of the local courts, constituted by the regulations of the Bengal or by Acts of the Indian Legislature. (189).

Assuming (but not deciding) that "the Courts of Civil and Criminal Judicature," mentioned in S. 4 of the Act of 1869, were only the courts of original jurisdiction established under the Indian Regulations and Acts, their Lordships think that the supposed consequence does not follow. It may be possible that under the terms of the 8th and 9th

GARO HILLS ACT XXII OF 1869, Ss. 5 and 4— (*Contd.*)

sections of the High Courts Act (24 & 25 Vict., c. 104), together with the 27th and 28th sections of the Royal Letters Patent (1865), under which the Calcutta High Court is constituted, appeals might have gone to that court from criminal tribunals of first instance, established by the Lieutenant-Governor of Bengal in the Garo, or the Khasi aud Jaintia Hills, if Act XXII of 1869 had made no other provision for such appeals. But S. 5 of that Act, distinctly authorised the Lieutenant-Governor to appoint tribunals, not of first instance only, but also of "Reference and Appeal"; and, by the notification now in question, he has done so, giving the powers of the High Court to the Commissioner of Assam, with an ultimate controlling authority to himself. Unless, therefore, the whole Act of 1869, or S. 9 of that Act, was void, as being in excess of the legislative powers of the Governor-General in Council, the jurisdiction of the High Court has been excluded (189-90). (*Lord Selborne.*) QUEEN *v.* BURAH. **(1878) 5 I.A. 178 = 4 C. 172 (176-7) = 3 C.L.R. 197 = 3 Sar. 834 = 3 Suth. 556.**

———**S. 9**—Intra vires *or* ultra vires *of Governor-General in Council.*

In the year 1869, the Indian Legislature passed Act XXII of 1869 removing the Garo Hills from the jurisdiction of the Courts of the Civil and Criminal Judicature constituted by the regulations of the Bengal Code, and vesting the administration of Civil and Criminal Justice within the same territory, in such officers as the Lieutenant-Governor of Bengal might, for the purpose of tribunals of first instance, or of reference and appeal, from time to time appoint. That Act was to come into force on such day as the Lieutenant-Governor should direct. By S. 9 of the Act, the Lieutenant-Governor was empowered to extend all or any of the provisions of the Act to the Khasi and the Jaintia Hills. The Lieutenant-Governor accordingly fixed the time at which the Act should come into operation in the Garo Hills, and subsequently he extended all the provisions of the Act to the other two Hills, declaring the administration of Civil and Criminal Justice to be vested in the Commissioner of Assam, and adding that the Commissioner should exercise the powers of the High Court. Under that Act, and those notifications, the respondent was in 1876 tried by the Deputy Commissioner of Jaintia Hills upon a charge of murder. He was convicted and sentenced to death, but the sentence was commuted by the Chief Commissioner of Assam to transportation for life. The respondent presented a petition to the High Court at Calcutta ; and majority of the judges decided that the case fell within their appellate jurisdiction ; and they sent for the record of the proceedings with a view to an adjudication thereon. From that decision the appeal before their Lordships was, by special leave, brought.

The ground on which the High Court assumed jurisdiction was that S.9 of Act XXII of 1869, purporting to authorise the Lieutenant-Governor to extend the Act to the Khasi and Jaintia Hiils, was in excess of the legislative powers of the Governor-General in Council on the ground that S. 9 was not legislation, but a delegation of legislative power.

Held, that the doctrine of the majority of the High Court was erroneous, and that it rested upon a mistaken view of the powers of the Indian Legislature, and indeed of the nature and principles of legislation (193).

What has been done is this. The Governor-General in Council has determined, in the due and ordinary course of legislation, to remove a particular district from the jurisdiction of the ordinary courts and offices, and to place it under new courts and offices, to be appointed by and responsible to the Lieutenant-Governor of Bengal ; leaving it to the Lieutenant Governor to say at what time that change shall take place ; and also enabling him, not to make what laws

GARO HILLS ACT XXII OF 1869, S. 9—(*Contd.*)

he pleases for that or any other district, but to apply by public notification to that district any law, or part of a law, which either already was, or from time to time might be, in force, by proper legislative authority, "in the other territories subject to his Government." The Legislature determined that, so far, a certain change shall take place ; but that it was expedient to leave the time, and the manner, of carrying it into effect to the discretion of the Lieutenant-Governor ; and also, that the laws which were or might be in force in the other territories subject to the same Government were such as it might be fit and proper to apply to this district also ; but that, as it was not certain that all those laws, and every part of them, could with equal convenience be so applied, it was expedient, on that point also, to entrust a discretion to the Lieutenant-Governor. This having been done as to the Garo Hills, what was done as to the Khasi and Jaintia Hills ? The Legislature decided that it was fit and proper that the adjoining districts of the Khasi and Jaintia Hills should also be removed from the jurisdiction of the existing Courts, and brought under the same provisions with the Garo Hills, not necessarily and at all events, but if and when the Lieutenant-Governor should think it desirable to do so ; and that it was also possible that it might be expedient that not all, but some only, of those provisions should be applied to that adjoining district. And accordingly the Legislature entrusted, for these purposes also, a discretionary power to the Lieutenant-Governor (194-5).

It is a fallacy to speak of the powers thus conferred upon the Lieutenant-Governor (large as they undoubtedly are) as if, when they were exercised, the efficacy of the acts done under them would be due to any other legislative authority than that of the Governor-General in Council. Their whole operation is, directly and immediately, under and by virtue of the Act XXII of 1869 itself. The proper Legislature has exercised its judgment as to place, persons, laws, powers ; and the result of that judgment has been to legislate conditionally as to all these things. The conditions having been fulfilled, the legislation is now absolute (195). (*Lord Selborne.*) QUEEN *v.* BURAH.

(1878) 5 I.A. 178 = 4 C. 172 (181-2) = 3 Sar. 834 = 3 C. L. R. 197 = 3 Suth. 556.

GENERAL CLAUSES ACT I OF 1868.

———**S. 6 (b)**—*Words*—"*Thing done*"—*Acknowledgment of liability if a—Effect of such acknowledgment.*

An acknowledgment of liability only extends the period of limitation within which a suit must be brought and does not confer title, and is not a "thing done" within the meaning of S. 6 of the General Clauses Act (84). (*Sir John Edge.*) LALA SONI RAM *v.* KANHAIYA LAL.

(1913) 40 I. A. 74 = 35 A. 227 (236) = 13 M. L. T. 437 = (1913) M.W. N. 470 = 17 C.L.J. 488 = 17 C.W.N. 605 = 11 A. L. J. 389 = 13 Bom. L.R. 489 = 19 I.C. 291 = 25 M. L. J. 131.

GHARBARI GOSAVIS.

———*Who are—Law governing—Hindu Law—Custom.*

The Gharbari Gosavis are a fraternity within the Sudra caste. Gharbari means house-holder, and the literal translation of the two words is "house-holder ascetics"—that is, they are married ascetics, having certain of the customs and practices of ascetics, necessarily modified by the fact of marriage and its consequences. Except so far as their particular customs apply, they are governed by the usual law as to Hindoos, which in the province of Berar is the same as the Hindu law in the Presidency of Bombay (356-7.) (*Lord Phillimore.*) HARIGIR KISANGIR GOSAVI *v.* BHARATHI VISHNU BHARATHI GOSAVI,

(1925) 22 L. W. 355 = (1925) M. W. N. 414 = 88 I. C. 343 = A. I. R. 1925 P.C. 127 = 21 N.L.R. 127.

GHARBARI GOSAVIS—(*Contd.*)

———*Adoption among—Initiation if means, or is necessary for.*

It is not necessary to determine whether initiation means adoption or whether in this sect (of Gharbari Gosavis) the ceremony of initiation is a necessary factor in an adoption (360). (*Lord Phillimore.*) HARIGIR KISANGIR GOSAVI *v.* BHARATHI VISHNU BHARATHI GOSAVI.

(1925) 22 L.W. 355=(1925) M. W. N. 414= 21 N. L. R. 127=88 I.C. 343=A.I.R. 1925 P. C. 127.

———*Disciple—Creation of a full—Ceremonies necessary for.*

In the sect. of Gharbari Gosavis the ceremonies for the creation of a full disciple are, apparently, two, the initial sharing and the subsequent ceremony performed after the lapse of a period of years, of Boja Hom (359). (*Lord Phillimore.*) HARIGIR KISANGIR GOSAVI *v.* BHARATHI VISHNU BHARATHI GOSAVI. **(1925) 22 L. W. 355= (1925) M. W. N. 414=21 N. L. R. 127=88 I. C. 343= A. I. R. 1925 P. C. 127.**

———Adoption among, in Hindu law sense with the usual consequences—Practice of—Recent introduction of, in the sect. (*Lord Phillimore.*) HARIGIR KISANGIR GOSAVI *v* BHARATHI VISHNU BHARATHI GOSAVI.

(1925) 22 L. W. 355 (357)=(1925) M. W. N. 414= 21 N. L. R. 127=88 I. C. 343= A. I. R. 1925 P. C. 127.

———Adoption in Hindu law sense—Practice of—Not precluded by custom of inheritance of disciple to preceptor. *See* GHARBARI GOSAVIS—INHERITANCE ETC.

(1925) 22 L. W. 355 (357).

———*Inheritance of disciple to preceptor—Custom of—Adoption in Hindu law sense if precluded by.*

In the sect of Gharbari Gosavis there may be direct inheritance by the disciple to his preceptor. But this peculiar form of inheritance does not preclude the ordinary Hindu practice of adoption with the usual consequence. Adoption in the usual sense, however, may, as some witnesses suggest, be of recent introduction as a practice in this sect (357). (*Lord Phillimore.*) HARIGIR KISANGIR GOSAVI *v.* BHARATHI VISHNU BHARATHI GOSAVI.

(1925) 22 L. W. 355=(1925) M. W. N. 414= 21 N. L. R. 127=88 I. C. 343= A. I. R. 1925 P. C. 127.

———*Inheritance by disciple to preceptor without adoption—Right conferred by.*

It would appear that in this sect (of Gharbari Gosavis) there may be direct inheritance by the disciple (chela) to his preceptor (guru). If this took place without adoption it may be that it would confer upon the disciple no right of inheritance to the collaterals of his guru. This is a point, however, which it is not necessary for their Lordships to decide (357). (*Lord Phillimore.*) HARIGIR KISANGIR GOSAVI *v.* BHARATHI VISHNU BHARATHI GOSAVI.

(1925) 22 L. W. 355=(1925) M. W. N. 414= 21 N. L. R. 127=88 I. C. 343=A. I. R. 1925 P. C. 127.

———Law governing—Hindu Law—Custom. *See* GHARBARI GOSAVIS—WHO ARE.

GHATWAL.

Jagir appertaining to office of—Possession of, by person not entitled to office.

———*Rights acquired by.*

If a person enters into possession of a ghatwali jagir, not having obtained the appointment which is required to make him the lawful holder of it, his possession is without title at all, and until by prescription or otherwise he acquires a right which he is capable of alienating, the lack of a sanad of appointment is really the proof of the defect of his title, not of the completeness of it. (*Lord Sumner.*) NARAYAN

GHATWAL—(*Contd.*)

Jagir appertaining to office of—Possession of, by person not entitled to office (*Contd.*)

SINGH *v.* NIRANJAN CHAKRAVARTI.

(1923) 51 I. A. 37 (56-7)=3 Pat. 183= A. I. R. 1924 P. C. 5=28 C. W. N. 351= 34 M. L. T. 27=79 I. C. 825=5 Pat. L. T. 171

Lands held by.

———*See* GHATWALLY TENURE.

Office of—Nature and duties of.

———Personal performance of services—Necessity or otherwise of—Alienability of lands held by ghatwal—Review of law as to. (*Lord Sumner.*) NARAYAN SINGH *v.* NIRANJAN CHAKRAVARTI. **(1923) 51 I. A. 37 (50-4)= 3 Pat. 183=A. I. R. 1924 P. C. 5=28 C. W. N. 351= 34 M. L. T. 27=79 I. C. 825=5 Pat L. T. 171.**

Office of right to.

———Personal unfitness in heir—Appearance of—Effect. *See* GHATWALLY TENURE—FORFEITURE OF—GROUNDS—SERVICES. **(1923) 51 I A. 37 (58)=3 P. 183.**

Resumption invalid by Government of—Mesne profits payable by Government in case of.

———Right to, of ghatwal and of zemindar—Apportionment of, between them. *See* GHATWALLY TENURE—RESUMPTION OF—GOVERNMENT.

Services of.

———*Abolition or discharge formal of—Performance thereof by Government—Distinction.*

There is a clear distinction between the case where the Government thinks fit itself to perform duties theretofore performed by ghatwals and the case where the ghatwalli service is formally abolished or discharged. (*Lord Sumner.*) NARAYAN SINGH *v.* NIRANJAN CHAKRAVARTI.

(1923) 51 I. A. 37 (69)=3 Pat. 183= 28 C. W. N. 351=34 M. L. T. 27= 5 Pat. L. T. 171=79 I. C. 825=A. I. R. 1924 P. C. 5.

———*Kharakpur district—Public service in—Termination of.*

In the Kharakpur district it does not appear that there has been any formal termination by law of ghatwali public services. (*Lord Sumner.*) NARAYAN SINGH *v.* NIRANJAN CHAKRAVARTI. **(1923) 51 I. A. 37 (69)=3 Pat. 183= 28 C. W. N. 351=34 M. L. T. 27=5 Pat. L. T. 171= 79 I. C. 825=A. I. R. 1924 P. C. 5.**

———*Nature of—Right in Ghatwally villages—Nature and extent of.*

After referring to various reports describing the nature and incidents of the *Ghatwally* tenure in different districts, their Lordships concluded: "Though the nature and extent of the right of the *Ghatwals* in the *Ghatwally* villages may be doubtful, and probably differed in different districts and in different families, there clearly was some ancient law or usage by which these lands were appropriated to reward the services of *Ghatwals*; services which, although they would include the performance of duties of police, were quite as much in their origin of a military as a civil character, and would require the appointment of a very different class of persons from ordinary police officers" (125). (*Mr. Pemberton Leigh.*) RAJA LEELANUND SING BAHADOOR *v.* GOVERNMENT OF BENGAL. **(1855) 6 M.I. A. 101= 4 W. R. 77 (P. C.)=1 Suth. 248=1 Sar. 505.**

———Non-performance of, for a long time—Incidents of tenure if altered by. *See* GHATWALS—LANDS HELD BY—MOCURRARY ISTIMRAREE ETC.

(1923) 51 I. A. 37 (68)=3 Pat. 183.

———Personal performance of—Necessity or otherwise of. *See* GHATWAL—OFFICE OF.

(1923) 51 I. A. 37 (50 4)=3 Pat. 183.

GHATWAL—(*Contd.*)

Services of—(*Contd.*)

———Repudiation express of obligation of—Incapacity of heir to render even vicarious service—Forfeiture of tenure on ground of. *See* GHATWALLY TENURE—FORFEITURE OF. **(1923) 51 I. A. 37 (58)=3 Pat. 183.**

———*Termination of—Zemindar's power of—Compromise with Government by him and substitution of rent for services—Effect.*

As long as the ghatwals were ready and willing to render services if required, the Zemindar could not put an end to their services, whether required or not, even by compromising with the Government and substituting a rent for the former services, for, as against the tenure-holders, this was *res inter alios acta*. (*Lord Sumner.*) NARAYAN SINGH *v.* NIRANJAN CHAKRAVARTI.

(1923) 51 I. A. 37 (70)=3 Pat. 183=28 C. W. N. 351=34 M. L. T. 27=5 Pat. L. T. 171=79 I. C. 825=A. I. R. 1924 P. C. 5.

GHATWALLY TENURE.

WHAT IS A.
ALIENABILITY OF.
DIVISION OF, UPON DEATH OR BY ALIENATION.
EAST INDIA COMPANY—ACTION OF, WITH REGARD TO SUCH TENURES.
EXECUTION SALE OF—VALIDITY.
EXTENT OF LANDS INCLUDED IN.
FORFEITURE OF—GROUNDS.
GRANT OF—ESTATE TAKEN UNDER.
HERITABILITY OF.
INALIENABILITY OF—GOVERNMENT'S RIGHT TO ENFORCE.
INCIDENTS OF.
MOCURRARY ISTIMRAREE PROPRIETORSHIP IN.
NATURE AND INCIDENTS OF.
REG. XXIX OF 1814—PREAMBLE TO—GHATWALLY TENURE OF NATURE DESCRIBED IN—JAGHIR HELD ON TENURE ANALOGOUS TO.
RESUMPTION OF.
RIGHT BY BIRTH IN—PARTITION OF—SON'S RIGHT OF.
SONTHAL PARGANNAS.
VILLAGES HELD ON—RIGHT IN.
ZEMINDAR'S CLAIM TO LANDS HELD ON.
ZEMINDARI—MOUZAHS WITHIN AMBIT OF—PERMANENT AND FIXED GHATWALLY TENURE IN RESPECT OF—CLAIM TO.

What is a.

———Besides the disorder which prevailed generally through the Provinces, particular districts were exposed to ravages of a different description. The mountain or hill districts in India were at this time inhabited by lawless tribes, asserting a wild independence, often of a different race and different religion from the inhabitants of the plains, who were frequently subjected to marauding expeditions by their more warlike neighbours. To prevent these incursions it was necessary to guard and watch the *Ghats*, or mountain passes, through which these hostile descents were made; and the Mahomedan rulers established a tenure called *Ghatwally* tenure, by which lands were granted to individuals, often of high rank, at a low rent, or without rent, on condition of their performing these duties, and protecting and preserving order in the neighbouring districts (109-110). (*Mr. Pemberton Leigh.*) RAJA LEELANUND SINGH BAHADOOR *v.* GOVERNMENT OF BENGAL. **(1855) 6 M. I A. 101=1 Suth. 248=4 W. R. (P. C.) 77=1 Sar. 505.**

GHATWALLY TENURE—(*Contd.*)

Alienability of.

———*Birbhum—Tenures in—Bengal Regulation XXIX of* 1814 *and Act V of* 1859—*Sonthal Parganas Rural Police Regulation IV of* 1910.

The inalienability of a ghatwali tenure is a settled principle of the general law and, with regard to those in Birbhum, Bengal Reg. XXIX of 1814 and Act V of 1859, which the Reglation of 1910 does not purport to affect, have specifically affirmed it. (*Viscount Sumner.*) THAKUR ASHUTOSH DEO GHATWAL *v.* BANSIDAR SHROFF.

(1928) 55 I. A. 249=7 Pat. 744=32 C. W. N. 880=48 C. L. J. 64=9 Pat. L. T. 549=109 I. C. 730=28 L. W. 798=A. I. R. 1928 P. C. 177=55 M. L. J. 7 (8).

———*Custom against—Proof of—Onus.*

The allegation that a ghatwali estate is not in the whole or in part alienable, or, if alienable, is only so for the life of the alienor, must largely depend on local and family custom, and such custom, if proved to exist, may supersede the general law, though in other respects the general law may govern the relations of parties outside that custom (27). (*Lord Fitzgerald.*) TEKAIT KALI PERSHAD *v.* ANUND ROY. **(1887) 15 I. A. 18=15 C. 471 (480-1)=5 Sar. 121.**

———*Evidence—Other alienations by Ghatwal—Evidence of—Admissibility.*

Where the whole matter in dispute was whether alienations by the holder of Government ghatwali lands were valid, and there was no question of any actual assent being given either by his family or by the Government, *held*, that the fact that in other transactions besides the one in question he purported to alienate and appeared to believe in his own power to do so, proved nothing. (*Lord Sumner.*) NARAYAN SINGH *v.* NIRANJAN CHAKRAVARTI.

(1923) 51 I. A. 37 (63)=3 Pat. 183=A. I. R. 1924 P. C. 5=28 C. W. N. 351=34 M. L. T. 27=79 I. C. 825=5 Pat. L. T. 171.

———*Kharakpur zemindary—Custom of alienability in—Inapplicability of, to tenures independent of Kharakpur zemindary.*

It was contended that Handwa is in any case locally in Kharakpur, and that, by a well-established local custom now always recognised, Kharakpur ghatwalli lands are alienable. There is no ground for the contention that the custom of Kharakpur relied upon has any application to ghatwalli tenures, which, like Handwa, are independent of the Kharakpur zemindary, even though they may be not far off Kharakpur.

The decisions which have held that certain ghatwalli tenures in the district of Kharakpur are alienable with the consent of the Zemindar can have no reference to ghatwalli tenures not under the zemindar nor forming part of his zemindari. (*Lord Sumner.*) NARAYAN SINGH *v.* NIRANJAN CHAKRAVARTI. **(1923) 51 I. A. 37 (61-2)=3 Pat. 183=A. I. R. 1924 P. C. 5=28 C. W. N. 351=34 M. L. T. 27=79 I. C 825=5 Pat. L T. 171.**

Division of, upon death or by alienation.

———*Prohibition against—Reason of.*

Ghatwalli tenures are not divisible on the death of a ghatwal, but descend to the eldest son. The ghatwalli lands are granted for particular purposes, especially of police, and to divide them into small portions amongst the heirs of the ghatwals would be to defeat the very ends for which the grants were made (122).

The same principle which precludes a division of a tenure upon death must also apply to a division by aliena-

GHATWALLY TENURE—(*Contd.*)

Division of, upon death or by alienation—(*Contd.*)

tion. Their Lordships are of opinion that the tenure is not transferable or saleable in execution of a decree (122-3).

If the jaghir were transferable without the consent of Government by voluntary sale, or sale in execution, or otherwise, there would be no security that the transferee would be a proper person to discharge the duties in respect of which the lands are held at the reduced rent. The transferee might be a person of questionable or even of bad character (124). (*Sir Barnes Peacock.*) RAJAH NILMONI SINGH *v.* BAKRANATH SINGH. **(1882) 9 I. A. 104 = 9 C. 187 (207-8) = 4 Sar. 335.**

East India Company—Action of, with regard to such tenures.

———*Creation thereof—Recognition and confirmation of them.*

Quaere, whether the East India Company ever created a ghatwalli tenure. The action of the East India Company was generally confined to recognition and confirmation (110). (*Lord Phillimore.*) SECRETARY OF STATE FOR INDIA *v.* RAJA JYOTI PRASHAD SINGH DEO BAHADUR. **(1926) 53 I. A. 100 = 53 C. 533 = 30 C. W. N. 745 = 24 A. L. J. 761 = 94 I. C. 974 = A. I. R. 1926 P. C. 41.**

Execution sale of—Validity.

———*Zemindar's assent—Effect—Kharakpur ghatwal.*

A Kharakpur ghatwalli is not inalienable, and may be transferred by the ghatwal or sold in execution of a decree against him if such transfer or sale is assented to by the Zemindar (27-8).

There is no foundation for the argument that, though the ghatwal might alien, it could only be for the life of the alienor. When once it is established that the ghatwal had the power of alienation as before stated, that power forms an integral portion of his right and interest in the ghatwalli, and there is no evidence whatever to limit it to an alienation for his own life and no longer (28). (*Lord Fitzgerald.*) TEKAIT KALI PERSHAD *v.* ANUND ROY. **(1887) 15 I. A. 18 = 15 C. 471 (481) = 5 Sar. 121.**

Extent of lands included in.

———*Evidence—Issumnovisee returns—Nature of—Admissibility in evidence of—Value of.*

Issumnovisee returns are returns made by the Police generally on the information of the *ghatwally* holder, stating his name, the quantity of land which he held, and the *Putnee* rent which he paid for it. Different courts at different times have given greater or less weight to those returns. All the courts agree that they are admissible in evidence. In each particular case the courts have considered what weight ought to be given to them, and it is nothing very surprising if the courts at different times have not given exactly the same weight to those documents (264, 266). (*Lord Justice Mellish.*) FARQUHARSON *v.* DWARKANATH SINGH. **(1871) 14 M. I. A. 259 = 8 B. L. R 504 = 2 Sar. 708 = 16 W. R. P. C. 29 = 2 Suth. 469.**

———*Issumnovisee returns old showing lesser extent—Possession long of greater extent—Evidence of—Effect—Preference in case of.*

The suit was for possession and enhancement of rent brought by the plaintiff, the Putnidar, against the Respondent, *D*, the Ghatwal, and the Government on the ground of encroachment of lands in his Talook not held ghatwally. The question was whether the respondent, *D*, the Ghatwal, and entitled as such to certain ghatwally lands within the appellants' Putnee Talook, held lands in excess of what he was entitled to, and was liable to pay rent in respect of such excess to the plaintiff, the Putneedar, for the lands which the respondent, *D*, alleged he held ghatwally.

GHATWALLY TENURE—(*Contd.*)

Extent of lands included in—(*Contd.*)

The evidence which the plaintiff produced in support of his case entirely consisted of three documents, called *Issumnovisee* returns, for three separate years. In one of those returns, the then holder of the estate which *D*, held, the *ghatwally* holder had returned that the quantity of his land was 100 bighas. That was the sole evidence of the plaintiff. He did not produce any evidence at all to show how it happened that if 100 bighas was all that the *ghatwally* holder was entitled to in the years 1811, 1812, and 1813, that quantity of 100 bighas had increased to the very large quantity of 3,000 bighas at the time when the sale at which the plaintiff himself purchased the Putni took place. On the other hand, the respondent, *D*, produced evidence to show that as far back as living memory went, the whole quantity of 3,000 bighas had been held.

Held, that the long uninterrupted possession of the Ghatwalli holder ought clearly to have greater weight than those returns (265-6).

Weight must be given to ancient possession, and there may be a variety of causes why incorrect returns may have been made in the years 1811, 1812, and 1813. It may have been that the Police Officer was careless and did not care about what he returned, or it may have been that the ghatwally holder at that time had some reasons for giving incorrect information, or possibly it may have been that the ancient Ghatwals originally held only 100 bighas but that the estate had increased to 3,000 bighas many years before and before the creation of the *Putnee*, which, notwithstanding the Bengal Regulation VIII of 1819 would entitle the ghatwally-holder to hold the whole quantity. Their Lordships are of opinion, that the courts in this particular case have given quite as much weight to these returns as they deserve (266). (*Lord Justice Mellish.*) FARQUHARSON *v.* DWARKANATH SINGH. **(1871) 14 M. I. A. 259 = 8 B. L. R 504 = 16 W. R. P. C. 29 = 2 Suth. 469 = 2 Sar. 708**

Forfeiture of—Grounds.

———*Services—Repudiation express of obligation of—Incapacity of heir to render even vicarious.*

Since the (ghatwali) tenure is a service tenure, the lands are liable to forfeiture if the obligation of service is expressly repudiated, while the rights of the ruling power are similarly sufficiently safe-guarded by holding that the succession of an heir incapable of rendering even the vicarious service involved in the provision of an armed force, might be treated as being in itself a ground of forfeiture in the person of that successor, if not in the persons of the entire family, for it is what might be called an anticipatory repudiation.

Quaere whether and to what extent an appearance of personal unfitness in a particular heir would operate to disable him from succession as ghatwal. (*Lord Sumner.*) NARAYAN SINGH *v.* NIRANJAN CHAKRAVARTHI. **(1923) 51 I. A. 37 (58) = 3 Pat. 183 = A. I. R. (1924) P. C. 5 = 28 C. W. N. 351 = 34 M. L. T. 27 = 79 I. C. 825 = 5 Pat. L. T. 171.**

Grant of—Estate taken under.

———*Mokurrari—Istimrari—Use of—Effect.*

Where in regard to ghatwalli tenures, the words "mokurraree istimrari" were used, although it was doubtful whether they meant permanent during the life of the person to whom they were granted, or, permanent as regards hereditary descent, their Lordships were of opinion that, coupling those words with the usage, the tenures were hereditary. (*Sir Barnes Peacock.*) RAJAH LEELANUND SINGH BAHADOOR *v.* THAKOOR MUNOORUNJUN SINGH. **(1873) Sup. I. A 181 (186) = 13 B. L. R. 124 = 3 Sar. 238 = 3 C. G. Sup. Vol. 173 = 2 Suth. 818**

GHATWALLY TENURE—(*Contd.*)

Heritability of.

———The Ghatwalli tenure though peculiar, because of a certain reserved power of selection, nevertheless ranks as hereditary (112). (*Lord Phillimore.*) SECRETARY OF STATE FOR INDIA *v.* RAJA JYOTI PRASHAD SINGH DEO BAHADUR. **(1926) 53 I. A. 100 = 53 C. 533 = 30 C. W. N. 745 = 24 A. L. J. 761 = 94 I. C. 974 = A. I. R. (1926) P. C. 41.**

———*Office of personal character.*

It is objected that true heritability is inconsistent with a ghatwalli tenure when the office is of a personal character. A jaghir may, it is true, be held by a ghatwal on the terms of personal employment and service of the strictest kind and in the most complete subordination. In such a case selection and appointment are the natural commencement of the service, and its determination in fact involves the determination of this highly personal nature. Where everything depends on personal qualifications and exertions a heritable tenure is out of place. On the other hand, services may be due in bulk and the obligation of the ghatwal may consist, not in personal guardianship of a particular post, but in providing the service of others who are competent to discharge the services in person. The obligation to embody and keep up an armed force of 300 men with an appropriate staff of officers is pre-eminently an obligation of this kind. It is personal in that the grantee under this tenure is himself bound to the provision of this force from time to time, and is not merely chargeable in respect of the expense, or bound to make a contribution to the expense of forces embodied and kept on foot by others. It is personal in that the lands are granted upon this tenure in order that out of their produce the obligation in question may be discharged by the grantee. It is, however, impersonal in that the very nature of the service is rather one of purveyance than of arms. For this purpose the ghatwal must be a person of property, and for that reason he is the grantee of lands as ghatwalli lands ; but he need not be himself a soldier or watchman, and for that reason also the lands, though ghatwalli lands, may descend to heirs without personal selection and appointment. (*Lord Sumner.*) NARAYAN SINGH *v.* NIRANJAN CHAKRAVARTHI. **(1923) 51 I. A. 37 (57-8) = 3 Pat. 183 = A. I. R (1924) P. C. 5 = 28 C. W. N. 351 = 34 M. L. T. 27 = 79 I. C. 825 = 5 Pat. L. T. 171.**

Inalienability of—Governments' right to enforce.

———*Cessation of — Release or discharge of right—Necessity—Sonthal Parganas Rural Police Regulation IV of* 1910—*Scope and Effect of.*

So far from being on its face a Regulation altering the general law as recognised by Regulation 29 of 1814 and Act V of 1859, this local Regulation (Sonthal Parganas Rural Police Regn. IV of 1910) only brings in ghatwals as zemindars, incidentally and for the sake of uniformity. It was passed, *alio intuitu*, to make better provision for local police administration, and it is essentially of a temporary character and of shifting application. The Regulation contains nothing which can be construed as or operates to the same effect as a release or discharge of the Governments' right to have the inalienability of the tenure enforced unless and until it effectually puts an end to it. The rule on this point was thus laid down in L. R. 51 I. A. 37 at 68 :—

"To terminate the ghatwali character of the lands it is necessary to find something done or omitted to be done on the part of the Government, as the grantors, which would have the legal effect of a surrender and re-grant of the lands on new terms, or, at any rate, of a release of the right to appoint the ghatwal and call for the performance of the services." (*Viscount Sumner.*) THAKUR ASHUTOSH DEO GHATWAL *v.* BANSIDAR SHROFF.

GHATWALLY TENURE—(*Contd.*)

Inalienability of—Governments' right to enforce—(*Contd.*)

(1928) 55 I. A. 249 = 7 Pat. 744 = 32 C. W. N. 880 = 48 C. L. J. 64 = 9 P. L. T. 549 = 109 I. C. 730 = 28 L. W. 798 = A. I. R. 1928 P. C. 177 = 55 M. L. J. 7 (9, 11).

———*Release or discharge of—What amounts to—Muchilika—Construction.*

Where the terms of a muchilika were as follows :—

"I will not allow any thief, badmash, or absconder to live within the jurisdiction of my talook, neither will I plot or conspire against Government nor help others in doing the same. I will not discharge, without the order of Government, such persons under me who have been engaged in doing police duties ; if it be found necessary to discharge any such person, I will first send an information thereof or report his faults to the authorities, and abide by such orders as will be passed by them."

Held, that under the terms of his appointment the ghatwal held under conditions which were more extensive than that of merely supporting within his Zemindari the police, in respect of whom he had to pay the amount determined by the Deputy Commissioner, and which were also substantial enough to leave his inability to alienate unaffected as if Regulation IV of 1910 and its predecessors had not passed.

The words of the muchilika clearly import some kind of personal organisation, appointed, directed and discharged by the ghatwal, over and above or it may be under and subject to, the regular rural police, and out of that nucleus an important revival of the old ghatwalli obligations might at any time arise.

What has here been done on the part of the Government is a mere provision for the machinery of police administration and had not the effect of a release or discharge of iis right to enforce the inalienability of the tenure. (*Viscount Sumner.*) THAKUR ASHUTOSH DEO GHATWAL *v.* BANSIDHAR SHROFF. **(1928) 55 I. A. 249 = 7 Pat. 744 = 32 C. W. N. 880 = 48 C.L.J. 64 = 9 P.L.T. 549 = 109 I. C. 730 = 28 L. W. 798 = A. I. R 1928 P. C. 177 = 55 M. L. J. 7 (10).**

Incidents of.

———Effect on of non-performance of services for a long time. *See* GHATWAL—LANDS HELD BY—MOCURRARI ISTIMRARI PROPRIETORSHIP IN.

(1923) 51 I.A. 37 (68) = 3 Pat. 383.

Mocurrari Istimrary proprietorship in.

———*Not acquired by non-preformance of services for a long time.*

The decision of the High Court must be rested on legal assumption that, if during a sufficiently long period the incumbent of the office of ghatwal does not happen to be called on to render the services which he is bound to render when required, the quality and incidents of his tenure of ghatwalli lands change, at any rate so long as this abeyance of the services lasts, and that he becomes, to the prejudice of his heirs—who are, be it said, heirs of ghatwalli lands with the advantages as well as the disadvantages attaching thereto—a full mukarrari istimrari proprietor for the time being (67). To terminate the ghatwalli character of the lands, it seems to their Lordships that it is necessary to find something done or omitted to be done on the part of the Government as the grantors, which would have the legal effect of a surrender and regrant of the lands on new terms or, at any rate, of a release of the right to appoint the ghatwal and call for the performance of the services (68). (*Lord Sumner.*) NARAYAN SINGH *v.* NIRANJAN CHAKRAVARTI. **(1923) 51 I. A. 37 = 3 Pat. 183 = 79 I. C. 825 = A.I.R. 1924 P. C. 5 = 28 C. W. N. 351 = 34 M.L.T. 27 = 5 Pat. L. T. 171.**

GHATWALLY TENURE—(*Contd.*)

Nature and incidents of.

———*Property subject of tenure—Rights of ghatwal and the family over.*

The ghatwalli tenure is ordinarily hereditary, the estate descending to such male member of the family as the Zemindar approves as competent, and it is the right of the family, so long as they have male members competent to perform the duties, to have one or more of them appointed ghatwals. The ghatwal could put other members of the family into minor offices and grant them subordinate interests commonly called jotes, and he could and would generally provide for the family in the manner expected of its head. But this is a long way off making him a trustee for the family or treating the ghatwalli estate as possessed by the family and reducing the ghatwal to the position of karta or managing head of the family. The incidents of ghatwalli tenure are not such as to give the family any rights over the property while it is in the hands of the ghatwal. (*Lord Phillimore.*) DURGA PRASHAD SINGH *v.* TRIBENI SINGH. **(1918) 45 I. A. 251 (256)=46 C. 362=24 M L. T. 407=9 L. W. 60=28 C.L.J. 508=48 I. C. 527.**

Regulation 29 of 1814 — Preamble to — Ghatwally tenure of nature described in—Jaghir held on tenure analogous to.

———*What amounts to.*

Neither the origin of a jaghir nor the precise time at which it was created was known, but it appeared that as far back as 1771, the villages of which it was composed were held by jaghirdars who paid to Government two-thirds of the annual value thereof as revenue, and retained the other one-third as remuneration for the services under which the jaghir was held. The villages included in the jaghir were permanently settled as part of the Zemindary of Pachete, of which the appellant was the Zemindar. In fixing the Government revenue at the time of decennial settlement, the lands included in the jaghir were assessed at the two-thirds then payable by the jagirdar to the Government, and one-third retained by the jaghirdar in lieu of services formed no part of the assets of the Zemindary in respect of which the Government revenue was fixed.

Jaghirdars were successively appointed or approved by Government up to the time of *G*, who was appointed in 1816 in the place of *R*, who was dismissed for misconduct.

In February 1817, *G* petitioned the Magistrate for leave to associate *D* with himself as headman ; that was sanctioned, and they divided the jaghir and the duties. On the death of *G*, his son applied to be installed as his successor, but *R*, having applied to he reinstated, his application was granted. In 1834 *R*, attempted to oust *D*, but that was not allowed and the jaghir ever since remained divided.

Held, that whether the tenure was a ghatwalli or not it was analogous to a ghatwalli tenure of the nature described in the preamble to Regulation 29 of 1814 (120). (*Sir Barnes Peacock.*) RAJAH NILMONI SINGH *v.* BAKRANATH SINGH. **(1382) 9 I.A. 104=9 C. 187 (203-4)=4 Sar. 385.**

———*Inheritance rule applicable to.*

Jaghirs held on tenures analogous to a ghatwalli tenure of the nature described in the preamble to Regulation 29 of 1814, although hereditary, are not governed by the ordinary rules of inheritance, under the Hindu or Mahomedan law, and are subject to the condition of the Government's approval of the heir (122). (*Sir Barnes Peacock.*) RAJAH NILMONI SINGH *v.* BAKRANATH SINGH. **(1882) 9 I. A. 104=9 C. 187 (206)=4 Sar. 335**

———*Resumption of—Zemindar—Government—Right of.*

Jaghirs held on tenures analogous to a ghatwalli tenure of the nature described in the preamble to Regulation 29 of 1814 are not resumable either by the Zemindar or by the Government (122). (*Sir Barnes Peacock.*) RAJAH NILMONI SINGH *v.* BAKRANATH SINGH **(1882) 9 I. A. 104=9 C. 187 (205)=4 Sar. 335.**

———*Sale in son's hands of, in execution of decree against father—Validity of.*

The question for decision was, whether the suit mauzahs, comprised in a jaghir mehal, which had been held by the respondents' father during his lifetime, and which at his death descended to the respondent, as his heir, and to which the plaintiff (respondent) was appointed by Government, were liable to be seized in execution of a decree against the father as assets by descent in the hands of the plaintiff, his son.

It was found that the tenure in question, whether it was a ghatwalli or not, was analogous to a ghatwalli tenure of the nature described in the preamble to Regulation 29 of 1814.

Held, affirming the High Court, that the tenure was not liable to be seized in execution of a decree against the father as assets by descent in the hands of the son (122-4.) (*Sir Barnes Peacock.*) RAJAH NILMONI SINGH *v.* BAKRANATH SINGH. **(1882) 9 I. A. 104=4 Sar. 335=9 C. 187 (206-8).**

Resumption of.

———*Government—Invalid resumption by—Mesne profits payable by Government in case of—Apportionment of, between Zemindar and Ghatwal.*

The Government having wrongfully resumed certain ghatwalli lands held upon a tenure, by which they were liable to a certain rent and also to certain ghatwalli services were directed to refund mesne profits thereof, which consisted of the rent paid by the ghatwals under a settlement in force with them until the resumption was set aside,

Held, that such refund should be made by paying to the Zemindar the rent which was due to him by the ghatwals under the tenures, and returning to the ghatwals the remainder of the money (190-1). (*Sir Barnes Peacock.*) THAKOOR MUNOORUNJUN SINGH *v.* RAJAH LEELANUND SINGH BAHADOOR. **(1873) Sup. I. A. 181=13 B. L. R. 124=3 Sar. 238=3 O. G. Sup. Vol. 173=2 Suth. 818.**

———*Government—Invalid resumption by—Mesne profits payable by it in case of—Right to—Zemindar—Ghatwal—Right of.*

The question was who was entitled to the mesne profits payable by Government in respect of Ghatwalli lands improperly resumed and re-assessed by them. Their Lordships observed :—That a portion of the fund belongs to the Zemindar their Lordships think highly probable, if only on account of his quit-rent or quit-rents, fallen into arrear, but possibly also he may have a just claim on more than this portion, or even the whole fund, in respect of services which the Ghatwals were, or had been, under an obligation to perform, and have, from any cause whatever, not performed. Subject to that deduction, or those deductions, as the case may be, in favour of the Zemindar, there appears to their Lordships a title fit to be considered to the whole fund in the Ghatwals who were in the actual enjoyment of the lands, or their representatives (490-1.) (*Lord Justice Knight Bruce.*) RAJAH LEELANUND SINGH *v.* GOVERNMENT OF BENGAL. **(1863) 9 M. I. A. 479=2 Sar. 46=1 W. R. P.C. 20=1 Suth. 535.**

———*Kharakpur zemindari—Lands part of—Resumption of—Government's right of—Bengal Permanent Settlement Regulation I of* 1793, *S.* 8 (4)—*Effect.*

GHATWALLY TENURE—(*Contd.*)

Resumption of—(*Contd.*)

The question was as to the validity of a claim made by the East India Company to resume, for the purposes of revenue assessment, against the Raja of Kharakpur, 755 bighas of land, part of his Zamindari. The lands sought to be resumed, were of what was called *Ghatwally* tenure, and the great question in the case was, whether lands of that description were liable to be resumed under Regulation I of 1793, S. 8, cl. 4, relating to *Tannah*, or police establishments.

Held, under all the circumstances of the case, that the suit lands were not properly within the meaning of the clause relied upon by the respondent, that they were a part of the zemindary of Kharakpur, and were included in the Settlement for that Zemindary, and covered by the *jumma* assessed upon it (132). (*Mr. Pemberton Leigh.*) RAJA LEELANUND SING BAHADOOR *v.* GOVERNMENT OF BENGAL. **(1855) 6 M. I. A. 101 = 4 W. R. 77 P. C. = 1 Suth. 248 = 1 Sar. 505.**

———*Zemindari—Lands forming part of—Resumption by zemindar of—Right of—Government's consent to his dispensing with Ghatwal services on condition of paying additional revenue—Effect.*

In the case of a grant of land forming part of a zemindary upon the condition of the grantee performing ghatwalli duties, *held* that as long as the holders of the grant were willing and able to perform the services the Zemindar had no right to put an end to the tenure, whether the services were required or not (185).

The fact of the Government's having consented to dispense with the services in question as regards the zemindar, and the zemindar's having agreed with the Government to pay an additional revenue in consideration of the Government having absolved them from the services, does not entitle the zemindar, as between him and the ghatwals, to treat them as trespassers, and turn them out of possession (185). (*Sir Barnes Peacock.*) RAJAH LEELANUND SINGH BAHADOOR *v.* THAKOOR MUNOORANJUN SINGH.

(1873) Sup. I. A. 181 = 13 B. L. R. 124 = 3 Sar. 238 = 3 O. G. Sup. Vol. 173 = 2 Suth. 818.

———*Zemindari—Revenue sale purchaser of—Hereditary tenure existing since Decennial Settlement—Resumption of—Right of.*

The revenue-sale purchaser of a zemindary at a sale held in 1863 sued for possession of certain mouzahs appertaining to the zemindari and held under a Ghatwalli tenure. The tenure existed in its then form before the Decennial Settlement. The rent payable in respect of the suit mouzahs had also remained the same as at that Settlement. The tenure was an hereditary tenure. The purchaser sought to resume the mouzahs on the ground that the ghatwalli services had ceased to be necessary. The Government disputed his right to resume.

Held that the revenue-sale purchaser had no right to resume (257).

Semble he would have had no right even if Government had not disputed his right (257). (*Sir James W. Colvile.*) KOOLDEEP NARAIN SINGH *v.* GOVERNMENT.

(1871) 14 M. I. A. 247 = 11 B. L. R. 71 = 2 Suth. 491 = 2 Sar. 734.

———*Zemindari — Revenue sale-purchaser of—Lands forming part of zemindary granted on condition of ghatwal services—Resumption of—Right of—Extent of.*

In the case of a grant of land forming part of a zemindari on condition of ghtwalli services, *held* that the purchasers at a revenue sale of the zemindari had no greater rights of resuming the grant than they would have had as original zemindars (183). (*Sir Barnes Peacock.*) RAJAH LEELANUND SINGH BAHADOOR *v.* THAKOOR MUNOORANJAN SINGH. **(1873) Sup. I. A. 181 = 13 B. L. R. 124 = 3 Sar. 238 = 3 O. G. Sup. Vol. 173 = 2 Suth. 818.**

———*Zemindari — Revenue sale-purchaser of—Tenure granted subsequent to permanent settlement—Resumption of—Right of.*

In a suit by the purchaser of a zemindary at a sale for arrears of revenue to recover possession of certain lands within the zemindari held upon a ghatwalli tenure, *held* that, assuming that the ghatwalli tenure in question was created subsequently to the date of the permanent settlement, namely, in the year 1794, the plaintiff would not as an auction purchaser be entitled to turn the defendant out of possession, but that his only right, if any, would be to enhance the rent (188). (*Sir Barnes Peacock.*) RAJAH LEELANUND SINGH BAHADOOR *v.* THAKOOR MUNOORUNJUN SINGH. **(1873) Sup. I. A. 181 = 13 B. L. R. 124 = 3 Sar. 238 = 3 O. G. Sup. Vol. 173 = 2 Suth. 818.**

Right by birth in—Partition of—Son's right to.

———*Mitakshara rules as to—Applicability of.*

The admitted facts that a ghatwalli estate is impartible, that is to say, not subject to partition, and that the eldest son succeeds to the whole to the exclusion of his brothers seem to exclude the application of the Mitakshara rule, that the sons on birth each take an equal estate with the father, and are entitled to partition (27).

The doctrines of the Mithakshara, which govern in some districts the Hindu law of inheritance, are not to their full extent applicable to a ghatwalli tenure. By the general Hindu law of Inheritance, where the Mithakshara does not prevail, the heirs are generally selected because of their capability to exercise certain religious rites for the benefit of the deceased. Where, however, the Mithakshara governs, each son immediately on his birth takes a share equal to his father in the ancestral immoveable estate. Having regard to the origin and nature of ghatwalli tenures and their purposes and incidents, it is admitted that such a teuure is in some particulars distinct from and cannot be governed by either the general objects of Hindu inheritance as above stated, or by the before-quoted rule of the Mitakshara (26-7). (*Lord Fitz-Gerald.*) TEKAIT KALI PERSHAD *v.* ANUND ROY. **(1887) 15 I. A. 18 = 15 C. 471 (480) = 5 Sar. 121.**

Sonthal Parganas.

———*Classes of tenures in.*

In the Sonthal Parganas there are for practical purposes three classes of ghatwalli tenures, (*a*) Government ghatwallis created by the ruling power; (*b*) Government ghatwallis, which since their creation and generally at the time of the Permanent Settlement, have been included in a zemindari estate and formed into a unit in its assessment; and (*c*) zemindari ghatwallis, created by the zemindar or his predecessors and alienable with his consent. The second of these classes is really a branch of the first. (*Lord Sumner.*) NARAYAN SINGH *v.* NIRANJAN CHAKRAVARTI.

(1923) 51 I. A. 37 (50) = 3 Pat. 183 = A. I. R. (1924) P. C. 5 = 28 C. W. N. 351 = 34 M. L. T. 27 = 79 I. C. 825 = 5 Pat. L. T. 171.

———*Handwa taluk in—Alienability, Partibility, Heritability, and Resumability of—Sale in execution of decree against holder—Validity—Evidence.*

The suit was one to enforce by sale certain mortgages of lands, which might be shortly called the Handwa estates, created by one Udit Narayan Singh of Lagma, in Pargana Handwa, a jungleterry taluk in the Sonthal Parganas district. The suit was defended on behalf of the adopted son of Udit Narayan, and the ground of defence was that the

GHATWALLY TENURE—(*Contd.*)

Sonthal Parganas—(*Contd*).

Handwa estates had been and were inalienable and passed unencumbered to the defendant as successor on the death of Udit Singh, the mortgages notwithstanding. Two main questions arose : the first, whether the estates were ever inalienable at all ; and the second, even if so, whether before the dates of the mortgages they had not become alienable in full. Both the courts below rejected the defence ; the Sub-Judge mainly on the first point ; the High Court while accepting the original inalienability of the estates, definitely upon the second. The appeal to the Privy Council was by the defendant.

Held, reversing the Courts below :

(1) The pattah of 1776 and the sanad of 1794 contain words of grant and purport to make grants on behalf of and in the name of the East India Company. They must be so interpreted, nor can this construction be defeated merely because there may be ground for thinking that the grantees were already holders of these lands under earlier grants or on customary service terms. The tenure is therefore a Government tenure.

(2) As the grants are expressed to be istimrari mukarrari grants, and as in fact the lands have for generations descended in the family of the defendant from ancestor to heir, they are a perpetual and hereditary tenure.

(3) The express obligation imposed on the grantees, as an integral part of the grant, to support a specified number of barkandases, and with them to attend the Huzur when required, shows that the tenure is a service tenure and is ghatwalli in its nature. (4) A tenure so granted is inalienable and indivisible, and cannot be sold in execution of a decree against the person of the incumbent of the office of ghatwal for the time being. (5) Neither by the terms of the grant nor by the general law applying to such ghatwalli tenures is an actual appointment of the next heir to be ghatwalli in the room of his predecessor requisite, nor is actual performance of the stipulated ghatwalli services from time to time necessary. Readiness and willingness to perform them when required may be inferred where there is no proof of any refusal to perform and where performance within a reasonable time, if required, is not shown to have become impossible. (*Lord Sumner.*) NARAYAN SINGH *v.* NIRANJAN CHAKRAVARTI. **(1923) 51 I. A. 37 (58-9) = 3 Pat. 183 = A. I. R. (1924) P. C. 5 = 28 C. W. N. 351 = 34 M. L. T. 27 = 5 Pat. L. T. 171 = 79 I. C. 825.**

Villages held on—Right in.

———Nature and extent of. *See* GHATWAL—SERVICES OF—NATURE OF. **(1855) 6 M.I.A. 101 (125).**

Zemindar's claim to lands held on.

———*Onus of Proof of—Lands within ambit of zemindary.*

While it may well be that the digwars or ghatwals are subordinate to the Zemindar, it is always a question of fact whether they are or are not subordinate. The burden is upon the zemindar to prove that they are part of his zemindary, and this is so, even if the disputed lands are within the geographical limits of his zemindary (112). (*Lord Phillimore*). SECRETARY OF STATE FOR INDIA *v.* RAJA JYOTI PRASHAD SINGH DEO BAHADUR.

(1926) 53 I. A. 100 = 53 C. 533 = 30 C. W. N. 745 = 24 A. L. J. 761 = A. I. R. (1926) P. C. 41 = 94 I. C. 974.

Zemindari—Mouzahs withn ambit of—Permanent and fixed ghatwally tenure in respect of—Claim to.

———*Evidence of, sufficient to overcome mere title of zemindar.*

The appellant was the zemindar of a taluk within which were comprised the suit mouzahs. The appellant sued for a declaration that the defendants-respondents had no rights, mokurrari or dur-mokurrari, in the suit mouzahs, and for possession of the same.

As the case came finally to be presented for judgment on evidence, the appellant had really proved nothing beyond his title as Zemindar of the talook within which the villages were situated, which in deed was not disputed. He gave neither statement nor evidence as to how or when his title had its origin. The only evidence of possession by the appellant related to dates so lalte as 1868 and 1869, in which years two pattahs were granted by the appellant in favour of *D* of the whole of the talook within which the suit mouzahs were situated at stated rents. There was, however, no evidence that any rents were asked for or received by him from the possessors of the mouzahs in question.

Against the appellant's title to the zemindari, without any evidence of possession of any of the mouzahs in question, there was proved uninterrupted possession by the respondents and their predecessors from a date before the appellant's ancestor acquired a title, and in deed it might be presumed for upwards of a century. The mouzahs were held throughout that time for the payment of a uniform rent, and there were other considerations to be found in the parol evidence which supported the view that the tenure was ghatwalli,

Held, affirming the High Court, that the presumptions in favour of a fixed and permanent ghatwalli tenure arising from the long-continued possession of the respondents and their predecessors at a uniform rent were sufficient to overcome the mere title of the appellant as zemindar (67). (*Lord Shand.*) RAM RANJAN CHUCKERBUTTY *v.* RAM NARAIN SINGH. **(1894) 22 I. A. 60 = 22 C. 533 (543-4) = 6 Sar. 530 = 5 M. L. J. 7.**

GIFT.

———*See* (1) HINDU LAW—GIFT AND (2) MAHOMEDAN LAW—GIFT.

GOVERNMENT.

———(*See also* CROWN.)

———Confiscated property-- Auction-sale of—Purchaser at—Suit for specific performance by—Maintainability. *See* ACT OF STATE—ACT AMOUNTING OR NOT AMOUNTING TO—CONFISCATED PROPERTY. **(1869) 13 W.R. 4 P.C.**

———Officers of—Acts of—Challenge of, after lapse of time—Right of—Acquiescence in such acts—Effect. *See* CROWN—OFFICERS OF—ACTS OF—CHALLENGE OF, AFTER LAPSE OF TIME. **(1922) 33 M. L. T. 228 (231) P. C.**

———Officers of—Acts of—Estoppel by reason of. *See* (1) CROWN AND (2) EVIDENCE ACT, S. 115—CASES UNDER—CROWN.

———Officers of—Acts of—Estoppel by reason of—Collector in management of estate under Court of Wards—Assertion of rights of ward in Government tracts by—Effect. *See* COURT OF WARDS—ASSERTION OF RIGHTS OF ETC. **(1905) 32 I. A. 53 (71) = 28 M 130 (156-1).**

———Officers of—Acts of, in discharge of official duty—Authority valid for—Existence of—Presumption as to. *See* EVIDENCE ACT, S. 114, ILL. (*e*)—GOVERNMENT OFFICIAL. **(1923) 51 I. A. 37 (55) = 3 P. 183.**

———*Officers of—Sale deed by—Area included in—Error as to—Plea of—Proof of—Quantum.*

It would require very strong and very clear evidence to satisfy the minds of a Court of Justice that, under a description of an estat said to contain 10, 377 odd bighas of land,

GOVERNMENT—(*Contd.*)

the Government officers were so negligent of their duty as to sell, and the plaintiff so fortunate as to purchase, 25,000 bighas, more than double the quantity expressed (880). RANEE SURNOMOYEE *v.* WATSON & CO

(1873) 2 Suth. 879 = 20 W. R. 211 = 4 Sar. 820.

———Suit against—Procedure regulating—Formalities of—Legislation as regards—Power of Indian Legislature as to. *See* GOVERNMENT OF INDIA ACT OF 1858, S. 65—SUIT AGAINST GOVERNMENT. **(1913) 40 I. A. 48 = 40 C. 391.**

———Suit against, in respect of claim to right over land—Legislation taking away, of Indian Legislature—Validity of. *See* GOVERNMENT OF INDIA ACT OF 1858, S. 65—LAND. **(1913) 40 I. A. 48 = 40 C. 391.**

GOVERNMENT OF INDIA ACT OF 1858.

———**S. 65**—Civil Procedure—Regulation for—Not subject to section. *See* C. P. C. OF 1908, S. 80—NOT *ultra vires.* **(1927) 54 I.A. 338 (358) = 51 B. 725.**

———*Effect of—Secretary of State in council—Suit by subject against—Right of—Legislation taking away—Validity.*

The effect of the Government of India Act, 1858, was to debar the Government of India from passing an Act which could prevent a subject from suing the Secretary of State in Council in a civil court or in any case in which he could have similarly sued the East India Company. The section was inserted for the purpose of making it clear that the subject was to have the right of so suing and was to retain that right in future, or at least until the British Parliament should take it away. (*Lord Chancellor.*) SECRETARY OF STATE FOR INDIA *v.* MOMENT. **(1913) 40 I. A. 48 = 40 C. 391 = 17 C. W. N. 169 = 11 A. L J. 49 = 13 M. L.T. 53 = (1913) M.W.N. 45 = 15 Bom. L. R. 27 = 17 C. L. J. 194 = 18 I. C. 22 = 7 L. B. R. 10 = 6 Bur. L. T. 1 = 24 M. L. J. 459.**

———*Land—Right over—Claim to—Suit against Government in respect of—Right of—Legislation by Indian Legislature taking away—Validity.*

A suit relating to a claim to any right over land as against the Government would have lain against the East India Company, and the Government of India cannot by legislation take away that right. The Language of S. 65 of the Act of 1858 renders such legislation *ultra vires* (*Lord Chancellor*). SECRETARY OF STATE FOR INDIA *v.* MOMENT. **(1913) 40 I. A. 48 = 40 C. 391 = 17 C. W. N. 169 = 11 A. L. J. 49 = 13 M. L. T. 53 = (1913) M. W. N. 45 = 15 Bom L. R. 27 = 18 I. C. 22 = 17 C. L. J. 194 = 7 L. B. R. 10 = 6 Bur. L. T. 1 = 24 M. L. J. 459.**

———Secretary of State for India in Council—Contract with—Contract with Secretary of State for India if a—Suit on contract—Right of—Parties to. *See* SECRETARY OF STATE FOR INDIA—CONTRACT WITH. **(1913) 17 C.W.N. 735 (740).**

———*Suit against Government—Procedure regulating—Formalities of—Legislation as regards—Power of Indian Legislature.*

Semble—The Indian Government can legislate validly about the formalities of procedure so long as they preserve the substantial right of the subject to sue the Government in the Civil Courts like any other defendant and do not violate the fundamental principle that the Secretary of State even as representing the Crown is to be in no position different from that of the old East India Company. (*Viscount Haldane, L.C.*) SECRETARY OF STATE FOR INDIA *v.* MOMENT. **(1913) 40 I. A. 48 = 40 C. 391 = 17 C. W. N. 169 = 11 A. L. J. 49 = 13 M. L. T. 53 = (1913) M. W. N. 45 = 15 Bom. L.R. 27 = 17 C.L.J. 194 = 18 I.C. 22 = 7 L.B.R. 10 = 6 Bur. L.T. 1 = 24 M.L.J. 459.**

GOVERNMENT OF INDIA ACT OF 1915—(*Contd.*)

———**S. 65 (2)**—*Meaning and effect of—Law the passing of which is prohibited by the sub-section.*

Sub-S. 2 of S. 65 of the Government of India Act, 1915, does not prevent the Indian Government from passing a law which may modify or affect a rule of the constitution or of the common law upon the observance of which some person may conceive or allege that his allegiance depends. It refers only to laws which directly affect the allegiance of the subject to the Crown, as by a transfer or qualification of the allegiance or a modification of the obligations thereby imposed (138). (*Viscount Cave*). BUGGA *v.* THE KING-EMPEROR. **(1920) 47 I.A. 128 = 1 Lah. 326 = 24 C.W.N. 650 = 22 Bom. L.R. 609 = 18 A.L.J. 455 = 12 L.W. 296 = 21 Cr. L.J. 456 = 56 I.C. 440 = 39 M.L.J. 1.**

———*Ordinary Indian Courts—Substitution for, of other tribunal of judicial character—Law as to—Validity—Martial Law Ordinance IV of* 1919—*Validity of.*

It was contended that the Martial Law (Further Extension) Ordinance IV of 1919 by depriving British subjects in India of the right to be tried in the ordinary course by the established Courts of law, and by empowering a commission appointed under the Martial Law Ordinance I of 1919 to try them, affected the unwritten laws or constitution whereon the allegiance of His Majesty's subjects in India depends, and was accordingly invalidated by sub-S. 2 of S. 65 of the Government of India Act, 1915. It is not easy to understand how the substitution for the ordinary Indian Courts—which are themselves ot statutory origin—of another tribunal of a judicial character can be said to affect in any way the unwritten laws or constitution of the country (137-8). (*Viscount Cave*). BUGGA *v.* THE KING-EMPEROR. **(1920) 47 I. A. 128 = 1 Lah. 326 = 24 C.W.N. 650 = 22 Bom. L.R. 609 = 18 A.L.J. 455 = 12 L.W. 296 = 21 Cr. L. J. 456 = 56 I.C. 440 = 39 M.L.J. 1.**

———**S. 65 (3)**—*Law contravening—Invalidity of—Extent of—S. 84 of Act—S. 2 of Government of India Amendment) Act of* 1916.

On the strength of S. 65, sub-S. 3 of the Government of India Act of 1915 it was argued that the Martial Law (Further Extension) Ordinance IV of 1919, if it subjects any person whatever to be tried for his life by a Commisson in lieu of the ordinary Courts of law or Courts-martial, is an infringement of the provision which prevents the Governor-General in Council from empowering any Court other than a High Court to sentence to death any of His Majesty's subjects born in Europe, and accordingly that the Ordinance is void not only as to persons falling within sub-S. 3 of S. 65 but altogether. The answer to this contention is to be found in S. 2 of the Government of India (Amendment) Act, 1916, which provides that there shall be inserted at the end of S. 84 of the Act of 1915 the following words: "A law made by any authority in British India and repugnant to any provision of this or any other Act of Parliament, shall, to the extent of that repugnancy, but not otherwise, be void."

If the Ordinance IV contravenes S. 65, sub-S. 3 of the Act of 1915, it may properly be described as "repugnant" to that section so far as European British subjects are concerned, and if so it is void to the extent of that repugnancy but not otherwise (139-40). (*Viscount Cave*). BUGGA *v.* THE KING-EMPEROR. **(1920) 47 I.A. 128 = 1 Lah. 326 = 24 C. W. N. 650 = 22 Bom. L. R. 609 = 18 A. L. J. 455 = 12 L. W. 296 = 21 Cr. L. J. 456 = 56 I. C. 440 = 39 M. L. J. 1.**

———**S. 106 (2)**—*Revenue Officer—Order of High Court directing, to do his statutory duty—Jurisdiction in which, made.*

GOVERNMENT OF INDIA ACT OF 1915—(*Contd.*)

The order of a High Court to a revenue officer to do his statutory duty would not be the exercise of "original jurisdiction in any matter concerning the revenue" within the meaning of S. 106, sub-S. 2 of the Government of India Act of 1915. (*Lord Phillimore.*) ALCOCK, ASHDOWN & CO. *v.* CHIEF REVENUE AUTHORITY, BOMBAY.

(1923) **50 I.A. 227 (233-4) = 47 B. 742 (750) = 25 Bom. L.R. 920 = 21 A.L.J. 689 = A.I.R. 1923 P.C. 138 = 33 M.L.T. 267 = 18 L.W. 918 = (1923) M.W.N. 557 = 39 C.L.J. 302 = 28 C.W.N. 762 = 75 I.C. 392 = 45 M.L.J. 592.**

GOVERNMENT OF INDIA (AMENDMENT) ACT OF 1916.

———**S.** 2—Effect. *See* GOVERNMENT OF INDIA ACT OF 1915, S. 65 (3).

(1920) **47 I.A. 128 (139-40) = 1 Lah. 326.**

GOVERNMENT NOTES.

———Gift of—Trust for idols—Gift impressed with—Proof of—Pencil writing on notes indicating trust in hands of donee — Sufficiency of. *See* HINDU LAW—GIFT—GOVERNMENT NOTES. (1875) **3 Suth. 210 (212).**

———Indorsement of, to *A*—Trust upon notes subsequent to—Affixing by donor of—What amounts to—Validity—Donee's rights in case of. *See* HINDU LAW—GIFT—TRUST UPON PROPERTY SUBJECT OF.

(1875) **3 Suth. 210 (211-2).**

GOVERNMENT PROMISSORY NOTES.

———East India Company—Authority to make and issue notes on behalf of—Delegation of—Practice—Governor-General in Council—Delegation to—Delegation to any other authority—Validity. *See* EAST INDIA COMPANY—PROMISSORY NOTES ON BEHALF OF.

(1834) **2 Knapp. 245 (248).**

———East India Company—Promissory notes issued by Governor-General in Council on behalf of—Forged imitations of—Liability of Company on—Certificate of authority of notes by inferior officer of Company—Effect—Liability of Company by reason of—Authority of clerk to so certify—Proof of—Onus. *See* EAST INDIA COMPANY—PROMISSORY NOTES ISSUED, ETC.

(1834) **2 Knapp. 245 (248).**

———*Indorsement—Acquisition of title by—Law applicable to.*

The law applicable to the acquisition of title to notes passing by indorsement must not be confounded with that applicable to the acquisition of title in ordinary chattels (517). (*Lord Justice Giffard.*) IKBALOODOWLAH *v.* SAH BUNARSEE DOSS.

(1869) **12 M.I.A. 507 = 2 Sar. 463 = R. & J.'s No. 8 (Oudh).**

———*Indorsement — Transfer by — Validity—Deceased lady —Notes payable to—Indorsement by her son of, by use of her seal—Purchaser* bona fide *believing that use of seal was proper.*

The question was whether there was such indorsement of Government promissory notes made payable to a deceased Mahomedan lady as would be sufficient in itself to transfer the legal property in them. The indorsements, whether open or special, were made by affixing the seal of the deceased lady. That act was done after her death by the hand of one of her sons, and the indorsement did not purport to be other than the mother's.

Much evidence was given with a view to show that ladies of rank commonly indorsed Government notes by putting their seals on them, and that it was not unusual for purchasers to buy notes, bearing such seals, from members of their families in the confidence that the seals were properly affixed. The Courts below found, and their Lordships concurred in the finding, that the purchaser bought the notes in question in the *bona fide* belief that the seal had been properly affixed.

GOVERNMENT PROMISSORY NOTES—(*Contd.*)

Held that that alone could not avail, for it was obvious that a purchaser, however *bona fide*, could gain no title by an unauthorised use of the seal (177). MIRZA AHMAD ABBAS KHAN *v.* SAH MUTHRA DAS.

(1875) **3 Suth. 175 = R. & J.'s No. 37.**

———*Indorsement—Transfer invalid by—Equitable title by virtue of—Presumption of such transfer—Permissibility.*

An invalid transfer might still confer a valid equitable title, either in part or in entirety; but such a transfer being exceptional and dependent on special circumstances cannot be raised by legal intendment or presumption (520). (*Lord Justice Giffard.*) IKBALOODOWLAH *v.* SAH BUNARSEE DOSS.

(1869) **12 M. I. A. 507 = 2 Sar. 463 = R. & J.'s No. 8 (Oudh).**

———*Indorsement—Transfer legal by—Imposition of seal of native lady if amounts to—Imposition after death of lady—Effect.*

Supposing that a mere imposition of a seal by a native lady would be recognised as a legal transfer by indorsement of Government paper to which she has legal title, such a transfer would not be valid after the death of the lady (520). (*Lord Justice Giffard.*) IKBALOODOWLAH *v.* SAH BUNARSEE DOSS.

(1869) **12 M. I. A. 507 = 2 Sar. 463 = R. & J.'s No. 8 (Oudh).**

———Negotiate—Dispose of—Use of words in reference to—Meaning and effect of—Sale or purchase thereof only intended or pledge thereof included. *See* POWER OF ATTORNEY—CONSTRUCTION OF—GOVERNMENT PROMISSORY NOTES—SALE OR PURCHASE THEREOF.

(1884) **11 I. A. 94 (108) = 10 C. 901 (911-2).**

———*Sale by invalid indorsement—Validity of—Right to dispute—Estoppel—Acquiescence in such indorsement—Effect—Purchaser acting* bona fide.

The appeal arose out of a suit brought by the plaintiff against *B*, and the plaintiff's brother, *M*, to recover nine Government promissory notes of the amount of Rs. 27,000, which the plaint alleged to have been wrongfully sold and transferred by *M* to *B*. Although the transactions took place some time between November 1857, and March 1858, the plaint in the suit was not filed until the 6th of September, 1864. *B* was the transferee of the said notes, and he resisted the suit.

The said notes were made payable to the deceased mother of the plaintiff and *M*. They were indorsed after her death by affixing her seal. That act was done by the hand of *M*, and it was not suggested that the indorsement purported to be other than the mother's. The defence rested upon the ground that special circumstances were shown which in equity precluded the plaintiff from defeating the sale to *B*. It was clear that *M* who sold, or took part in the sale of the notes, as papers bearing genuine indorsements, was precluded from asserting that such indorsements were not genuine; and the contention for *B* was that, as between the brothers, the plaintiff had acquiesced in what was done with the notes, and that both were acting in collusion to set up a false case with a view to obtain their value from *B*.

Held, that *B* had established such a case, and that it would therefore be inequitable to allow the plaintiff to succeed in the suit (177). MIRZA AHMED ABBAS KHAN *v.* SAH MUTHRA DASS.

(1875) **3 Suth. 175 = R. & J.'s No. 37.**

———*Transfer by delivery by one of heirs—Validity—Presumption—Legal title in all heirs and transferable only by indorsement.*

GOVERNMENT PROMISSORY NOTES—(*Concld.*)

Plaintiff sued for the restitution of Promissory Notes, commonly called company's paper, of the Indian Government, or alternatively, for the recovery of their value. His case was that the suit Government Promissory Notes belonged to his and the second defendant's mother, that on her death he and the second defendant became entitled to them; that they were secured under the separate seals of the heirs, in a house belonging to the estate, in which the mother died; but that the second defendant broke the seals, carried off the property, and alone sold and purported to transfer it to the 1st defendant. The relief prayed by him as above stated was against the first defendant. The courts below dismissed the suit, holding that the onus of proof rested on the plaintiff to rebut a presumable *bona fide* title by transfer in the first defendant.

Held that, in the circumstances of the case, no such presumption could be raised, and that the case ought to be inquired into on proper pleadings and evidence (519-20).

The case made as to these papers is, that they were not in a state wherein a transfer, by delivery to a *bona fide* holder, would confer a title. On the contrary, it is stated that the legal title was in the mother, and required a transfer by indorsement from her or all her heirs. An invalid transfer might still confer a valid equitable title, either in part or in entirety; but such a transfer, being exceptional and dependent on special circumstances cannot be raised by legal intendment or presumption. Consequently the plaintiff's case required an answer, unless met on other grounds. Collusion between the brothers if alleged and proved, would have constituted a valid defence (519-20). (*Lord Justice Giffard.*) IKBALOODOWLAH *v.* SAH BUNARSEE DOSS.

(1869) 12 M. I. A. 507 = 2 Sar. 463 = R. & J.'s No. 8 (Oudh).

GRAM SARANJAM OR MAL SARANJAM LANDS.

———Chowkidars appointed by Zemindar and liable for performance of services to him—Lands held by—Distinction. *See* CHOWKIDARI CHAKERAN LANDS—MAL SARANJAM, ETC. **(1864) 10 M. I. A. 16 (46).**

———*Nature of.*

The plaint insisted that the lands in question were what are called "Mal Surunjamee" or "Gram Surunjamee" held for the performance of services personal to the Zemindar, and for the protection of his property. The answer insisted that the land in question was not Mal Surunjamee (service land for taking care of the Mal or Zemindar's property) (39-40). (*Lord Kingsdown.*) JOYKISHEN MOOKERJEE *v.* COLLECTOR OF EAST BURDWAN.

(1864) 10 M. I. A. 16 = 1 W. R. (P. C.) 26 = 1 Suth. 542 = 2 Sar. 54.

GRANT.

ALTUMGAH INAM.
AMARAM GRANT.
ANCIENT GRANT—GENERAL WORDS OF—UNCERTAINTY CAUSED BY.
BABUANA GRANT.
CANCELLATION OF, ON BREACH OF CERTAIN CONDITIONS BY GRANTEE.
CONSTRUCTION OF.
CORRESPONDENCE ANTECEDENT BETWEEN PARTIES TO—PART OF GRANT IF AND WHEN BECOMES.
CROWN—GRANT BY.
CROWN—PRIVATE INDIVIDUAL—GRANTS BY.
DAMODARPUR LAKHWAR—GRANT OF.
EASEMENT—GRANT OF.
ESTATE CONVEYED UNDER.
FREEHOLD HERITABLE INTEREST—GRANT OF.

GRANT—(*Contd.*)

HINDU LAW—IMPARTIBLE ESTATE—GRANT BY HOLDER OF.
HINDU WIDOW—GRANT TO.
INAM GRANT.
INDIAN GRANT—ESTATE PASSING UNDER—QUESTION AS TO—ENGLISH LAW RULES AS TO REAL PROPERTY.
INHERITANCE—LEGAL COURSE OF—ALTERATION OF—GRANT RESULTING IN.
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———*See* ALTUMGAH INAM.

Amaram Grant.

———*See* AMARAM GRANT.

Ancient grant—General words of—Uncertainty caused by.

———*Reference to subsequent usage to explain.*

Should the general words of an ancient grant be uncertain, they may be fairly explained by subsequent usage (121). (*Lord Phillimore.*) SECRETARY OF STATE FOR INDIA *v.* RAJA JYOTI PRASHAD SINGH DEO BAHADUR.

(1926) 53 I. A. 100 = 53 C. 533 = 30 C. W. N. 745 = 24 A. L. J. 761 = 94 I.C. 974 = A. I. R. 1926 P. C. 41.

GRANT—(*Contd.*)

Babuana Grant.

———*Words "Auras putra poutradik" in—Meaning of—Females if included.*

The words "auras putra poutradik" in sanads for babuana grants are words of limitation meaning sons born of the loins and are not words of general inheritance which would include female as well as male heirs (285-6).

The decision in L. R. 8 I. A. 46 to the effect that in Bengal in a gift to a man the vernacular words "putra poutradi krama" would be read as words of general inheritance, and would include female as well as male heirs where by law the estate would descend to such heirs is inapplicable to babuana grants. Such grants could not be made under the ordinary Hindu law, but they are authorised by the custom which excludes females from the succession. Their Lordships must regard the words "auras putra poutradik" as used in these sanads as words of limitation consistent with the custom, and not as words of general inheritance (286). (*Sir John Edge.*) EKRADESHWAR SINGH *v.* JANESHWARI BAHWASIN. **(1914) 41 I. A. 275 = 42 C. 582 (602-3) = (1914) M. W. N. 807 = 16 M. L. T. 382 = 1 L. W. 863 = 18 C. W. N. 1249 = 12 A. L. J. 1217 = 17 Bom. L. R. 18 = 21 C. L. J. 9 = 25 I. C. 417 = 27 M. L. J. 373.**

Cancellation of, on breach of certain conditions by grantee.

———Cancellation of grant on ground of breach of those conditions—Validity—Inquiry judicial or quasi-judicial prior as to alleged breach—Necessity. *See* CROWN—ASSIGNMENT OF LANDS BY. **(1927) A.I.R. 1927 P.C. 275.**

Construction of.

———*Annuity—Grant in lieu of—Villages themselves—Grant of — Assignment of the amount representing the annuity out of the revenue of the villages—Test.*

An ancestor of the plaintiff for services rendered to the Government had received a grant of Rs. 4,000 per annum. In 1844 his successor prayed that the grant might be changed into a grant of villages in Salsetti. This after some negotiations was done in 1847. The deed of grant then granted, after a preamble narrating the original grant of Rs. 4,000 to the family and the request that it might be exchanged for a grant of villages, went on as follows :—

"The aforesaid villages of Juhu and Vile Paria in the island of Salsette are hereby assigned to you and your heirs in perpetuity from the year A.D. 1847-8. The particulars of the cultivation, etc., founded on the Jamabandi of 1842-3, and the conditions of the grant are as follows" :—

Then followed a long and minute description of the villages, the boundaries and the various lands from which revenue was levied, calculated partly on the lands and partly on the produce of brab trees which were tapped for toddy. All the particulars referred to lands as held by various ryots or sutidars. The list ended with a summation of the revenue at the sum of Rs. 4,679-1-8. From that was deducted "the amount of your inam Rs. 4,000." It was added that there were 97 undrawn brab trees for which "the grantee is to pay Rs. 20-14-4," making the whole sum payable by him as the surplus over the Rs. 4,000, Rs. 700. Subsequently, on condition of the surrender of contain other lands not included in the grant, the Rs. 700 was reduced to Rs. 200. The deed then went on with various conditions referred to in the judgment of their Lordships. The villages consisted partly of land occupied by sutidars and partly of land not so occupied.

The Courts below held that the grant was neither an absolute grant of the soil nor a mere assignment of the revenues but was merely an assignment of Rs. 4,000 out of the revenue of the villages subject to the conditions of the grant,

GRANT—(*Contd.*)

Construction of—(*Contd.*)

Held, reversing the Courts below, that the grant was a grant of the villages.

In their Lordships' view the decision of the Courts below as to the effect of the grant is a complete inversion of the scheme of the deed prompted rather by a view as to what in the circumstances the Government ought to have done rather than by a strict observation of what they did do. No doubt it was clear that the Government intended and thought that what they were giving was worth Rs. 4,000 ; but they were not giving Rs. 4,000. On the contrary they were giving something instead of Rs. 4,000 which at that time they were paying in cash. Now what did the Government grant by the deed ? Indubitably they granted not money but villages. These are the only words of conveyance. Doubtless, the villages are granted under conditions. But these conditions will, on analysis, be found to leave the matter of the grant exactly as it was, *i.e.*, that the only grant is the grant of the villages. (*Viscount Dunedin.*) BOMANJI ARDESHIR WADIA *v.* SECRETARY OF STATE FOR INDIA. **(1928) 56 I. A. 51 = 53 B. 230 = 27 A. L. J. 47 = 33 C.W.N. 293 = 49 C.L.J. 179 = I.D. (1929) P C. 41 = 31 Bom.L. R. 256 = 114 I. C. 1 = A.I.R. 1929 P.C. 34.**

———*Community generally or two individuals thereof personally—Grant to.*

The appeal arose out of a controversy between various members of the Parsi community, and related to certain land situated in the Secunderabad cantonment, on a portion of which stood a Parsi tower of silence. The appellants claimed title to the land as descendants and representatives in title of the original founders, alleging that the founders were in their lifetime the owners of the land in question. The respondents, who were defendants in the suit, on the other hand, asserted that the land had been granted to the whole Parsi community for a public purpose, and to enure for the benefit of that community generally for all time, by the cantonment authority.

Held, on a consideration of the documentary evidence in the case, that the grant of the land in suit was to the two founders (predecessors in title of the appellants) personally, and not to the Parsi community. (*Sir Arthur Wilson.*) PESTONJI JIVANJI *v.* SHAPURJI.

(1908) 35 I. A. 79 = 35 C. 478 = 3 M. L. T. 399 = 12 C. W. N. 465 = 7 C. L. J. 401 = 10 Bom. L. R. 287 = 14 Bom. L. R. 102 = 4 N. L. R 65 = 18 M. L. J. 199.

———*Correspondence between parties prior to grant—Reference to—Permissibility.*

In a case in which the construction of a grant was in question the trial Judge examined the correspondence which took place between the parties before the deed in question was granted, and he came to his opinion on the true meaning of the deed, as he put it himself, "after a careful consideration of the deed in the light of the correspondence."

Held, that that way of approaching the true construction of the deed was quite illegitimate. Nothing is better settled than that when parties have entered into a formal contract that contract must be construed according to its own terms and not be explained or interpreted by the antecedent communings which led up to it. This is especially true of a conveyance. Thus even, if there has been a formal antecedent contract, that contract cannot be looked at to control the terms of the conveyance ; much less can mere communings which could only show what parties meant to do but cannot show what they did. (*Viscount Dunedin.*) BOMANJI ARDESHIR WADIA *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL. **(1928) 56 I. A. 51 = 53 B. 230 = 27 A. L. J. 47 = 33 C. W. N. 293 = 49 C. L. J. 179 = I. D. (1929) P.C. 41 = 31 Bom. L. R. 256 = 114 I. C. 1 = A. I. R. 1929 P. C. 34.**

GRANT—(*Contd.*)

Construction of—(*Contd.*)

———*See also* GRANT—CONSTRUCTION OF—EVIDENCE—CORRESPONDENCE PRIOR.

———*Estate conveyed—English law analogies — Usefulness of.*

It was sought to treat the estate conferred by the grant as being analogous to a base fee in English law. Such analogies are rarely helpful and very frequently they are misleading (301). (*Lord Blanesburgh.*) SUBHAN ALI *v.* IMAMI BEGUM. **(1925) 52 I. A. 294 = 52 C. 971 = 23 A. L. J. 667 = 88 I. C. 347 = (1925) M. W. N. 535 = 21 N. L. R. 117 = 30 C. W. N. 122 = A. I. R. 1925 P. C. 184 = 50 M. L. J. 136 (141).**

———*Estate conveyed—Indefinite period—Grant for.*

If a grant be made to a man for an indefinite period, it enures, generally speaking, for his lifetime, and passes no interest to his heirs unless there are some words showing an intention to grant an hereditary interest. That rule of construction does not apply if the term for which the grant is made is fixed or can be definitely ascertained (225). (*Sir Montague E. Smith.*) BABOO LEKHRAJ ROY *v.* KUNHYA SINGH. **(1877) 4 I. A. 223 = 3 C. 210 (211-2) = 3 Sar. 758 = 3 Suth. 453.**

———Estate conveyed — Land itself or land-revenue only—Crown—Grant by. *See* CROWN — GRANT BY—ESTATE CONVEYED UNDER—LAND ITSELF, ETC.

———Estate conveyed — Land itself or land-revenue only—Inam—Use of word, in grant—Effect. *See* INAM—MEANING OF.

(1922) 49 I. A. 286 (298-9) = 45 M. 586 (602).

———*Estate conveyed — Land itself or land-revenue only—Words — Taluka — Ilaka—Jaghir—Zemindary—Use of—Effect.*

The use of the words " Taluka", "Ilaka", "Jagir," and "Zemindari" may not be entirely inconsistent with the construction that the grant was only of the revenue payable in respect of the Pergunna, and was only of a money payment in the nature of a pension ; but these words point to the grant being a grant of land rather than of revenue charged on land (579). (*Lord Parker.*) SAKINA BAI *v.* KANIZ FATIMA BEGUM. **(1917) 22 C. W. N. 577 = 47 I. C. 632 = (1918) M. W. N. 384.**

———*Estate conveyed—Mafee-birt-tenure—Grant as, of ancestral properties in which grantee was co-sharer with grantor, in lieu of grantee's share—Service by grantee to grantor—Stipulation in grant for.*

The words of a grant to *B* were :—"I, *S*, do hereby declare that I have given *B*, Mouzah *S*, with all its cardinal boundaries and the julkur, bunkur, and roads, as a ' mafee-birt-tenure ' in lieu of his share in Mouzah *D*, and he can take possession thereof in perfect security, and continue to do service to me, and that whoever of my descendants should become Rajah, he should maintain this grant."

Mouzahs *D* and *S* had been given in lieu of service to an ancestor of *B*, so that they had both of them originally been ancestral property. The grant above set out was made to *B* for the purpose of dividing that property which they had held jointly, and giving *B* the interest in Mouzah *S* in lieu of the joint interest which he previously had in both properties. The Mouzah *S* had actually descended without dispute from *B*, the original donee, to his son, and from his son to his mother.

Held, on a construction of the grant and on the evidence in the case, that the tenure created by the grant was an hereditary, and not a mere life, tenure, and that the property conveyed was property which went from heir to heir in the ordinary way of Hindu property.

The grant, no doubt, says that it was made in lieu of service ; but there is nothing to show that that was a service of a kind which prevented the property granted being ancestral property descending in the ordinary way. RAJAH MAHENDRA SINGH *v.* JOKHA SINGH. **(1873) 2 Suth. 802 = 19 W. R. 211.**

———*Estate conveyed—Male descendants of a person—Grant to be continued to the—Female descendant's right to share in, so long as there is no failure of male descendants.*

It is impossible to hold that an order that an estate shall " be continued to the male descendants " of a certain person means that it shall be continued to the male and female descendants of that person so long as there is no failure of male descendants. Such a grant is not one in general terms. The expression " to the male descendants " is a very limited expression and the word " to " can have no other than its ordinary meaning attributed to it. It cannot be treated as meaning " during the existence of " or " pending the failure of," and even if the word were capable of being so extended, there would still be difficulty in holding that, from the general words, a general grant could anywhere be evolved in terms sufficiently wide to include female descendants within its scope (301). (*Lord Blanesburgh.*) SUBHAN ALI *v.* IMAMI BEGUM. **(1925) 52 I. A. 294 = 52 C. 971 = 23 A. L. J. 667 = 88 I C. 347 = (1925) M. W. N. 535 = 21 N. L. R. 117 = 30 C. W. N. 122 = A. I. R. 1925 P. C. 184 = 50 M. L J 136 (140-1).**

———*Estate conveyed—Partible or impartible estate—Misapprehension of parties as to—Effect.*

Where a zemindari was created by a sunnad which conferred on the zemindar liberty to transfer by sale, gift or otherwise his proprietary right in the whole or any part of the zemindary, and granted the estate to him, his heirs, successors, and assigns, at the permanent assessment therein named, *held* (1) that the zemindari created by the sunnad was not impartible or descendible otherwise than according to the ordinary Hindu Law ; (2) that the fact that the parties concerned, under a misapprehension, thought that the zemindari was impartible could not make it so or alter the legal course of descent. (*Lord Davey.*) SRI RAJA VIRAVARA THODHRAMMAL RAJYA LAKSHMI DEVIGARU *v.* SRI RAJA VIRAVARA THODHRAMMAL SURYA NARAYANA DHATRAZER BAHADUR VARU. **(1897) 24 I. A. 118 (122) = 20 M. 256 (264) = 7 Sar. 185.**

———Estate conveyed—Words generation to generation —Effect of. *See* ZEMINDAR—GRANT BY—ESTATE CONVEYED UNDER. **(1878) 6 I. A. 54 (61) = 3 B. 186 (192)**

———Evidence—Ancient grant—General words in—Uncertainty caused by—Reference to subsequent usage in case of. *See* GRANT—ANCIENT GRANT.

(1926) 53 I. A. 100 (121) = 53 C. 533.

———*Evidence*—Contemporanea exposito—*Delivery order issued in respect of lands covered by grant—Value of.*

Where a question arose as to the construction of a sanad, *held* that the delivery order issued with reference to the lands which were the subject of the sanad formed a not unimportant item of the *contemporanea exposito* admissible as a guide to the interpretation of the document (213-4). (*Lord Shaw.*) RAGHOJIRAO SAHEB *v.* LAKSHMANRAO SAHEB. **(1912) 39 I. A. 202 = 36 B. 639 (659) = 16 C. W. N. 1058 = 12 M. L. T. 472 = (1912) M.W.N. 1140 = 14 Bom. L. R. 1226 = 17 C. L. J. 17 = 16 I. C. 239 = 23 M. L. J. 383.**

———*Evidence—Correspondence prior—Admissibility of.*

The learned counsel for the respondent have called in aid of their construction (of the grant) the official correspondence which preceded the grant. It was pointed out by one of their Lordships that this correspondence could not be legitimately admitted as a key to the construction of the

GRANT—(*Contd.*)

Construction of—(*Contd.*)

sanad (49). (*Sir James W. Colvile.*) SHEIKH ZAHURUDDIN *v.* COLLECTOR OF GORUCKPORE.
(1870) 4 B L. R. 36 = 13 W. R. (P.C.) 31 = 2 Sar. 454 = 2 Suth. 314

———*See also* GRANT — CONSTRUCTION — CORRESPONDENCE, ETC.

———Evidence – Grantee's acts or statements—Acts or statements of his successor—Value of. *See* MAHOMEDAN LAW—WAKF – DEED WHETHER CREATING A—EVIDENCE—GRANTEE'S ACTS OR STATEMENTS.
(1924) 51 I. A. 192 (195) = 51 C. 446 (449).

———*Evidence—Grantee's self-serving statements—Admissibility of.*

A statement in his own favour by a grantee as to the estate conveyed by the grant is not admissible evidence (10). (*Sir Richard Couch.*) RAJAH RAMESHAR BAKHSH SINGH *v.* ARJUN SINGH. **(1900) 28 I. A. 1 = 23 A. 194 (205) = 7 Sar. 804.**

———*Evidence—Grantor's family—Other deeds with same xpressions of—Admissibility of—Use of.*

The question in the suit out of which the appeal arose was whether an istimrari mokurrari pottah granted in 1850 by the then holder of an impartible estate to his son-in-law of certain mouzahs which were part of the zemindary was for the life of the grantee or for perpetuity to be enjoyed generation after generation.

Some of the documents tendered in evidence consisted of mokurraris granted by the same individual to his three brothers, his brother in-law, who had married his only sister, and his five sons-in-law and two other relatives, and also of mokurraris granted by the son of the grantor of the pottah in question.

Held, that such evidence could only prove a custom of the family of the grantor of the pottah in question, and what was understood in his family to be the meaning of "istimrari mokurrari" when used without any other words (209). (*Sir Richard Couch.*) TOOLSHI PERSHAD SINGH *v.* RAM NARAIN SINGH. **(1885) 12 I. A. 205 = 12 C. 117 (125-6) = 4 Sar. 646.**

———Heirs—Class of—Leading member of—Enumeration of—All members of class if included. *See* DEED—CONSTRUCTION OF—HEIRS. **(1875) 2 I. A. 263 (272).**

———Interests of parties making grant—Consistency with—Necessity. *See* DEED - CONSTRUCTION OF—WORDS IN DEED—MEANING OF—PARTIES USING WORDS.
(1854) 6 M. I. A. 1 (23).

———Legal incidents of grant—Mistake of grantor as to—Construction of grant if affected by. *See* GRANT—LEGAL INCIDENTS OF. **(1923) 50 I. A. 265 (273) = 45 A. 596 (603).**

———Marginal specification of villages within zemindary granted—Grant in general language of zemindary—Control of latter by former. *See* ZEMINDARY—GRANT OF—GENERAL LANGUAGE OF. **(1891) 18 I. A. 149 (154) = 15 M. 101 (107-8).**

———Maxim *Quando aliquid conceditur sine quo res ipsa non esse potest*—Applicability of. *See* MINERALS—GRANT OF—RIGHT TO WORK MINERALS, ETC.
(1924) 52 I. A. 109 (115) = 4 P. 244.

———Misapprehension of parties as to effect of grant—Construction of grant if affected by. *See* GRANT—CONSTRUCTION OF—ESTATE CONVEYED—PARTIBLE OR ETC.
(1897) 24 I. A. 118 (122) = 20 M. 256 (264).

———Parties—Construction put upon grant by—Enjoyment long pursuant to—Claim inconsistent with. *See* GRANT—PARTIES—CONSTRUCTION PUT UPON GRANT BY. **(1870) 4 B. L. R. 36 (47).**

GRANT—(*Contd.*)

Construction of—(*Contd.*)

———*Surrounding circumstances—Reference to.*

In construing a grant the circumstances in which it was made are relevant considerations (140). (*Lord Buckmaster.*) GHULAM ABBAS KHAN *v.* AMATUL FATIMA. **(1921) 48 I. A. 135 = 43 A. 297 (302) = 19 A. L. J. 433 = 24 O. C. 118 = (1921) M. W. N. 349 = 29 M. L. T. 409 = 34 C. L. J. 113 = 14 L. W. 380 = 60 I. C. 907 = 40 M. L. J. 577.**

———Words in grant—Meaning of—Interests at the time of parties using words—Regard for—Necessity. *See* DEED—CONSTRUCTION OF—WORDS IN DEED—MEANING OF—PARTIES USING WORDS. **(1854) 6 M. I. A. 1 (23).**

———Words in grant—Meaning of. *See* WORDS—MEANING OF.

Correspondence antecedent between parties to—Part of grant if and when becomes.

———*Preamble of deed—Narrative in—Reference to correspondence in—Effect.*

In a case in which the construction of a grant was in question, the trial Judge stated that because the correspondence which took place between the parties before the deed of grant was referred to in the deed that made the correspondence part and parcel of the deed. The only reference to the correspondence was, however, in the narrative in the preamble of the deed that there had been such a correspondence.

Held, that it was a vital mistake to suppose that that circumstance introduced the correspondence as a part of the deed. (*Viscount Dunedin.*) BOMANJI ARDESHIR WADIA *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL. **(1928) 56 I. A. 51 = 53 Bom. 230 = 27 A. L. J. 47 = 33 C. W. N. 293 = 49 C. L. J. 179 = I D. (1929) P. C. 41 = 31 Bom. L. R. 256 = 114 I. C. 1 = A. I. R. 1929 P. C. 34.**

Crown—Grant by.

———*See* CROWN—GRANT BY.

Crown—Private individual—Grants by.

———*Considerations applicable to—Distinction.*

Their Lordships are not prepared to affirm that all the considerations applicable to grants from private persons apply to grants from the state (61-2). (*Sir Robert P. Collier.*) GULABDAS JUGJIVANDAS *v.* COLLECTOR OF SURAT. **(1878) 6 I. A. 54 = 3 B. 186 (192) = 3 Sar. 889.**

———*See also* CROWN—GRANT BY—INHERITANCE—LEGAL COURSE OF.

Damodarpur Lakhwar—Grant of.

———*Property passing under.*

When the question was whether under a grant of "Damodarpur Lakhwar" only one village was conveyed or three villages bearing the common designation of Lakhwar were conveyed, *held*, reversing the courts below, that the words "Damodarpur Lakhwar" denoted all the three villages. (*Mr. Ameer Ali.*) INDRAJIT PRATAP SAHI *v.* AMAR SINGH. **(1923) 50 I. A. 183 (191) = 2 P. 676 = 21 A. L. J. 554 = A. I. R. 1923 P. C. 128 = 4 Pat. L. T. 447 = 1 Pat. L. R. 345 = 33 M. L. T. 233 = 18 L. W. 728 = 25 Bom. L. R. 1259 = 28 C. W. N. 277 = 39 C. L. J. 318 = 74 I. C. 747 = 45 M. L. J. 578.**

Easement—Grant of.

———*See* under EASEMENT.

Estate conveyed under.

———*See* GRANT—CONSTRUCTION OF—ESTATE CONVEYED.

GRANT—(*Contd.*)

Freehold heritable interest—Grant of.

———*Writing—Necessity.*

A freehold interest descendible to the heirs of the grantee cannot be created by parol or by an informal written instrument (64). (*Lord Chelmsford.*) SREEMUTTY ANUNDOMOHEY DOSSEE *v.* DOE DEM THE EAST INDIA COMPANY. **(1859) 8 M. I. A. 43 = 13 Moo. P. C. 162 = 1 Suth. 383 = 4 W. R. 51.**

Hindu Law—Impartible Estate—Grant by holder of.

———*See* HINDU LAW—IMPARTIBLE ESTATE—GRANT BY HOLDER OF.

Hindu widow—Grant to.

———*See* HINDU LAW—WIDOW—GRANT TO.

Inam grant.

———*See* INAM.

Indian grant—Estate passing under—Question as to—English law rules as to real property.

———*Inapplicability of.*

The rules of English law as to real property in England can afford no guidance as to what has passed under an Indian grant. (*Lord Tomlin.*) RAJAH OF PITTAPUR *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL. **(1929) 56 I. A. 223 = 52 Mad. 538 = 33 C. W. N. 725 = 27 A. L. J. 702 = 31 Bom. L. R. 866 = 6 O. W. N. 503 = 30 L. W. 9 = 1929 M. W. N. 442 = 50 C. L. J. 30 = 117 I. C. 481 = I. R. (1929) P. C. 249 = A. I. R. 1929 P. C. 152 = 57 M. L. J. 64.**

———*See also* (1) (*Sir Lawrence Jenkins.*) SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* SRINIVASA CHARIAR. **(1920) 48 I. A. 56 (65) = 44 M. 421 (429) = (1921) M. W. N. 111 = 29 M.L.T 181 = 19 A.L.J. 201 = 3 U.P.L.R. (P. C.) 43 = 25 C.W.N. 818 = 13 L.W. 592 = 33 C. L. J. 380 = 60 I. C. 230 = 40 M. L. J. 262.**

———(2) GRANT—MEANING OF WORD, ETC. **(1916) 44 I. A. 46 = 44 C. 585 (590).**

Inheritance—Legal course of—Alteration of—Grant resulting in.

———Validity of—Crown—Private individual—Grants by—Distinction. *See* HINDU LAW—INHERITANCE—LEGAL COURSE OF—ALTERATION OF—GRANT OR TRANSFER RESULTING IN AND CROWN—GRANT BY—INHERITANCE—LEGAL COURSE OF.

Inheritance rule applicable to estate held under—Alteration by new grant of.

———Validity—Effect. *See* CROWN—GRANT BY—ESTATE HELD UNDER—SURRENDER OF, ETC.

Jaghir grant.

———*See* JAGHIR.

Kattubadi grant.

———*See* KATTUBADI GRANT.

Khorposh grant.

———*See* KHORPOSH GRANT.

Legal incidents of—Mistake of grantor as to.

———*Effect of grant if affected by.*

The fact that the grantor makes a mistake as to the legal incidents belonging to the estate which he has granted does not affect the grant made by him (273). (*Lord Phillimore.*) LAL RAM SINGH *v.* DEPUTY COMMISSIONER OF PARTABGARH. **(1923) 50 I. A. 265 = 45 A. 596 (603) = 76 I. C. 922 = (1923) M. W. N. 591 = 21 A. L. J. 777 = 33 M. L. T. 355 = 26 O. C. 257 = 9 O. & A. L. R. 746 = 10 O. L. J. 513 = 29 C.W.N. 86 = A.I.R. 1923 P.C. 160.**

Life estate with reverter to grantor on its termination—Grant of.

———*Treatment by grantor of grantee's heir as entitled under—Equity in latter's favour by reason of.*

GRANT—(*Contd.*)

Life estate with reverter to grantor on its termination—Grant of—(*Contd.*)

In a case in which a grant terminated with the death of the grantee and reverted to the grantor, *held* that the fact that, for sometime after the grantee's death, the grantor treated his heir, not in existence at the time of the grant, as entitled thereunder, did not create an equity in favour of such heir; and that the latter was not entitled to specific performance of the agreement whereunder the grant was made (157 8). (*Sir Richard Couch.*) RAJA PUDMANUND SINGH BAHADUR *v.* HAYES. **(1901) 28 I.A. 152 = 28 C. 720 (733-4) = 5 C. W. N. 806 = 3 Bom. L. R. 803 = 8 Sar. 125.**

Life grant—Permanent lease by grantee under.

———Validity of—Suit by grantor for declaration of invalidity of—Necessity. *See* LIMITATION ACT OF 1908, ART. 91. **(1899) 26 I. A. 216 (223-4) = 27 C. 156 (165-6).**

Lost grant—Presumption of.

———Artificial water-course on neighbour's land—Water flowing to one's own land through—Right to—Legal origin for — Evidence. *See* WATER-COURSE — ARTIFICIAL WATER-COURSE—NEIGHBOUR'S LAND. **(1878) 6 I. A. 33 (43) = 4 C. 633 (641-2, 643-4).**

———Artificial water-course constructed on land of another—Water flowing through—Right to—Lost grant of—Presumption of—Evidence justifying. *See* WATER-COURSE—ARTIFICIAL WATER-COURSE. **(1880) 7 I. A. 240 (247) = 6 C. 394 (403-4).**

———Fishery right—Legal origin for—Presumption of, from long user. *See* FISHERY RIGHT—DECENNIAL SETTLEMENT. **(1914) 41 I. A. 221 (227) = 42 C. 489 (510-1).**

———*Grant existing—Claim founded on—Inapplicability of presumption to case of.*

The claim of the respondents, therefore, is founded upon an existing grant, and the case is not, and cannot be, assimilated to a claim founded on a long continuous possession, where the title-deed is alleged to have been lost, and, therefore, that its existence and contents might be presumed (136). (*Dr. Lushington.*) UNIDE RAJAHA RAJE BOMMARAUZE BAHADUR *v.* PEMMASAWMY VENKATADRY NAIDOO. **(1858) 7 M. I. A. 128 = 4 W. R. 121 = 1 Sar. 637 = 1 Suth. 300.**

———*Privilege—Immemorial exercise of—Presumption from, of sanad granting privilege.*

Quære, whether the existence of a sunnud granting a privilege might be presumed from the immemorial exercise of the privilege (219). (*Lord Campbell.*) SRI SUNKUR BHARTI SWAMI *v.* SIDHA LINGAYAH CHARANTI. **(1843) 3 M. I. A. 198 = 6 W. R. (P. C.) 39 = 1 Suth. 142 = 1 Sar. 266.**

———*Rent admittedly due — Permanent fixing of—Question as to—Applicability of presumption to case of.*

Where the question is, not whether a *mahal* is rent free, but whether a rent admitted to be due has been permanently fixed, it would be difficult to raise a presumption of lost grant (497). (*Lord Justice Turner.*) BENGAL GOVERNMENT *v.* NAWAB JAFUR HOSSEIN KHAN. **(1854) 5 M. I. A. 467 = 1 Sar. 472.**

———*Sunnuds not proved—Claim rested on—Inapplicability of presumption to case of.*

The presumption of a lost grant cannot be made when the claim is rested on sunnuds actually produced, and they are found to be not genuine (219). (*Lord Campbell.*) SRI SUNKUR BHARTI SWAMI *v.* SIDHA LINGAYA CHARANTI. **(1843) 3 M.I.A. 198 = 6 W.R. (P. C.) 39 = 1 Suth. 142 = 1 Sar. 266.**

———*See* under this sub-head TENURE ALLEGED TO BE FOUNDED ON SUNNUDS. **(1854) 5 M.I.A. 467 (497).**

GRANT—(*Contd.*)

Lost grant—Presumption of—(*Contd.*)

———*Tenure alleged to be founded on sanad—Failure to prove sanad—Applicability of presumption to case of.*

The respondent having alleged the istimrary tenure to be founded on the sunnuds, and having alleged it to rest upon them, and having failed to make good that allegation, he must abide by the failure, and is not entitled to resort to any presumption which might possibly otherwise have been made (497). (*Lord Justice Turner.*) BENGAL GOVERNMENT *v.* NAWAB JAFUR HOOSEIN KHAN.

(1854) 5 M.I.A. 467 = 1 Sar. 472.

Maafee Sunud.

———Nature of. *See* MAAFEE SUNUD.

(1852) 5 M.I.A. 271 (275).

Maintenance Grant.

———*See* HINDU LAW—MAINTENANCE—GRANT FOR.

Meaning of word, in legal transactions in India.

———*English law technical meaning—Inapplicability of.*

In considering whether a particular grant carries with it the mineral rights in the soil, it is important to avoid giving the words used in connection with legal transactions in India the special and technical meaning that they possess in this country. According to the English law, the word "grant" is strictly applicable to the conveyance at common law of remainders, reversions, and incorporeal hereditaments, which do not lie in livery, or of which livery could not be given. But in connection with the present dispute, the word has no such meaning. (*Lord Buckmaster, L. C.*) SASHRI BHUSHAN MISRA *v.* JYOTI PRASHAD SINGH DEO. **(1916) 44 I.A. 46 = 44 C. 585 (590) = 6 L.W. 2 = 19 Bom. L.R. 416 = 21 C.W.N. 377 = 21 M. L. T. 303 = 15 A.L.J. 209 = (1917) M.W.N. 226 = 25 C.L.J. 265 = 1 Pat. L.W. 361 = 40 I.C. 139 = 32 M.L.J. 245.**

Minerals.

———Grant of. *See* MINERALS.

Misapprehension of parties as to effect of.

———Effect of grant if affected by. *See* GRANT—CONSTRUCTION OF—ESTATE CONVEYED—PARTIBLE OR IMPARTIBLE ESTATE.

(1897) 24 I. A. 118 (122) = 20 M. 256 (264).

Muafi Grant.

———Resumption by Government of—Suit to set aside—Civil Court—Jurisdiction. *See* PENSIONS ACT, SS. 5, 6—MUAFI GRANT. **(1919) 12 L.W. 311 (314).**

Native Ruler.

———Grant by—Nature of—Evidence—Confirmatory grant by British Government—Value of. *See* HINDU LAW—RELIGIOUS ENDOWMENT—MUTT—HEAD OF—GRANT BY NATIVE RULER TO.

(1917) 45 I. A. 1 (8) = 41 M. 296 (304-5).

———Grant by, to Hindu gossain—Acquisitions with income of property granted—Accretion to asthal of which gossain is head. *See* HINDU LAW—RELIGIOUS ENDOWMENT—ASTHAL—HEAD OF—GRANT BY NATIVE RULER TO. **(1918) 35 M.L.J. 5 (9-10).**

———Grant to temple by—Estate conveyed—Kudiwaram and melwaram. *See* MADRAS ACTS—ESTATES LAND ACT, S. 3 (2) (*d*). **(1923) 51 M.I.A. 83 (96) = 47 M. 337.**

———*Spiritual preceptor—Grant of non-religious lands by former to latter—Appanage or endowment of office—Personal inam of grantee—Test.*

Properties, non-religious and religious, were granted at various times by the Raja of Tanjore to a person who was his guru or spiritual preceptor. Shortly after the escheat of the Tanjore Raj in 1855 inquiries were directed by the Government with a view of ascertaining whether the properties so granted were service lands, that is, lands enjoyed

GRANT—(*Contd.*)

Native Ruler—(*Contd.*)

or endowments of offices held by servants or ministers of the Rajah, which would escheat upon the termination of the Raj, or whether they had been bestowed as personal grants; and a report was made which was acted upon by the Government to the effect that the non-religious properties were not service lands but personal grants and consequently had not escheated. Thereupon new inam grants in confirmation of the original grants were made by the Government to *R*, a descendant of the grantee. The confirmation grants of the non-religious lands described them as the personal inams of the grantee to be held by him as his absolute property to hold or dispose of as he thought proper, subject to the quit-rent. In some of the grants the inam was said to be tax-free and hereditary, and that on failure of lineal heirs it would lapse to the state.

In a suit by the younger son of *R* against his elder brother for partition of the non-religious lands, *held* that there was nothing in the documents, or in any of the other circumstances of the case, to take the descent of the non-religious lands out of the ordinary rule of inheritance, and that they were therefore partible (6).

The original grants of the non-religious lands show no indication that they were made by way of endowment of an office. The utmost that can be said on behalf of that contention is that the grantee is sometimes described as a royal priest. But this is a mere description. (*Sir Robert Phillimore.*) SETHURAMASWAMIAR *v.* MERUSWAMIAR.

(1917) 45 I. A. 1 = 41 M. 296 (302-3) = 43 I. C. 806 = 20 Bom. L. R. 414 = 7 L. W. 22 = 23 M. L. T. 94 = 4 P. L. W. 91 = 16 A. L. J. 113 = 27 C. L. J. 231 = 22 C. W. N. 457 = 34 M L. J. 130.

Non-Hindu—Grant by, as Hindu.

———*Legality of.*

The East India Company did not grant, nor did they intend to grant, as Hindoos; if they had so intended, they must have failed in their intention, for they could only grant according to law (65). (*Lord Chelmsford.*) SREEMUTTY ANUNDOMOHEY DOSSEE *v.* DOE DEM THE EAST INDIA CO. **(1859) 8 M. I. A. 43 = 13 Moo P. C. 162 = 1 Suth. 383 = 4 W. R. 51.**

Office.

———Grant of, by supreme power of State, in way different from that in which it might have been granted before—Validity. *See* OFFICE—GRANT OF, BY SUPREME, ETC.

(1841) 2 M. I. A. 480 (486).

Oudh Estate.

———Grant of. *See* OUDH ESTATE.

Parties—Construction put upon grant by—Enjoyment long pursuant to—Claim inconsistent with.

———*Maintainability.*

Where general descriptive terms such as "villages" or the like are used in a grant, and both the parties have by their acts put a particular construction upon them and rights depending on that construction have been enjoyed for many years, it lies upon those who impugn that construction to show that it is erroneous. (*Sir James W. Colvile.*) SHEIKH ZAHURUDDIN *v.* COLLECTOR OF GORUCKPURE.

(1870) 4 B. L. R. 36 (47) = 13 W. R. (P. C.) 31 = 2 Sar. 454 = 2 Suth 314.

Pension.

———*See* PENSION.

Perpetuity.

———*See* PERPETUITY.

Preamble of—Correspondence antecedent between parties referred to in narrative of.

———Part of deed if and when becomes. *See* GRANT—CORRESPONDENCE ANTECEDENT BETWEEN PARTIES TO.

(1928) 56 I.A. 51 = 53 B. 230

GRANT—(*Contd.*)

Private individual—Crown—Grants by.

———Considerations applicable to — Distinction. *See* GRANT—CROWN—PRIVATE INDIVIDUAL AND CROWN—GRANT BY.

Religious Endowment.

———Asthal—Head of—Grant by Native ruler to—Income of property granted—Acquisitions with—Accretion to asthal. *See* HINDU LAW—RELIGIOUS ENDOWMENT—ASTHAL—HEAD OF—GRANT BY NATIVE RULER TO.
(1918) 35 M. L. J. 5 (9-10).

———Grant personal to a person subject to condition of his defraying expenses of, from its revenue — Non-observance of condition—Effect. *See* HINDU LAW—RELIGIOUS ENDOWMENT—GRANT PERSONAL TO A PERSON, ETC.
(1924) 51 I. A. 192 (197-8) = 51 C. 446 (452-3).

———Mutt—Head of—Grant by Native ruler to—Nature of—Evidence of—Confirmatory grant by British Government—Value of. *See* HINDU LAW—RELIGIOUS ENDOWMENT—MUTT—HEAD OF—GRANT BY NATIVE RULER TO.
(1917) 45 I. A. 1 (8) = 41 M. 296 (304-5).

Resumption of.

———*See* RESUMPTION.

Saranjam.

——— Grant by way of. *See* SARANJAM.

Secunderabad Cantonment.

———Land in, and forming Hyderabad territory—Grant of, by Commander of British troops in Cantonment—Validity. *See* SECUNDERABAD CANTONMENT.
(1908) 35 I. A. 79 (86-7) = 35 C. 478 (493)

Service Grant.

———*See* SERVICE GRANT ; SERVICE LAND ; AND SERVICE TENURES.

Shet Sanadi.

———Nature and incidents of. *See* SHET SANADI.
(1928) 56 M. L. J. 429 (432-3).

Shrotriem Grant.

———*See* SHROTRIEM GRANT.

Talabi Brahmottar Grant.

———Nature of. *See* TALABI BRAHMOTTAR GRANT.
(1916) 44 I. A. 46 = 44 C. 585 (590).

Tanjore Raja—Grant to temple by.

———Estate conveyed—Kudiwaram and melwaran. *See* MADRAS ACTS—ESTATES LAND ACT, S. 3 (2) (*d*)—ESTATE—GRANT BY, ETC. **(1923) 51 I. A. 83 (96) = 47 M. 337.**

Title under—Existence of—Presumption.

———Pottah—Acceptance by grantee of—Effect of. *See* POTTAH—ACCEPTANCE OF. **(1873) 19 W. R. 353.**

Treaty.

———*See* TREATY.

Unborn persons—Conditional grant of estate to.

———*Validity.*

The conditional grant of an estate to persons yet unborn, who may happen to be the living descendants of the grantees named, at some future and indefinite period, upon the occurrence of an event, which may possibly never occur, is altogether void and ineffectual (154). (*Lord Watson.*) CHUNDI CHARN BARUA *v.* RANI SIDHESWARI DEBI.
(1888) 15 I. A. 149 = 16 C. 71 (80) = 5 Sar. 231.

GRANT—(*Concld.*)

Validity of.

———Non-Hindu—Grant by, as Hindu. *See* GRANT—NON-HINDU.
(1859) 8 M. I. A. 43 (65).

———Perpetuity—Pension in—Settlement by way of—Validity—Private individual—Contract or treaty between sovereign powers — Settlements by — Distinction. *See* MAHOMEDAN LAW—PENSION IN PERPETUITY.
(1889) 16 I. A. 175 (182) = 17 C. 234 (245).

———*Presumption—Lapse of time—Enjoyment lawful by grantee under grant.*

At the lapse of 100 years, when every party to the original transaction has passed away, and it becomes completely impossible to ascertain what were the circumstances which caused the original grant to be made, it is only following the policy which the courts always adopt, of securing as far as possible quiet possession to people who are in apparent lawful holding of an estate, to assume that the grant was lawfully and not unlawfully made (59). (*Lord Buckmaster.*) BAWA MAGNIRAM SITARAM *v.* KASTURBHAI MANIBHAI.
(1921) 49 I. A. 54 = 46 B. 481 (488) = 26 C. W. N. 473 = 20 A. L. J. 371 = 35 C. L. J. 421 = 24 Bom. L. R. 584 = 30 M. L. T. 268 = (1922) M. W. N. 319 = A. I. R. 1922 P. C. 163 = 66 I. C. 162 = 42 M. L. J. 501.

Words in.

———Meaning of. *See* WORDS—MEANING OF.

Zemindar.

———Grant by. *See* ZEMINDAR—GRANT BY.

Zemindari.

———Grant of. *See* ZEMINDARY—GRANT OF.

GRASSIAS—KASBATIS—TENURES OF.

———*Distinction—Mewassies—Tenure of.*

They (the Grassias) were ancient Rajput proprietors, and, before the cession of the Ahmedabad Zillah by the Gaekwar to the British Government, stood to their native Sovereigns in that relation, their lands being cultivated by raiyat tenants from year to year and at will. They and the mewassies were clearly distinguishable from the Kasbatis. The last named held their lands by contract, neither by sanad nor by defiance, and there was no analogy between the holdings of the Grassias and those of the Kasbatis (248). (*Lord Atkinson.*) SECRETARY OF STATE FOR INDIA *v.* BAI RAJBAI. **(1915) 42 I. A. 229 = 39 B. 625 (660-1) = 19 C. W. N. 1087 = 18 M. L. T. 179 = 17 Bom. L. R. 730 = 13 A. L. J. 953 = 2 L. W. 731 = (1915) M. W. N. 563 = 30 I. C. 303 = 29 M. L. J. 242.**

GUDIKATTU DOWLE.

———*Meaning of.*

Gudikattu dowle means entire assessment (40). (*Sir Richard Couch.*) MAHARAJAH MIRZA SRI ANAND *v.* PIDAPARTI SURIANARAYANA SASTRI.
(1886) 13 I. A. 32 = 9 M. 307 (316) = 4 Sar. 696.

GUARDIANS AND WARDS ACT VIII OF 1890.

———*See also* BENGAL ACTS—MINORS ACT XL OF 1858.

———**Ss. 7, 52**—*District Court—Minors—Suit by father to recover custody of—Order declaring minors wards of court and declaring plaintiff their legal guardian—Jurisdiction as to.*

In a suit instituted in the District Court by a Hindu father for an order directing the defendant, to whom he had entrusted the custody and education of his infant sons, to hand them over to the plaintiff, it is not competent to the

GUARDIANS & WARDS ACT VIII OF 1890—(*Ctd.*)

District Court to declare the infants wards of court, and to declare under S. 7 of the Guardians and Wards Act, 1890, that the plaintiff was their legal guardian so as to prolong their minorities until they attained respectively the age of 21 years.

Held, that no such order was competent to the District Court in such a suit (323). (*Lord Parker.*) BESANT *v.* NARAYANIAH. **(1914) 41 I. A. 314 = 38 M. 807 (821) = 16 M. L. T. 165 = (1914) M. W. N. 585 = 1 L. W. 520 = 18 C. W. N. 1089 = 20 C. L. J. 253 = 12 A. L. J. 1155 = 16 Bom. L. R. 625 = 24 I. C. 290 = 27 M. L. J. 30.**

———*High Court—Minors—Suit by father to recover custody of—Order declaring minors wards of court and declaring plaintiff their legal guardian—Jurisdiction to make—Condition.*

A suit instituted in the District Court by a Hindu father for an order directing the defendant, to whom he had entrusted the custody and education of his infant sons, to hand them over to the plaintiff, was transferred to the High Court under cl. 13 of the Letters Patent, 1865. The trial Judge in the High Court made an order declaring the infants wards of court, and declaring under S. 7 of the Guardians and Wards Act, 1890, that the plaintiff was their guardian so as to prolong their minorities until they attained respectively the age of 21 years.

Held that assuming that, in the exercise of its general jurisdiction over infants, the High Court had jurisdiction to declare the infants to be wards of Court, an order declaring a guardian could only be made if their interests required it (323-4). (*Lord Parker.*) BESANT *v.* NARAYANIAH. **(1914) 41 I. A. 314 = 38 M. 807 (821-2) = 16 M. L. T. 165 = (1914) M. W. N. 585 = 1 L. W. 520 = 18 C. W. N. 1089 = 20 C. L. J. 253 = 12 A. L. J. 1155 = 16 Bom. L. R. 625 = 24 I. C. 290 = 27 M. L. J. 30.**

———**S. 9**—*District Court—Minors—Jurisdiction over—Condition of.*

The District Court has no jurisdiction over infants except such jurisdiction as is conferred by the Guardians and Wards Act, 1890. By S. 9 of that Act the jurisdiction of the Court is confined to infants ordinarily resident in the District (322). (*Lord Parker.*) BESANT *v.* NARAYANIAH. **(1914) 41 I.A. 314 = 38 M. 807 (820) = 16 M.L.T. 165 = (1814) M. W. N. 585 = 1 L. W. 520 = 18 C. W.N. 1089 = 20 C. L. J. 253 = 16 Bom. L. R. 625 = 12 A. L.J. 1155 = 24 I. C. 290 = 27 M. L. J. 30.**

———*Ordinarily resides—Meaning of.*

By S. 9 of the Guardians and Wards Acts, 1890, the jurisdiction of the District Court over infants is confined to infants ordinarily resident in the district. It is impossible to hold that infants who had months previously left India with a view to being educated in England and going to the University of Oxford were ordinarily resident in the district of Chingleput (322). (*Lord Parker.*) BESANT *v.* NARAYANIAH. **(1914) 41 I. A. 314 = 38 M. 807 (820) = 16 M. L. T. 165 = (1914) M. W. N. 585 = 1 L. W. 520 = 18 C. W. N. 1089 = 20 C. L. J. 253 = 12 A. L. J. 1155 = 16 Bom. L. R. 625 = 24 I. C. 290 = 27 M. L. J. 30.**

———**Ss. 9 and 10**—*Minors—Guardianship of—Proceedings relating to—Form proper of.*

A suit *inter partes* is not the form of procedure prescribed by the Guardians and Wards Act, 1890, for proceedings in a District Court touching the guardianship of infants (322).

A Hindu father, who had purported to entrust the custody and education of his infant sons to the defendant, subsequently purported to revoke the authority so entrusted and demanded the restoration by the defendant of the custody of his children to his own custody. Subsequently, the father instituted a suit against the defendant in the District Court of Chingleput for a declaration that he was entitled to

GUARDIANS & WARDS ACT VIII OF 1890—(*Ctd.*)

the guardianship and custody of his sons and that the defendant was not so entitled, and for an order on the defendant to hand over such sons to the plaintiff (father) or such other person as to the Court might seem meet.

Held that such a suit *inter partes* was not the proper form of procedure prescribed by the Guardians and Wards Act, 1890 (322). (*Lord Parker.*) BESANT *v.* NARAYANIAH. **(1914) 41 I. A. 314 = 38 M. 807 (820) = 16 M. L. T. 165 = (1914) M. W. N. 585 = 1 L. W. 520 = 18 C. W. N. 1089 = 20 C. L. J. 253 = 12 A. L. J. 1155 = 16 Bom. L.R. 625 = 24 I C. 290 = 27 M. L.J. 30.**

———**S. 19**—*Order declaring guardian under, when father alive—Validity—Condition.*

An order declaring a guardian cannot, by reason of S. 19 of the Guardians and Wards Act, 1890, be made during the lifetime of the father of the infant unless in the opinion of the Court he is unfit to be his guardian (324). (*Lord Parker.*) BESANT *v.* NARAYANIAH.

(1914) 41 I. A. 314 = 38 M. 807 (822) = 16 M. L. T. 165 = 1 L. W. 520 = (1914) M.W.N. 585 = 18 C.W.N. 1089 = 20 C.L J. 253 = 16 Bom. L. R. 625 = 12 A.L.J 1155 = 24 I. C. 290 = 27 M.L.J. 30.

———**S. 31.** *See* cases under BENGAL ACTS—MINORS ACT XL OF 1858, S. 18.

GURU.

———*See* SPIRITUAL MINISTER.

HABEAS CORPUS—WRIT OF—ISSUE OF.

———*Supreme Court—Jurisdiction of—Person resident out of local limits of general jurisdiction of court.*

The Supreme Court of Bombay has no power or authority to issue a writ of *habeas corpus* except when directed either to a person resident within those local limits wherein such court has a general jurisdiction, or to a person out of such local limits, who is personally subject to the civil and criminal jurisdiction of the Supreme Court (58). JUSTICES OF THE SUPREME COURT OF BOMBAY.

(1829) 1 Knapp. 1 = 1 Sar. 1.

———*Supreme Court—Jurisdiction of, to issue writ to gaoler or officer of native court as such.*

The Supreme Court of Bombay has no power or authority to issue a writ of *habeas corpus* to the gaoler or officer of a native court as such officer, the Supreme Court having no power to discharge persons imprisoned under the authority of a native Court (58). JUSTICES OF THE SUPREME COURT OF BOMBAY. **(1829) 1 Knapp. 1 = 1 Sar. 1.**

HAKIKAT CHOWHUDDIBUNDI PAPERS.

———Nature of—Evidentiary value of—Dispute with Government. *See* BOUNDARY—EVIDENCE—HAKIKAT CHOWHUDDIBANDI PAPERS—NATURE OF.

(1917) 43 I. C. 361 (365).

HEIR-AT-LAW.

———*See* (1) DECEASED; (2) EVIDENCE ACT, S. 115—CASES UNDER—HEIR-AT-LAW; AND (3) EXECUTOR.

HEREDITARY OFFICE.

———*See* OFFICE—HEREDITARY OFFICE.

HEREDITARY PROPERTY.

———*See* PROPERTY—HEREDITARY PROPERTY.

HIGH COURT.

AMALGAMATION IN, OF SUPREME AND EAST INDIA COMPANY'S COURTS.

BENCH HEARING CASE—CONSULTATION WITH JUDGE NOT MEMBER OF BENCH.

CERTIORARI—WRIT OF—GRANT OF.

CONTEMPT OF COURT.

HIGH COURT—(*Contd.*)
CONTEMPT OF COURT AS TO.
DECISION OF—SUBORDINATE COURTS.
DIFFERENCE OF OPINION IN SAME COURT—FULL BENCH—REFERENCE TO.
INSOLVENCY COURT—ORDER OF, AGAINST INSOLVENT—JUDGMENT ENTERED UP IN HIGH COURT IN PURSUANCE OF.
JURISDICTION OF.
LAW AND EQUITY.
ORIGINAL SIDE—JURISDICTION IN.
ORIGINAL SIDE APPEAL—DIFFERENCE OF OPINION EQUAL BETWEEN JUDGES HEARING.
PUISNE JUDGE—ACTING PUISNE JUDGE—APPOINTMENT OF—VALIDITY.
SUPERIOR COURT OF RECORD.
TRANSFER OF SUIT UNDER CHARTER ACT — REMOVAL OF SUIT UNDER LETTERS PATENT.
TRANSFER TO FILE OF, OF SUIT IN DISTRICT COURT.

Amalgamation in, of Supreme and East India Company's Courts.

———*Effect of.*

The general scheme of the amalgamation of the two systems of Judicature (*viz.*, the Courts of the East India Company known as the Mofussil Courts, and the Courts established in the Presidency towns and elsewhere by Royal Charter), and the establishment of the High Courts by Letters Patent under the powers given by the 24th and 25th Vict., c. 104, and the 28th Vict., c. 15; was to constitute one general court, of which the Judges sitting in various divisional courts were to exercise the functions both of the Supreme Court and the appellate Mofussil Courts (the Sudder Dewanny Adawlut and the Sudder Nizamut Adawlut) all of which were abolished (486). (*Sir James W. Colvile.*) KRISTO KINKUR ROY *v.* RAJAH BURRODACAUNT ROY. **(1872) 14 M. I. A. 465 = 17 W. R. 292 = 10 B. L. R. 101 = 2 Suth. 564.**

Bench hearing case—Consultation with Judge not member of Bench.

———*Propriety of.*

In the case of *Boidyanth Sett* v. *Durga Churn Basik*, High Court of Bengal, original jurisdiction, Mr. Justice Morgan decided a point of Hindu Law, after consulting Mr. Justice Shumbhoonath Pandit, a learned Hindu lawyer.

Their Lordships referred to the case without expressing any disapproval of the course adopted by Mr. Justice Morgan (126-7). (*Sir Barnes Peacock.*) AUMIRTOLALL BOSE *v.* RAJONEEKANT MITTER. **(1875) 2 I. A. 113 = 15 B. L. R. 10 = 23 W. R. 214 = 3 Sar. 430 = 3 Suth. 94.**

———Judges who have heard the arguments and who are responsible for the decision in a case can hardly with propriety rest it on the authority of one who has not heard the arguments and is not responsible for the decision though he may also be a Judge of the High Court. (*Sir Richard Couch.*) HARRISS *v.* BROWN. **(1901) 28 I.A. 159 (166) = 28 C. 621 (635-6) = 5 C. W. N. 729 = 3 Bom. L. R. 808 = 8 Sar. 92.**

———In I. L. R. 5 M. 291 the Judges say they had "consulted their learned colleague, Muthusami Ayyar, J," and acknowledged their obligations to him for his assistance. Their Lordships cannot help remarking that it is an undesirable course, which has not been approved of by this Board, to introduce the opinion of another judge not a party to the judgment for the purpose of enforcing the conclusion arrived at. The recorded opinion of Muthusamy Aiyar, J would have been of great value had he been associated in the decision (227). (*Mr. Ameer Ali.*) BUDDHA SINGH *v.* LALTU SINGH. **(1915) 42 I. A. 208 = 37 A. 604 (623) = 20 C. W. N. 1 = 22 C. L. J. 481 =**

HIGH COURT—(*Contd.*)

Bench hearing case—Consultation with Judge not member of Bench—(*Contd.*)

13 A. L. J. 1007 = 17 Bom. L. R. 1022 = (1915) M. W. N. 772 = 2 L. W. 897 = 18 M. L. T. 409 = 30 I C. 529 = 29 M. L. J. 434.

———On a question of the admissibility of a piece of evidence, a Full Bench decision of the same Court was cited before the trial Judge. Before admitting the evidence, the trial Judge consulted another learned Judge of the same court who had been a party to the Full Bench decision. Their Lordships adverted to this circumstance without making any remarks against the propriety of such a course (1000). (*Lord Sumner.*) IBRAHIM *v.* EMPEROR. **(1914) 1 L. W. 989 = 18 C. W. N. 705 = 23 I. C. 678 = 15 Cr. L. J. 326 = (1914) A. C. 599 = 4 Cr. L. R. 225 = 3 Con. L. R. 187.**

Certiorari—Writ of—Grant of.

———Jurisdiction. *See* CERTIORARI—WRIT OF—GRANT OF— HIGH COURTS. **(1919) 46 I. A. 176 = 43 M. 146 (159).**

Contempt of Court.

———Commitment for—Jurisdiction as to—Privy Council appeal from order of. *See* CONTEMPT OF COURT. **(1883) 10 I. A. 171 = 10 C. 109.**

Contempt of Court as to.

———*See* CONTEMPT OF COURT.

Decision of—Subordinate Courts.

———*Binding character on.*

A court which is subordinate to a High Court is bound to follow the decision in law of a Bench of that Court unless the decision of the Bench has been overruled by a decision of a Full Bench of that Court or unless it has been overruled expressly or impliedly on an appeal to His Majesty in Council, or unless the law has been altered by a subsequent Act of the legislature (160). (*Sir John Edge.*) PUTTU LAL *v.* PARBATI KUNWAR. **(1915) 42 I A. 155 = 37 A. 359 (366) = 13 A. L. J. 721 = 19 C. W. N. 841 = 22 C. L. J. 190 = 17 Bom. L. R. 549 = 18 M. L. T. 61 = 2 L. W. 881 = (1915) M. W. N. 514 = 29 I. C. 617 = 29 M. L. J. 63.**

Difference of opinion in same court - Full Bench - Reference to.

———*Necessity.*

It is usual in cases where a difference of opinion arises in the same court to refer the point to a Full Bench, and the law provides for such contingencies (227). (*Mr. Ameer Ali.*) BUDDHA SINGH *v.* LALTU SINGH. **(1915) 42 I. A. 208 = 37 A 604 (622 3) = 20 C. W. N. 1 = 22 C. L. J. 481 = 13 A. L. J. 1007 = 17 Bom. L. R. 1022 = (1915) M. W. N. 772 = 2 L. W. 897 = 18 M. L, T. 409 = 30 I. C, 529 = 29 M. L. J. 434.**

———In the ordinary course, on a difference of opinion arising between two Division Benches of the same court, the case should be referred to a Full Bench (300). (*Lord Parker.*) HAMIRA BIBI *v.* ZUBAIDA BIBI. **(1916) 43 I. A. 294 = 38 A. 581 (588) = 14 A. L. J. 1055 = 20 M. L. T. 505 = (1916) 2 M. W. N. 551 = 4 L. W. 602 = 21 C. W. N. 1 = 1 Pat. L. W. 57 = 18 Bom. L. R. 999 = 25 C. L. J. 517 = 36 I. C. 87 = 31 M. L. J. 799.**

———When a Bench of the High Court does not agree with a previous decision of a Bench of that Court, the constitutional principle to be followed is to refer the question to a Full Bench to decide what, so far as that High Court

HIGH COURT—(*Contd.*)

Difference of opinion in same court—Full Bench—Reference to—(*Contd.*)

is concerned, would be a binding decision on all the Benches of that court (171). (*Sir John Edge.*) BINDESHWARI PRASAD SINGH *v.* MAHARAJA KESHO PRASAD SINGH. **(1926) 53 I. A. 164 = 5 Pat. 634 = 7 Pat. L. T. 553 = 31 C. W. N. 74 = 44 C. L. J. 86 = A. I. R. 1926 P. C. 79 = 93 I. C. 1025 = 51 M. L. J. 587.**

Insolvency Court—Order of, against insolvent—Judgment entered up in High Court in pursuance of.

———Jurisdiction in which it is entered up—Execution of judgment—Limitation. *See* INSOLVENCY—HIGH COURT—INSOLVENCY COURT—ORDER OF ETC.

(1889) 16 I.A. 156 (162) = 13 B. 520 (533).

Jurisdiction of.

——District Court—Suit in—Transfer of, to file of High Court—Jurisdiction in. *See* LETTERS PATENT (MADRAS), S. 13—DISTRICT COURT, ETC.

(1914) 41 I. A. 314 (322) = 38 M. 807 (820).

———*Division of—Threefold or fourfold.*

Ss. 11 to 18 of the Royal Charter which regulates the Bombay High Court, are a group of clauses headed "Civil Jurisdiction of the High Court." Ss. 11 and 12 describe the local limits of the ordinary original civil jurisdiction, which is said to extend to all kinds of suits within those limits except small cause suits. S. 13 gives to the High Court power to remove and to try as a Court of extraordinary original jurisdiction any suit falling within the jurisdiction of any Court subject to its superintendence, when it shall think proper, either on agreement of the parties, or for the purposes of justice. Ss. 15 and 16 confer appellate jurisdiction. S. 17 confers authority over infants, idiots, and lunatics. S. 18 ordains that the Court for relief of insolvent debtors shall be held before one of the Judges of the High Court, and that the High Court and any such Judge shall have such powers as are constituted by the laws relating to insolvent debtors in India.

It was argued that the passages of the Charter which have just been epitomized divide the jurisdiction into four classes, ordinary original, extraordinary original, appellate, and those special matters which are the subject of special and separate provisions. But their Lordships are of opinion that the expression "ordinary jurisdiction" embraces all such as is exercised in the ordinary course of law and without any special step being necessary to assume it ; and that it is opposed to extraordinary jurisdiction which the Court may assume at its discretion upon special occasions and by special orders. They are confirmed in this view by observing that in the next group of clauses, which indicate the law to be applied by the Court to the various classes of cases, there is not a fourfold division of jurisdiction, but a threefold one, into ordinary, extraordinary, and appellate (162). (*Lord Hobhouse.*) NAVIVAHOO *v.* TURNER.

(1889) 16 I. A. 156 = 13 B. 520 (533) = 5 Sar. 400.

———Ordinary jurisdiction — Meaning of. *See* HIGH COURT—JURISDICTION OF—DIVISION OF.

(1889) 16 I. A. 156 (162) = 13 B. 520 (533).

———*Ordinary jurisdiction—Extraordinary jurisdiction—Meaning.*

The expression " ordinary jurisdiction " embraces all such as is exercised in the ordinary course of law and without any special step being necessary to assume it ; and it is opposed to extraordinary jurisdiction which the Court may assume at its discretion upon special occasions and by special orders (162). (*Lord Hobhouse.*) NAVIVAHOO *v.* TURNER.

(1889) 16 I. A. 156 = 13 B. 520 (533) = 5 Sar. 400.

HIGH COURT—(*Contd.*)

Jurisdiction of—(*Contd.*)

———*Original jurisdiction—Meaning of, in cl. 39 of Letters Patent (Bombay).*

The words "original jurisdiction" in cl. 39 of the Letters Patent of the High Court of Bombay, are only used in contradistinction to the words " made on appeal " mentioned earlier in the clause. (*Lord Atkinson.*) TATA IRON AND STEEL CO. *v.* CHIEF REVENUE AUTHORITY, BOMBAY.

(1923) 50 I. A. 212 (218) = 47 B. 724 (732) = 25 Bom. L. R. 908 = A. I. R. 1923 P. C. 148 = 21 A. L. J. 675 = 18 L. W. 372 = (1923) M. W. N. 603 = 33 M. L. T. 301 = 9 O. & A. L. R. 783 = 28 C. W. N. 307 = 39 C. L. J. 16 = 74 I. C. 469 = 45 M. L. J. 295.

———*Original and appellate jurisdictions—Distinction—Law applicable to the two jurisdictions—Distinction.*

By the amalgamation of the two systems of Judicature, and the establishment of the High Courts by Letters Patent under the powers given by the 24th and 25th Vict., c. 104, and the 28th Vict., c. 15, the powers and jurisdiction of the Supreme Court with some slight modification of the latter, were transferred to the High Court, to be exercised by it as a Court of original jurisdiction ; and the powers and jurisdiction of the appellate Mofussil Courts were transferred to it, to be exercised by it as an appellate Court. But the law to be administered by it as a Court of original jurisdiction was substantially that previously administered by the Supreme Court ; whilst that to be administered by it on appeal from the Mofussil Courts was necessarily that of those Courts. The Code of Procedure of 1859 was indeed made the procedure of the Court in its original as well as in its appellate jurisdiction, and superseded the procedure which had previously obtained in the Supreme Court. But that Code did not touch the subject of limitation, which continued to be regulated by Act XIV of 1859 (486-7). (*Sir James W. Colvile.*) KRISTO KINKUR ROY *v.* RAJAH BURRODACAUNT ROY. **(1872) 14 M. I. A. 465 = 17 W. R. 292 = 10 B. L. R. 101 = 2 Suth. 564.**

———Original side—Jurisdiction in. *See* HIGH COURT—ORIGINAL SIDE.

———Removal of place or territory from—Legislation as regards—Power of Indian Legislature as to. *See* INDIAN LEGISLATURE—HIGH COURT.

(1878) 5 I. A. 178 (192) = 4 C. 172 (179).

———*Testamentary jurisdiction—Nature of—English law—Applicability of.*

Even in the case of the High Courts, the successors of the Supreme Courts (which alone possessed ecclesiastical jurisdiction), the testamentary jurisdiction which the charters purport to confer upon them is not given as a branch of ecclesiastical jurisdiction, and is not made dependent upon the law administered by English Courts (258). (*Sir Arthur Wilson.*) MIRZA KURRATULAIN BAHADUR *v.* PEARA SAHEB. **(1905) 32 I.A. 244 = 33 C. 116 (129-30) = 1 C. L. J. 594 = 9 C. W. N. 938 = 2 A. L. J. 758 = 7 Bom. L. R. 876 = 8 Sar. 839 = 15 M. L. J. 336.**

Law and Equity.

———*Powers of Courts of both.*

The High Court have the powers both of a Court of Equity and a Court of Law (233). (*Lord Justice Mellish.*) MILLER *v.* BARLOW. **(1871) 14 M. I. A. 209 = 2 Sar. 727 = L. R. 3 P. C. 733 = 8 Moo. P. C. (N. S.) 127.**

Original Side—Jurisdiction in.

———Administration suit—Jurisdiction to entertain—Executor principal within jurisdiction—Lease of land by executors outside jurisdiction—Decree of Mofussil Court—Settni

HIGH COURT—(*Concld.*)

Original Side—Jurisdiction in—(*Contd.*)

aside of both on ground of fraud—Suit also praying for. *See* ADMINISTRATION — SUIT FOR — HIGH COURT—ORIGINAL SIDE.

(1905) 32 I. A. 193 (201) = 33 C. 180 (191-2).

———Admiralty—Collision in Bay of Bengal—Suit in respect of—Jurisdiction in. *See* ADMIRALTY—HIGH COURT—JURISDICTION OF.

(1881) 8 I. A. 159 (163) = 7 C. 547 (561-2).

Original Side Appeal—Difference of opinion equal between judges hearing.

———Procedure on. *See* (1) C.P.C. OF 1908, S. 98—ORIGINAL SIDE APPEAL. (1921) 48 I.A. 181 (184-5) = 45 B. 718 (722 3).

———(2) LETTERS PATENT (CALCUTTA), S. 36—ORIGINAL SIDE APPEAL. (1871) 14 M.I A. 209 (221).

Puisne Judge—Acting puisne judge—Appointment of—Validity.

———*Appointment made not immediately upon, or within reasonable time after, occurrence of vacancy.*

Under the High Courts Act, the local Government has power to appoint an acting Judge upon the happening of a vacancy among the puisne judges of the court. No limit of time is mentioned within which the appointment should be made. That is left to the discretion of the local Government. *Held*, that the appointment of an acting puisne judge was not invalid merely because it was not made immediately upon, or within a reasonable time after, the occurrence of the vacancy (76-7). (*Lord Hobhouse.*) RAO BALWANT SINGH *v.* RANI KISHORE. (1898) 25 I.A. 54 = 20 A. 267 (293-4) = 2 C. W. N. 273 = 7 Sar. 279.

Superior Court of Record.

———*See* CONTEMPT OF COURT—HIGH COURT.

(1883) 10 I. A. 171 (179) = 10 C. 109 (131-2).

Transfer of suit under Charter Act—Removal of suit under Letters Patent.

———Powers of—Conditions of exercise of—Distinction *See* LETTERS PATENT (BOMBAY), S. 13.

(1905) 33 I. A. 38 = 30 B. 246.

Transfer to file of, of suit in District Court.

———Jurisdiction in. *See* LETTERS PATENT (MADRAS), S. 13—DISTRICT COURT SUIT. ETC.

(1914) 41 I. A. 314 (322) = 38 M. 807 (820).

HIGHWAY.

———*Acts done on—Civil action and indictment in regard to—English law distinction between—Inapplicability in India of.*

The distinction between indictment and civil action in regard to what is done on a highway is a distinction peculiar to English law and ought not to be applied in India (67). (*Lord Dunedin.*) MANZUR HASAN *v.* MUHAMMAD ZAMAN. (1924) 52 I. A. 61 = 47 A. 151 = 23 A. L. J. 179 = 6 L. R. P. C. 34 = 27 Bom. L. R. 170 = 21 L. W. 239 = 6 P. L. T. 115 = 29 C. W. N. 486 = 2 O. W. N. 53 = 3 P. L. R. 300 = A. I. R. 1925 P. C. 36 = 86 I. C. 236 = 48 M. L. J. 23.

———*Dedication to public of*—Animus dedicandi—*Necessity—User by public merely evidence.*

In order to constitute a valid dedication to the public of a highway by the owner of the soil, there must be an intention to dedicate—there must be an *animus dedicandi*, of which the user by the public is evidence, and no more (31). (*Lord Shaw.*) MUHAMMAD RUSTAM ALI KHAN *v.* MUNICIPAL COMMITTEE OF KARNAL CITY. (1919) 47 I. A. 25 = 1 L. 117 = 18 A. L. J. 466 = 11 L. W. 579 = 22 Bom. L. R. 563 = 13 P. L. R. 1920 = 28 M. L. T. 1 = 25 C. W N. 122 = 32 C. L. J. 471 = 56 I. C. 1 = 38 M. L. J. 455.

———*Dedication of, to section of public—Dedication to public for limited purposes—Validity of—Distinction.*

HIGHWAY—(*Contd.*)

A person in dedicating land to public use may, of course, place such limits as he wishes upon the dedication, if he makes those limits clear and definite. That is to say, he may announce to the public that a certain road is dedicated to it as access, say, to a particular building or for a particular purpose. But there can be no such thing in law as a public right of way, constituted by dedication to only a section of the public. As Baron Parke said: "There may be a dedication to the public for a limited purpose, as for a footway, horse-way, or drift-way; but there cannot be a dedication to a limited part of the public" (31). (*Lord Shaw.*) MUHAMMAD RUSTAM ALI KHAN *v.* MUNICIPAL CORPORATION OF KARNAL CITY. (1919) 47 I. A. 25 = 1 Lah. 117 = 18 A. L. J. 466 = 11 L.W. 579 = 22 Bom. L. R. 563 = 13 P. L. R. 1920 = 28 M. L. T. 1 = 25 C. W. N. 122 = 32 C. L. J. 471 = 56 I. C. 1 = 38 M. L. J. 455.

———*Intention to dedicate, to public—Evidence—Interruption by owner—Single act of—Enjoyment by public—Many acts of—Relative values of.*

On a question of intention of the owner of a soil to dedicate a highway to the public, a single act of interruption by the owner is of much more weight than many acts of enjoyment by the public (31). (*Lord Shaw.*) MUHAMMAD RUSTAM ALI KHAN *v.* MUNICIPAL COMMITTEE OF KARNAL CITY. (1919) 47 I. A. 25 = 1 L. 117 = 18 A. L. J. 466 = 11 L. W. 579 = 22 Bom. L. R. 563 = 13 P. L. R. 1920 = 28 M. L. T. 1 = 25 C. W. N. 122 = 32 C. L. J. 471 = 56 I. C. 1 = 38 M. L. J. 455.

———*Private property—Road through, if a public highway, though not expressly dedicated to public—Intention to dedicate to public generally—Right of passage to visitors to or traders with tenants whose shops abut on road—Evidence showing—Distinction.*

In determining whether a road through private property is a public highway, although not expressly dedicated to the public, it is important to distinguish between evidence showing an intention to dedicate to the public generally and evidence showing that visitors to or traders with tenants whose shops abut on the road have, by permission, a right of passage.

Held, that the evidence in the case was of the latter description only, and that the road in question was not a "public street" within the meaning of S. 3, Sub-S. 13 of the Punjab Municipal Act (III of 1911) (30-1). (*Lord Shaw.*) MUHAMMAD RUSTAM ALI KHAN *v.* MUNICIPAL COMMITTEE OF KARNAL CITY. (1919) 47 I A. 25 = 1 Lah. 117 = 18 A. L. J. 466 = 11 L. W. 579 = 22 Bom. L. R. 563 = 13 P. L. R. 1920 = 28 M. L. T. 1 = 25 C. W. N. 122 = 32 C. L. J. 471 = 56 I. C. 1 = 38 M L. J. 455.

———*Religious processions through—Carrying on of—Obstruction to — Suit for — Maintainability—Special damage—Proof of—Necessity.*

A civil suit lies against persons who would prevent a religious procession from being conducted along a highway with its appropriate observances. To sustain such a suit it is not necessary to prove special damage other than the obstruction of the procession (66, 68). (*Lord Dunedin.*) MANZUR HASAN *v.* MUHAMMAD ZAMAN.

(1924) 52 I. A. 61 = 47 A. 151 = 23 A. L. J. 179 = 6 L. R. P. C. 34 = 27 Bom. L. R. 170 = 21 L. W. 239 = 6 P. L. T 115 = 29 C. W. N. 486 = 2 O. W. N. 53 = 3 P. L. R. 300 = A. I. R. 1925 P. C. 36 = 86 I.C. 236 = 48 M. L. J. 23.

———*Religious processions through—Carrying on of—Right of.*

There is a right to conduct a religious procession with its appropriate observances along a highway. Persons of what

HIGHWAY—(*Concld.*)

ever sect are entitled to conduct religious processions though public streets so that they do not interfere with the ordinary use of such streets by the public and subject to such directions as the magistrates may lawfully give to prevent obstructions of the thoroughfare or breaches of the public peace (65 6). (*Lord Dunedin.*) MANZUR HASAN *v.* MUHAMMAD ZAMAN. **(1924) 52 I.A. 61 = 47 A. 151 = 23 A. L. J. 179 = 6 L. R. P.C. 34 = 27 Bom. L. R. 170 = 21 L. W. 239 = 6 P. L. T. 115 = 29 C. W. N. 486 = 2 O. W. N. 53 = 3 P. L. R. 300 = A.I.R. 1925 P. C. 36 = 86 I. C. 236 = 48 M. L. J. 23.**

———*Religious processions through—Carrying on of—Right of—Declaration of, subject to Magistrate's directions—Propriety and object of reservation.*

While granting a declaration to the Shiahs of a certain place of their right to go in procession in the month of Mohanam and use Matam without obstruction by the Sunnis of that place, their Lordships added that the declaration was to be subject "to the Magistrates' directions and the rights of the public".

Though every different sect or religion when places of worship or upon the routes where the processions of those with whom they do not agree pass would not be entitled to insist upon the functions of the procession ceasing as it passed them, the Magistrates must still be able to make any arrangements they choose having regard to special circumstances. That order would be an order passed in respect of special circumstances, not a general pronouncement as to rights (68). (*Lord Dunedin.*) MANZUR HASAN *v.* MUHAMMAD ZAMAN. **(1924) 52 I. A. 61 = 47 A. 151 = 23 A. L. J. 179 = 6 L. R. P. C. 34 = 27 Bom. L.R. 170 = 21 L. W. 239 = 6 P. L. T. 115 = 29 C. W. N. 486 = 2 O. W. N. 53 = 3 P.L.R. 300 = A.I.R. 1925 P. C. 36 = 86 I. C. 236 = 48 M. L. J. 23.**

———*Religious processions through—Carrying on of—Right of all members of public as to.*

The village of Tiruvendipuram contained an ancient Vaishnava temple dedicated to Devanayaka Swami. Annexed to it was the shrine of a saint Vedanta Desika, who was held in great veneration by the Vadagalais. The Tengalais, on the other hand, worshipped a saint said to belong to more modern times and called Manavala Mahamuni. The Vadagalai inhabitants of the village sued for a declaration of their right to prohibit public worship in the village of the idol of the Tengalais and processions in its honour, and for an injunction.

The plaintiffs based their claim to relief on the allegation that the Vadagalais were originally the owners of all the lands in the village, and only allowed houses to be built and streets formed subject to the reservation that no worship or procession of a Tengalai idol should be permitted there. They contended that, even if strict proof of that allegation were wanting, a conditional or limited dedication of the streets to the public should be permitted, and that at any rate they had acquired, by immemorial usage and custom, the right to prevent the worship and processions of any alien deity in their streets.

There was no trace of any evidence tending to show that the site of the village was at any time the private property of the Vadagalais. The village was an ordinary ryotwari village. The streets were public streets vested at the date of suit under the Madras Act V of 1884 in the local board.

Held, that the suit had been rightly dismissed by the Courts below.

All members of the public have equal rights in the public streets. (*Lord Macnaghten.*) SADAGOPA CHARIAR *v.* RAMA RAO. **(1907) 34 I. A. 93 (100-1) = 30 M. 185 (190) = 4 A. L. J. 333 = 11 C. W. N. 585 = 5 C. L. J. 565 = 9 Bom. L. R. 668 = 2 M. L. T. 204 = 17 M. L. J. 240.**

HINDU.

BURMA—MIGRATION TO AND SETTLEMENT IN, AND INTER-MARRIAGE WITH BURMANS THERE.
CASTE OF.
CONCUBINE—KEEPING OF—COMMUNICATION WITH PARTICULARS OF FACT OF, TO STRANGER MAHOMEDAN.
CONVERSION TO BRAHMO SAMAJ.
CONVERT TO CHRISTIANITY.
CONVERT TO MAHOMEDANISM.
CONVEYANCE OF.
DEED BY—WORDS IN—MEANING OF.
ENGLISHMAN—ILLEGITIMATE CHILD OF, BY HINDU WOMAN.
KSHATRIYA'S SON BY MAHOMEDAN MISTRESS IF A.
MEANING OF.
ORTHODOX PRACTICES—LAPSE FROM—EFFECT OF.
RELIGION—CHANGE OF—INHERITANCE OR SUIT—RIGHT OF.
SIKH IF A.
TEST OF BEING A.

Burma—Migration to and settlement in, and inter-marriage with Burmans there.

———*Effect of.*

If a twice-born Hindu migrates across the sea to Burma and marries a Burmese woman, that in itself may not necessarily deprive him of his Hindu status in the eye of the law. But if he has descendants who have been born and have always lived in Burma, and who have intermarried with its people, then, even though they may form a community of their own which inherits many traces of Hindu usage, if the usages and religion are of a character very divergent from Hinduism, the community cannot be regarded as Hindu (564). (*Viscount Haldane.*) MA YAIT *v.* MAUNG CHIT MAUNG. **(1921) 48 I. A. 553 = 1 Bur. L. J. 15 = 30 M.L.T. 126 = 4 U.P.L.R (P.C.) 45 = A.I.R. 1922 P. C. 197 = 66 I C. 609 = 42 M. L. J. 193.**

Caste of.

———*See* HINDU LAW—CASTE.

Concubine—Keeping of—Communication with particulars of fact of, to stranger Mahomedan.

———Improbability of. *See* EVIDENCE—HINDU—CONCUBINE KEPT BY. **(1871) 14 M. I. A. 346 (364 5).**

Conversion to Brahmo Samaj.

———Effect of. *See* SIKH—BRAHMO SAMAJ. **(1903) 30 I. A. 249 (256-7) = 31 C. 11 (33).**

Convert to Christianity.

———*Hindu law if applicable to—Effect of conversion.*

A member of a Hindoo family who has become a convert to Christianity becomes at once severed from the family, and regarded by them as an out-cast. The tie which bound the family together is, so far as he is concerned, not only loosened, but dissolved. The obligations consequent upon and connected with the tie must be dissolved with it. Upon the conversion of a Hindoo to Christianity the Hindu law ceases to have any continuing obligatory force upon the convert. He may renounce the old law by which he was bound, as he has renounced his old religion, or, if he thinks fit, he may abide by the old law, notwithstanding he has renounced the old religion (237-8). (*Lord Kingsdown.*) ABRAHAM *v.* ABRAHAM. **(1863) 9 M. I. A. 195 = 1 W. R. (P. C.) 1 = 1 Suth. 501 = 2 Sar. 10.**

———*Property of—Rights over—Law determining.*

As regards the law which determines the rights over the property of a Hindu becoming a convert to Christianity, the *lex loci* Act clearly does not apply, the parties having ceased to be Hindu in religion. The case falls to be deci

HINDU—(*Contd.*)

Convert to Christianity—(*Contd.*)

ed according to the Regulation which prescribes that the decision shall be according to equity and good conscience. The course which appears to have been pursued in India in these cases of referring the decision to the usages of the class to which the convert may attach himself, and of the family to which he may have belonged, has been most consonant both to equity and good conscience. The profession of Christianity releases the convert from the trammels of the Hindu law, but it does not of necessity involve any change of the rights or relations of the convert in matters with which Christianity has no concern, such as his rights and interests in, and his powers over, property. The convert, though not bound as to such matters, either by the Hindu law or by any other positive law, may by his course of conduct after his conversion have shown by what law he intended to be governed as to these matters. He may have done so either by attaching himself to a class which as to these matters has adopted and acted upon some particular law, or by having himself observed some family usage or custom ; and nothing can surely be more just than that the rights and interests in his property, and his powers over it, should be governed by the law which he has adopted, or the rules which he has observed (239-40). (*Lord Kingsdown.*) ABRAHAM *v.* ABRAHAM. **(1863) 9 M. I. A. 195 = 1 W. R. (P. C.) 1 = 1 Suth. 501 = 2 Sar. 10.**

———*Self-acquisitions of—Ownership of.*

If a Hindu in an undivided family may keep his own sole acquisitions separate, as he undoubtedly may, *a fortiori* a Christian may do the same (243). (*Lord Kingsdown.*) ABRAHAM *v.* ABRAHAM. **(1863) 9 M. I. A. 195 = 1 W. R. (P. C.) 1 = 1 Suth. 501 = 2 Sar 10.**

———*Self-acquisitions of—Use and enjoyment of—Rules governing—Ancestors of convert—Rules voluntarily imposed on themselves by—Applicability of.*

In regard to the use and enjoyment of property acquired by a convert to Christianity, it is plain that no rule as to such use and enjoyment, which the ancestors may voluntarily have imposed on themselves, could be of compulsory obligation on a descendant of theirs acquiring his own wealth (243). (*Lord Kingsdown.*) ABRAHAM *v.* ABRAHAM. **(1863) 9 M. I. A. 195 = 1 W. R. (P. C.) 1 = 1 Suth. 501 = 2 Sar. 10.**

Convert to Mahomedanism.

———*Inheritance—Hindu law of—Election to retain—Proof of—Mode of.*

In their essential characteristics, custom and an election by a convert to abide by the law of the old status differ fundamentally as sources of law, still, making every assumption in its favour, in the circumstances of this case and on the record as it stands there is no mode of proving this alleged election except by way of inference from actings and conduct that would establish a custom (123-4). (*Sir Lawrence Jenkins.*) MUHAMMAD IBRAHIM ROWTHER *v.* SHAIKH IBRAHIM ROWTHER. **(1922) 49 I. A. 119 = 45 M. 308 (314) = 30 M. L. T. 85 = 15 L. W. 354 = 26 C. W. N. 793 = (1922) M. W. N. 470 = 36 C. L. J. 64 = 24 Bom. L. R. 944 = A. I. R. 1922 P. C. 59 = 67 I. C. 115 = 43 M. L. J. 69.**

———*Joint family estate—Share in—Right to—Effect on.*

The renunciation by a member of a joint Hindu family of the Hindu religion involves, under the Hindu law, the forfeiture of civil rights to the extent of depriving the convert of his share in the joint estate (98). (*Mr. Ameer Ali.*) KHUNNI LAL *v.* GOBIND KRISHNA NARAIN. **(1911) 38 I. A. 87 = 33 A. 356 (363) = 15 C. W. N. 545 = 8 A. L. J. 552 = 13 Bom. L. R. 427 = 13 C. L. J. 575 = 10 M. L. T. 25 = (1911) 1 M. W. N. 432 = 10 I. C. 477 = 21 M. L. J. 645.**

HINDU—(*Contd.*)

Convert to Mahomedanism—(*Contd.*)

———*Joint family estate—Share in—Right to—Effect on—Regulation VII of 1832, S. 9—Act XXI of 1850—Effect of.*

The intention in both enactments (Regulation VII of 1832, S. 9, and Act XXI of 1850) is perfectly clear; by declaring that the Hindu or Mahomedan law shall not be permitted to deprive any party not belonging to either of those persuasions of a right to property, or that any law or usage which inflicts forfeiture of rights or property by reason of any person renouncing his or her religion, shall not be enforced, the Legislature virtually set aside the provisions of the Hindu law which penalises renunciation of religion or exclusion from caste (101).

Where a Hindu, who with his son formed a joint Hindu family and was entitled in joint tenancy to a moiety of the family properties, abandoned Hinduism and adopted the Mahomedan faith in 1845, held that the effect of the legislation of 1832 and 1850 was that on the father's abandonment of Hinduism the son did not acquire any enforceable right to his father's share in the joint family property which he could either assert himself or transmit to his heirs for enforcement in a British Court of Justice (101). (*Mr. Ameer Ali.*) KHUNNI LAL *v.* GOBIND KRISHNA NARAIN. **(1911) 38 I. A. 87 = 33 A. 356 (365-6) = 15 C. W. N. 545 = 8 A. L. J. 552 = 13 Bom. L. R. 427 = 13 C. L. J. 575 = 10 M.L.T. 25 = 10 I. C. 477 = (1911) 1 M. W. N. 432 = 21 M. L. J. 645.**

———*Mahomedan descendants of—Succession among—Law governing*—Abraham *v.* Abraham—*Decision in—Scope and effect of.*

The case has hitherto been treated on the assumption that this family, though converted to Mahomedanism, is to be taken as still conforming to the Hindu laws and usuges ; and that, consequently, the questions of title raised in this cause are to be governed by Hindu law. Their Lordships, however, are far from admitting the correctness of that assumption This case is distinguishable from that of *Abraham* v. *Abraham*. There the parties were native Christians, not having, as such, any law of inheritance defined by statute ; and in the absence of one, this committee applied the law by which, as the evidence proved, the particular family intended to be governed. But the written law of India has prescribed broadly that in questions of succession and inheritance the Hindu law is to be applied to Hindus and the Mahomedan law to Mahomedans ; and in the judgment delivered by Lord Kingsdown in *Abraham* v. *Abraham*, it is said that " this rule must be understood to refer to Hindoos and Mahomedans, not by birth merely, but by religion also." The two cases in Macnaghten's "Principles of Hindu law," which dealt with the case of converts from the Hindu to the Mahomedan faith, and rule that the heirs according to Hindu law will take all the property which the deceased had at the time of his conversion, are also authorities for the proposition that the devolution of his subsequently acquired property is to be governed by the Mahomedan law. Here there is nothing to show conclusively when or how the property was acquired by " the great ancestor." There was no conflict, as in the cases just referred to, between Hindoos and Mahomedans touching the succession to him. Whatever he had is admitted to have passed to his descendants, of whom all, like himself, were Mahomedans ; and it seems to be contrary to principle that, as between them, the succession should be governed by any but Mahomedan law (537-8). (*Sir Edward V. Williams.*) JOWALA BUKSH *v.* DHARUM SINGH. **(1866) 10 M. I. A. 511 = 2 Sar. 189.**

HINDU—(*Contd.*)

Conveyance of.

———English equitable doctrine of feeding the estoppel—Inapplicability of. *See* T. P. ACT, S. 43—HINDU CONVEYANCE. **(1880) 6 C. L. R. 528.**

Deed by—Words in—Meaning of.

———English law technical meaning—Inapplicability of. *See* DEED—CONSTRUCTION OF—HINDU—DEED BY. **(1927) 55 I. A. 74 = 52 B. 176.**

Englishman—Illegitimate child of, by Hindu woman.

———*Hindu if a.*

An Englishman had two illegitimate children by a Hindu married woman, who had deserted her husband and lived in adultery with the Englishman. She was originally one of the privileged classes. The Englishman had also three other illegitimate children by another native woman.

Held that all the illegitimate sons were rightly considered, in the Courts in India, to be Hindus (420). (*Lord Kingsdown.*) MYNA BOYEE *v.* OOTARAM.
(1861) 8 M. I. A. 400 = 2 W. R. 4 = 2 M. H. C. R. 196 = 1 Suth. 452 = 1 Sar. 797.

Kshatriya's son by Mahomedan mistress if a.

———*Son brought up and himself living as a Hindu.*

Quære, whether the son of a Kshatriya by a Mahomedan mistress who was brought up as a Hindu and who himself lived the life of a Hindu ever since he attained discretion could be regarded as a Hindu. (*Lord Atkinson.*) BHAIYA SHER BAHADUR *v.* BHAIYA GANGA BAKHSH SINGH.
(1913) 41 I. A. 1 (14) = 36 A. 101 (115-6) = 18 C. W. N. 401 = 15 M. L. T. 169 = (1914) M. W. N. 184 = 19 C. L. J. 277 = 16 Bom. L. R. 306 = 17 O. C. 68 = 12 A. L. J. 188 = 22 I. C. 293 = 26 M. L. J. 291.

Meaning of.

———*Inheritance and succession — Enactments, earlier and later, dealing with matters of—Meaning in—Distinction—Mahomedan—Meaning of, in same.*

The framers of the earlier Acts, Regulations and charters (passed to secure to the people of India the maintenance of their ancient law, amongst others in matters of inheritance and succession) had a less detailed acquaintance than we have now with the diversities of creed and of religious law existing in India. They were familiar with two great classes, Mahomedans and Hindus, each with its own law bound up with its own religion. They thought no doubt that they were sufficiently providing for the case of securing to Mahomedans the Mahomedan law, and to Hindus (or Gentus, as they were sometimes called) the Hindu law. In process of time it became more and more clearly understood that there were more forms than one of the Mahomedan law, and more forms than one of the Hindu law, and the Courts, acting in the spirit which prompted the legislation, have applied the law of each school to the people whose ancestral law it was. In the same way it came to be known that there were various religious bodies in India which had, at various periods and under various circumstances, developed out of, or split off from, the Hindu system, but whose members have nevertheless continued to live under Hindu law. Of these the Jainas and the Sikhs are conspicuous examples. Their cases had to be considered by the Courts, and in dealing with them a liberal construction was always placed upon the enactments by which Mahomedans and Hindus were secured in the enjoyment of their own laws (253). (*Sir Arthur Wilson.*) RANI BHAGWAN KUAR *v.* JOGENDRA CHANDRA BOSE. **(1903) 30 I. A. 249 = 31 C. 11 (29) = 7 C. W. N. 895 = 84 P. R. 1903 = 135 P. L. R. 1903 = 13 M. L. J. 381.**

HINDU—(*Contd.*)

Meaning of—(*Contd.*)

———*Probate and Administration Act.*

The term Hindu in the Probate and Administration Act is used in the same sense as in the Succession Act, and a Sikh is included under that term (256). (*Sir Arthur Wilson.*) RANI BHAGWAN KUAR *v.* JOGENDRA CHANDRA BOSE. **(1903) 30 I.A. 249 = 31 C. 11 (33) = 7 C. W. N. 895 = 84 P. R. 1903 = 135 P. L. R. 1903 = 13 M. L. J. 381.**

Orthodox practices—Lapse from—Effect of.

———It was next objected that in matters of diet and ceremonial observance the testator had departed so far from the standard of orthodoxy binding upon him as a Hindu or Sikh as to exclude him from the term Hindu in the Probate and Succession Act.

Their Lordships agree with the Chief Court in thinking that such lapses from orthodox practice could not have the effect of excluding from the category of Hindu in the Act one who was born within it, and who never became otherwise separated from the religious communion in which he was born (257). (*Sir Arthur Wilson.*) RANI BHAGWAN KUAR *v.* JOGENDRA CHANDRA BOSE.
(1903) 30 I. A. 249 = 31 C. 11 (33) = 7 C. W. N. 895 = 84 P. R. 1903 = 135 P. L. R. 1903 = 13 M. L. J. 381.

———*Individual—Community—Distinction.*

In the case of a man who is born a Hindu, mere deviation from orthodoxy will not be sufficient to deprive him of Hindu status. He may continue to possess it if he becomes a member of the Brahmo Samaj, and he will not the less possess the status if he has been, say, a Sikh or Jain, or probably if he has even at times worshipped with Buddhists. In the case of a single individual considerable latitude of action is extended before he is deemed to have deprived himself of the religion which gave him his law by anything that does not amount to clear renunciation of that religion. In the instance of a community the question must always be whether there has been continuity of character. No doubt there may develop gradually among a set of people who live and worship together, variations from the regular practices of those who are Hindus which, though considerable, ought not to be taken to be such as have destroyed continuity of relationship (562).

The formation of new castes is a process which is constantly taking place. Usage has modified old principles and it governs in the sects which have adopted such usage. Contact with other religions may well have evolved sects which have discarded many characteristics of orthodox Hinduism, and have adopted ideas and rites which are popularly supposed to belong to other systems. Continuity may not in such cases have been destroyed ; but there is a limit to such processes. Continuity may be so broken that the new sect is outside the original pale. The Hindu law which the Courts administer rests on the shastras, which claim divine sanction and are followed by Brahmins generally. There may have been introduced usages which constitute a departure from the principles of the shastras so great that the community which has adopted them must be taken to have lost the character of being one in which Hindu religion governs. In the case of a sect at a distance from Hindu centres, where the surroundings are Burman and Buddhist and the mode of life is different from that of the Hindu communities in India proper, popularly known as such, it is easier to determine it as being outside Hinduism than it is in the case of an isolated individual who has merely lapsed into unorthodox practices. It is obvious that few influences can be more potent in producing new communities of this separate kind than the combined operation of migration, intermarriage and new occupations. When these influences have operated for sufficiently long a different community.

HINDU—(*Concld.*)

Orthodox practices—Lapse from—Effect of—(*Ctd.*)

with its peculiar religion and usages, may well result and be so outside Hinduism in the proper meaning of the word. To the members of such a community the expression Hindu in the Indian Succession Act and the Burma Laws Act would not be applicable (562-3).

The application of any merely abstract principle may be insufficient to solve the problem in concrete cases. A method which takes account of historical as well as other considerations must be applied, and the subject-matter must in each instance be looked at as a whole (563 4). (*Viscount Haldane.*) MA YAIT *v.* MAUNG CHIT MAUNG.
(1921) 48 I.A. 553 = 1 Bur. L. J. 15 = 30 M. L. T. 126 = 4 U. P. L.R. (P. C.) 45 = A. I. R. 1922 P. C. 197 = 66 I. C. 609 = 42 M. L. J. 193.

Religion—Change of—Inheritance or suit—Right of.

———Effect on. *See* CASTE DISABILITIES REMOVAL ACT OF 1850 AND ALSO HINDU—CONVERT TO CHRISTIANITY AND CONVERT TO MAHOMEDAN.
(1872) Sup. I. A. 47 (56).

Sikh if a.

———*See* SIKHS—HINDUS. **(1903) 30 I.A. 249 (254) = 31 C. 11 (30 1).**

Test of being a.

———Birth or bringing up and mode of living. *See* HINDU—KSHATRIYA'S SON, ETC. **(1913) 41 I. A. 1 (14) = 36 A. 101 (115-6).**

———Birth only or religion also. *See* MADRAS ACTS—ADMINISTRATION OF ESTATES ACT III OF 1862, S. 16 (1). **(1863) 9 M. I. A. 195 (239).**

HINDU FAMILY—CONVERSION TO MAHOMEDANISM OF.

———*Hindu law of inheritance—Retention of, as special and customary law—Possibility of—Proof of.*

Quœre, whether it is competent for a family converted from the Hindu to the Mahomedan faith to retain for several generations Hindu usages and customs, and by virtue of that retention to set up for itself a special and customary law of inheritance. To control the general law, if, indeed, the Mahomedan law admits of such control, much stronger proof of special usage would be required than has been given in this case (538). (*Sir Edward V. Williams.*) JOWALA BAKSH *v.* DHARUM SINGH.
(1866) 10 M. I. A. 511 = 2 Sar. 189.

———*Hindu usages and customs—Retention of, for several generations—Possibility of.*

Quœre, whether it is competent for a family converted from the Hindu to the Mahomedan faith to retain for several generations Hindu usages and customs (538). (*Sir Edward V. Williams.*) JOWALA BAKSH *v.* DHARUM SINGH. **(1866) 10 M. I. A. 511 = 2 Sar. 189.**

HINDUISM.

———Renunciation of — What amounts to — Orthodox practices—Lapse from—Effect—Community—Individual—Distinction. *See* HINDU—ORTHODOX PRACTICES.

HINDU LADY.

———*See* HINDU WOMAN.

HINDU LAW.

ADMINISTRATION.
APPLICABILITY OF.
AUTHORITIES.
HINDU.
SCHOOLS OF.

HINDU LAW—(*Contd.*)

ADOPTION.
ALIENATION.
ANCESTRAL PROPERTY.
CASTE.
COMPROMISE.
CONVERSION.
CUSTOM.
DAMDUPAT.
DAUGHTER.
DAUGHTER'S DAUGHTER.
DAUGHTER'S SON.
DEBT.
DISPOSITION OF PROPERTY BY HINDU—VALIDITY OF —LAW GOVERNING.
ESTATES KNOWN TO AND RECOGNISED BY.
EXPRESSIONS IN—MEANING OF.
FAMILY.
FAMILY ARRANGEMENT.
GIFT.
GRANT.
HUSBAND AND WIFE.
ILLEGITIMATE CHILD.
ILLEGITIMATE DAUGHTER.
ILLEGITIMATE SON.
IMPARTIBLE ESTATE.
INCREMENT—PRINCIPAL.
INHERITANCE.
INTEREST.
JOINT FAMILY—
  NORMAL CONDITION OF.
  NORMAL CONDITION OF HINDU SOCIETY.
  ORDINARY SENSE OF.
  BUSINESS OF.
  CO-PARCENARY IN.
  FATHER.
  FEMALE MEMBER OF.
  FIRM OF.
  GRANDFATHER.
  GREAT-GRANDFATHER.
  JOINT FAMILY PROPERTY.
  MANAGER.
  MEMBER OF.
  MEMBERS OF.
  OUDH—JOINT FAMILY IN.
  PARTITION.
  PARTNERSHIP WITH STRANGER.
  PRINCIPLE OF—RECOGNITION OF.
JOINT TENANCY.
LEGITIMACY.
MAINTENANCE.
MARRIAGE.
MIGRATING FAMILY.
MINOR.
MOTHER.
NIYOGA.
PARTITION.
POLLUTION.
PRINCIPAL—INCREMENT.
PROPERTY.
PROSTITUTION.
PUNDITS.
RELIGIOUS CEREMONIES.
RELIGIOUS CHARITY—DEDICATION OF LANDED PROPERTY TO.
RELIGIOUS ENDOWMENT.
RELIGIOUS OFFICE.
RE-UNION.
REVERSIONER.
RIGHT BY BIRTH.

HINDU LAW—(*Contd.*)
SELF-ACQUISITION.
SETTLEMENT.
SON.
SRADDH.
STRIDHAN.
SURVIVORSHIP.
TRANSACTION CONTRARY TO STRICT AND NATURAL VIEW OF—TEXT PROHIBITING—ABSENCE OF—INFERENCE FROM.
TRANSFER OF PROPERTY.
TRUST.
WIDOW.
WIFE.
WILL.
WOMAN.

Administration.

———Admitted principle of Hindu Law—Logical carrying out of—Modern jurisprudence—Exceptional doctrine established by—Limits to—Imposing of—Distinction. *See* HINDU LAW—ADMINISTRATION — MODERN JURISPRUDENCE. **(1880) 7 I.A. 181 (195) = 5 B. 48 (62).**

———Ancient texts—Novel interpretation of obscure and —Unsettling of rule settled by uniform course of decisions on—Propriety. *See* HINDU LAW — INHERITANCE — RULE OF—DECISIONS UNIFORM.
(1867) 11 M.I.A. 386 (403) and (1878) 6 I.A. 15 (32) = 4 C. 744 (755-6).

———*Arbitrary rule of Hindu Law—Application of—Cogent authority—Necessity.*

It is true that some rules of Hindu law, resting perhaps on religious tenets or ancient customs, appear to be quite arbitrary ; but when this Board is asked to affirm a rule of that nature, they require some cogent authority for it. (*Lord Hobhouse*). ANNAPURNI NACHIAR *v.* FORBES.
(1899) 26 I.A. 246 (253) = 23 M. 1 (9) = 3 C. W. N. 730 = 1 Bom. L. R. 611 = 7 Sar. 591.

———Decision or work of authority—Rule of law applicable not directly laid down in—Deduction of rule from rules which are settled and form the principles on which they are founded—Duty as to. *See* HINDU LAW—INHERITANCE — RULE OF — DECISION OR WORK OF AUTHORITY. **(1872) Sup. I.A. 1 (6) = 14 M.I.A. 570.**

———Decisions uniform—Rule of law laid down in—Unsettling, on novel interpretation of old and obscure texts—Propriety. *See* HINDU LAW—INHERITANCE—RULE OF —DECISIONS UNIFORM. **(1867) 11 M.I.A. 386 (403) and (1878) 6 I. A. 15 (32) = 4 C. 744 (755-6).**

———Family rights and duties connected with ancestral customs and religious convictions — Law relating to — Variations of, or uncertainties in—Introduction of—Impropriety. *See* HINDU LAW—FAMILY-RIGHTS AND DUTIES, ETC. **(1921) 48 I.A. 162 = 2 Lah. 40 (52).**

———*General Hindu Law—Rule of, laid down by recognised authority — Adoption of, by people subject to that general law—Proof of — Necessity — Observations in* 12 *M.I.A.* 397 (436)—*Effect of.*

In the Ramnad case, the Privy Council observed "The duty, therefore, of a European judge who is under the obligation to administer Hindu law is not so much to inquire whether a disputed doctrine is fairly deducible from the earliest authorities, as whether it has been received by the particular school which governs the district with which he has to deal, and has there been sanctioned by usage. For under the Hindu system of law clear proof of usage will outweigh the written text of the law."

Held : the above passage gives no countenance to the conclusion that in order to bring a case under any rule of law laid down by recognised authority for Hindus generally, evidence must be given of actual events to show that

in point of fact the people subject to that general law regulate their lives by it.

Special customs may be pleaded by way of exception which it is proper to prove by evidence of what is actually done. But to put one who asserts a rule of law under the necessity of proving that in point of fact the community living under the system of which it forms part is acting upon it, or defeat him by assertions that it has not been universally accepted or acted upon, would go far to deny the existence of any general Hindu law, and to disregard the broad foundations which are common to all schools, though divergencies have grown out of them. To do so would be to invert the processes by which law is ascertained. (*Lord Hobhouse*). BHAGWAN SINGH *v.* BHAGWAN SINGH.
(1899) 26 I.A. 153 (164-6) = 21 A. 412 (423-4) = 3 C.W.N. 454 = 1 Bom. L.R. 311 = 7 Sar. 474.

———*Manu—Reference to authority of—When proper.*

His (Manu's) authority may properly be referred to when it is necessary to resort to first principles in order to ascertain and declare the law (7). (*Sir Montague E. Smith*). RAMALAKSHMI AMMAL *v.* SIVANANTHA PERUMAL SETHURAYAR. **(1872) Sup. I.A. 1 = 14 M. I. A. 570 = 17 W. R. 553 = 12 B.L.R. 396 = 2 Suth. 603 = 3 Sar. 108.**

———*Matter for consideration in case of—Earliest authorities—Disputed doctrine whether fairly deducible from—Acceptance of doctrine by particular school and sanction thereof by usage of particular district.*

The duty of a European Judge in administering Hindu law is not so much to inquire whether a disputed doctrine is fairly deducible from the earliest authorities, as to ascertain whether it has been received by the particular school which governs the district with which he has to deal, and has there been sanctioned by usage. For, under the Hindu system of law, clear proof of usage will outweigh the written text of the law. (*Sir James Colvile*). COLLECTOR OF MADURA *v.* MUTTU RAMALINGA SATHUPATHY. **(1868) 12 M.I.A. 397 (436) = 10 W. R. P.C. 17 = 1 B.L.R. P.C. 1 = 2 Suth. 135 = 2 Sar. 361.**

———*Modern jurisprudence—Exceptional doctrine established by—Limits to— Imposing of—Admitted principle of Hindu Law—Logical carrying out of—Distinction.*

The question is not so much whether an admitted principle of Hindu law shall be carried out to its apparently logical consequences, as what are the limits of an exceptional doctrine established by modern jurisprudence. (195.)

The above observation was made to meet the argument that, the decisions having recognised the right of a coparcener to dispose of his undivided share by gift or other voluntary conveyance without the consent of his co-sharers, it followed as a necessary consequence that he had also the right to dispose of such share by will. Their Lordships observed that the former right was an exceptional doctrine established by modern jurisprudence and that they were not disposed to extend the doctrine of the alienability by a coparcener of his undivided share without the consent of his co-sharers beyond the decided cases. (194-5.) (*Sir James Colvile*). LAKSHMAN DADA NAIK *v.* RAMACHANDRA DADA NAIK. **(1880) 7 I. A. 181 = 5 B. 48 (62) = 7 C. L. R. 320 = 4 Sar. 173 = 3 Suth. 778.**

———Texts of Hindu law—Interpretation of—Abstract reasoning—Analogies borrowed from other systems of law —Application of—Impropriety of. *See* HINDU LAW—AUTHORITIES — TEXTS—INTERPRETATION OF—ABSTRACT REASONING. **(1870) 13 M. I. A. 373 (390) and (1914) 41 I.A. 290 (299) = 42 C. 384 (406).**

HINDU LAW—(*Contd.*)

Applicability.

——*See* HINDU LAW—CUSTOM—APPLICABILITY OF.

Authorities.

ANCIENT TEXTS.
APARARKA.
ARBITRARY RULE LAID DOWN IN.
BALAM—BHATTA.
BENARES SCHOOL.
BENGAL SCHOOL.
BOMBAY OR MAHARATTA SCHOOL.
COMMENTARIES.
DATTAKA CHANDRIKA AND DATTAKA MIMAMSA.
DAYABHAGA.
EUROPEAN AUTHORITIES.
GENERAL HINDU LAW—RULE OF, LAID DOWN BY RECOGNISED AUTHORITY—ADOPTION OF, BY PEOPLE SUBJECT TO THAT GENERAL LAW—PROOF OF—NECESSITY.
HINDU WRITERS.
INTERPRETATION OF.
MANU.
MITAKSHARA.
MITHILA SCHOOL.
NANDA PANDITA—WORKS OF.
PUNDITS—OPINIONS OF.
SEVERAL SCHOOLS—AUTHORITIES IN.
SMRITIS.
SMRITI CHANDRIKA.
SOUTHERN OR DRAVIDA SCHOOL.
SUBODHINI.
TEXTS.
TRANSACTION CONTRARY TO STRICT AND NATURAL VIEW OF HINDU LAW—TEXT PROHIBITING ABSENCE OF—INFERENCE FROM.
VASISHTA.
VIRAMITRODAYA.
VISHNU.
VYAVASTHA CHANDRIKA OF SHAMA CHARAN SARKAR.

ANCIENT TEXTS.

——*See also* UNDER THIS HEADING—TEXTS.

———*Citation of, in commentaries—Purpose of—Ascertainment of—Mode of.*

To see for what purpose an ancient text is cited in the Dayabhaga or in the Mithakshara, it is necessary to refer to the verses immediately preceding those in which the text is cited, for there is nothing more likely to mislead than to read a single paragraph from the Dayabhaga or Mithakshara alone without studying the whole chapter, and in some cases, even without studying several chapters of the same treatise (148). (*Sir Barnes Peacock*). MONIRAM KOLITA *v.* KERRY KOLITANY. **(1880) 7 I.A. 115 = 5 C. 776 (783) = 6 C. L. R. 322 = 4 Sar. 103 = 3 Suth. 765.**

———*Commentators dealing with same — Conclusions drawn by, very often opposite.*

Nothing is more certain than that in dealing with the same ancient texts, the Hindu commentators have often drawn opposite conclusions (150-1). (*Sir Barnes Peacock.*) MONIRAM KOLITA *v.* KERRY KOLITANY.
(1880) 7 I.A. 115 = 5 C. 776 (786) = 6 C.L.R. 322 = 4 Sar. 103 = 3 Suth. 765.

———*Interpretation of—Analogies strained—Application of—Propriety.*

See HINDU LAW—AUTHORITIES—TEXTS — INTERPRETATION OF—ABSTRACT REASONING.

HINDU LAW—(*Contd.*)

Authorities—(*Contd.*)

ANCIENT TEXTS—(*Contd.*)

———Novel interpretation of obscure and—Unsettling of rule settled by uniform course of decisions on—Propriety. *See* HINDU LAW—INHERITANCE — RULE OF—DECISIONS UNIFORM.

———Rule fairly deducible from—Application of—Condition—Acceptance of rule in district in question and sanction thereof by usage in that district. *See* HINDU LAW—ADMINISTRATION OF—MATTER FOR CONSIDERATION IN CASE OF. **(1868) 12 M.I.A. 397 (436).**

APARARKA.

———*Benares school—Authority in.*

Apararka is another scholiast of Yagnavalkya, who flourished about a century later than Vijnaneswara. That Apararka's authority is acknowledged by the expositors of the Benares school is clear from the fact, to which Mr. Mandlik refers, that Visveswara Bhatta, the author of the Subodhini, a commentary on the Mithakshara, has used Apararka's work among others for the compilation of his Madanaparijata. Parts of Apararka's treatise have been translated by Dr. Sarvadhikari and are to be found in his Tagore Lectures for 1880 (221 2). (*Mr. Ameer Ali*). BUDDHA SINGH *v.* LATTU SINGH.
(1915) 42 I.A. 208 = 37 A. 604 (617-8) = 20 C.W.N. 1 = 22 C.L.J. 481 = 13 A.L.J. 1007 = 17 Bom. L. R. 1022 = (1915) M.W.N. 772 = 2 L.W. 897 = 18 M.L.T. 409 = 30 I.C. 529 = 29 M.L.J. 434.

ARBITRARY RULE LAID DOWN IN.

———Application of—Cogent authority—Necessity. *See* HINDU LAW — ADMINISTRATION—ARBITRARY RULE OF HINDU LAW. **(1899) 26 I.A. 246 (253) = 23 M. 1 (9).**

BALAM—BHATTA.

———Commentator of Benares school. (*Sir James W. Colvile*). COLLECTOR OF MADURA *v.* MOOLTOO RAMALINGA SATHUPATHY. **(1868) 12 M.I.A. 397 (432-3) = 10 W.R. P.C. 17 = 1 B.L.R. P.C. 1 = 2 Suth. 135 = 2 Sar. 361.**

———One of best known commentators of Mithakshara. (*Mr. Ameer Ali*). BUDDHA SINGH *v.* LALTU SINGH.
(1915) 42 I.A. 208 (216) = 37 A. 604 (613) = 20 C.W.N. 1 = 22 C.L.J. 481 = 13 A.L.J. 1007 = 17 Bom. L.R. 1022 = (1915) M.W.N. 772 = 2 L.W. 897 = 18 M.L.T. 409 = 30 I.C. 529 = 29 M.L.J. 434.

BENARES SCHOOL.

———Viramitrodaya — Treatise of especial authority at Benares. **(1868) 12 M.I.A. 397 (438).**

———Viramitrodaya — Authority of, especially on point left doubtful by Mithakshara. **(1868) 12 M.I.A. 448 (466).**

———Vivada Chintamani, Ratnacara, Smriti Chandrika, Madhavya, and Vyavahara Mayukha—Not held in equal estimation at Benares. (*Sir James W. Colvile.*) BHUGWANDEEN DOOBEY *v.* MYNA BAEE.
(1867) 11 M. I. A. 487 (508) = 9 W. R. P. C. 23 = 2 Suth. 124 = 2 Sar. 327.

———*Vyavahara Mayukha—Authority of.*

The Mayukha, though received in the Bombay Presidency, is of no authority in the districts to which the Benares school of Hindu law applies. (*Sir James Colvile*). THAKOORAIN SAHIBA *v.* MOHUN LALL.
(1867) 11 M.I.A. 386 (402) = 7 W.R. 25 = 2 Sar. 289 = 1 Suth. 681.

HINDU LAW—(*Contd.*)

Authorities—(*Contd.*)

BENARES SCHOOL—(*Contd.*)

———The Vyavahara Mayuka is not recognised as an authority in the Benares school (160). (*Mr. Ameer Ali.*) GIRJA BAI *v.* SADASHIV DHUNDIRAJ.

(1916) 43 I. A. 151 = 43 C. 1031 = 37 I. C. 321 = 20 C. W. N. 1085 = 14 A.L.J. 822 = 20 M.L.T. 78 = (1916) 2 M. W. N. 65 = 18 Bom. L.R. 621 = 24 C.L.J. 207 = 4 L.W. 114 = 12 N.L.R. 65 = 31 M.L.J. 455.

BENGAL SCHOOL.

———Dayabhaga — Authority of. *See* HINDU LAW—AUTHORITIES—DAYABHAGA.

———Viramitrodaya—Authority of, in cases where Dayabhaga is silent. **(1880) 7 I.A. 115 (153) = 5 C. 776 (788-9).**

BOMBAY OR MAHRATTA SCHOOL.

———Manu, Mithakshara, and Mayukha principally followed in Western India. (*Sir Montague Smith.*) LULLOOBHOY BAPOOBHOY *v.* CASSIBAI.

(1880) 7 I.A. 212 (230) = 5 B. 110 (117) = 7 C.L.R. 445 = 4 Sar. 164 = 3 Suth. 795.

———Mayukha — Predominant authority in Mahratta school. (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOLTOO RAMALINGA SETHUPATHY.

(1868) 12 M. I. A. 397 (432) = 10 W. R. P. C. 17 = 1 B. L. R. P. C. 1 = 2 Suth. 135 = 2 Sar. 361.

———Mayukha dominating commentary in Bombay Presidency—It is a supplementary commentary to Mithakshara. (*Lord Dunedin.*) BALWANT RAO *v.* BAJI RAO.

(1920) 47 I. A. 213 (221) = 48 C. 30 (41) = 25 C. W. N. 243 = 18 A. L. J. 1049 = 28 M. L. T. 157 = (1920) M. W. N. 483 = 12 L. W. 679 = 57 I. C. 545 = 22 Bom. L. R. 1070 = 39 M. L. J. 166.

———Mayukha and Kaustubha —Peculiarily Mahratta treatises. (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOLTOO RAMALINGA SETHUPATHY.

(1868) 12 M. I. A. 397 (438) = 10 W. R. P. C. 17 = 1 B. L. R.P.C. 1 = 2 Suth. 135 = 2 Sar. 361.

———Vyavahara Mayukha implicitly followed in Bombay Presidency. (*Sir James W. Colvile.*) BHUGWANDEEN DOOBEY *v* MYNA BAEE. **(1867) 11 M.I.A. 487 (508) = 9 W. R. P. C. 23 = 2 Suth. 124 = 2 Sar. 327.**

COMMENTARIES.

———Ancient texts—Citation of—Purpose of—Ascertainment of—Mode of. *See* HINDU LAW—AUTHORITIES—ANCIENT TEXTS—CITATION OF, ETC.

(1880) 7 I. A. 115 (148) = 5 C. 776 (783).

———Ancient text—Conclusions opposite from same Drawing of—Practice of. *See* HINDU LAW—AUTHORITIES—ANCIENT TEXTS—COMMENTATORS DEALING WITH SAME. **(1880) 7 I.A. 115 (150-1) = 5 C. 776 (786).**

———Ancient texts - Doctrine fairly deducible from, but not accepted by commentators in particular district or sanctioned by usage in that district—Application of. *See* HINDU LAW—ADMINISTRATION OF — MATTER FOR CONSIDERATION IN CASE OF.

(1868) 12 M. I. A. 397 (436).

———Culluca Bhatta—Authority of. *See* HINDU LAW—AUTHORITIES—TEXTS — INTERPRETATION OF—CULLUCA BHATTA.

———*Scope and authority of.*

It must always be remembered that the commentaries are only commentaries. They do not enact ; they explain and are evidence of the congeries of customs which form the law (221). (*Lord Dunedin.*) BALWANT RAO *v.* BAJI RAO. **(1920) 47 I. A. 213 = 48 C. 30 (41) = (1920) M.W.N. 483 = 18 A.L.J. 1049 = 28 M. L.T. 157 = 12 L. W. 679 = 22 Bom. L. R. 1070 = 57 I. C. 545 = 25 C. W. N. 243 = 39 M. L. J 166.**

HINDU LAW—(*Contd.*)

Authorities -(*Contd.*)

COMMENTARIES—(*Contd.*)

RAO.

DATTAKA CHANDRIKA AND DATTAKA MIMAMSA.

———*Date and authorship of.*

It is not known who was the author of the Dattaka Chandrika, and the doubt as to its authorship makes it impossible to fix with any certainty the date when it was written, but it is believed to be an earlier work than the Dattaka Mimamsa, which was written by Nanda Pandita, who is known to have lived about 300 years ago. When the Dattaka Chandrika was first accepted in southern India as an authority on the law of adoption, it would probably be impossible now to ascertain (292). (*Sir John Edge.*) PERRAZU *v.* SUBBARAYUDU. **(1921) 48 I.A. 280 = 44 M 656 (667 8) = (1921) M. W. N. 541 = 34 C. L. J. 56 = 23 Bom. L.R. 920 = 14 L. W. 270 = 3 U. P. L.R. (P. C.) 46 = 26 C.W.N. 1 = 19 A.L.J. 621 = 61 I. C. 690 = 41 M. L. J. 33.**

———*Dattaka Chandrika and Dattaka Mimamsa—Authority of.*

The Chief Justice denies that the Dattaka Chandrika and the Dattaka Mimamsa have been recognised as any authority at all in the Benares School of Law. But their authority has been affirmed as part of the general Hindu law, founded on the smritis as the source from whence all schools of Hindu law derive their precepts. Both works have been received in courts of law, including this Board, as high authority. Both works must be accepted as bearing high authority for so long a time that they have become embedded in the general law. (*Lord Hobhouse*) BHAGWAN SINGH *v.* BHAGWAN SINGH. **(1899) 26 I.A. 153 (161) = 21 A. 412 (418-9) = 3 C.W.N. 454 = 1 Bom. L. R. 311 = 7 Sar. 474.**

------*Dattaka Chandrika and Dattaka Mimamsa Date of—Authority of—Questioning of—Permissibility.*

The Dattaka Mimamsa is not older than the 17th century A. D., and does not claim any but human origin. It was written during Mahomedan rule and cannot be the work of a law giver or judge.

The date of the Dattaka Chandrika is not certain ; but it is at all events very much later than the Smritis, and it stands only on the footing of a work by a learned man.

Both works have had a high place in the estimation of Hindu lawyers in all parts of India, and having had the advantage of being translated into English at a comparatively early period, have increased their authority during the British rule. Their Lordships cannot concur in the view that their authority is open to examination, explanation, criticism, adoption, or rejection like any scientific treatises on European jurisprudence. Such treatment would not allow for the effect which long acceptance of written opinions has upon social customs, and it would probably disturb recognised law and settled arrangements. But, their Lordships agree that caution is required in accepting their glosses where they deviate from or add to the Smritis. (*Lord Hobhouse.*) SRI BALUSU GURULINGASWAMI *v.* SRI BALUSU RAMALAKSHMAMMA.

(1899) 26 I.A. 113 (131-2) = 21 A. 460 = 22 M. 398 (411 2) = 3 C. W. N. 427 = 1 Bom. L. R. 226 = 7 Sar. 330 = 9 M. L. J. 67.

———Inheritance—Coparcenary rights in property acquired by birth or adoption—Authority as regards. *See* HINDU LAW — INHERITANCE — LAW OF — AUTHORITIES—DATTAKA CHANDRIKA. **(1921) 48 I. A 280 (292) = 44 M. 656 (667 8).**

HINDU LAW—(*Contd.*)

Authorities—(*Contd.*)

DAYABHAGA.

———It is to the Dayabhaga that we must look for the authoritative exposition of the law which governs Lower Bengal. (150.) (*Sir Barnes Peacock.*) MONIRAM KOLITA *v.* KERRY KOLITANY. **(1880) 7 I. A. 115 = 5 C. 776 (785-6) = 6 C. L. R. 322 = 4 Sar. 103 = 3 Suth. 765.**

———The Dayabhaga which, wherever it differs from the Mithakshara, prevails in Bengal, and is the foundation of the principal divergences between that and the other schools, equally admits and relies on the authority of Yagnavalkya. (435.) (*Sir James Colvile.*) COLLECTOR OF MADURA *v.* MOOLTOO RAMALINGA SETHUPATHY. **(1868) 12 M. I. A. 397 = 10 W. R. P. C. 17 = 1 B. L. R. P. C. 1 = 2 Suth. 135 = 2 Sar. 361.**

———The Dayabhaga is not necessarily of authority except in Bengal. (81.) (*Sir James W. Colvile.*) RAJAH VURMAH VALIA *v.* RAVI VURMAH MUTHA. **(1876) 4 I. A. 76 = 1 M. 235 (248) = 3 Sar. 687 = 3 Suth. 382.**

EUROPEAN AUTHORITIES.

The highest European authorities on the Hindu law are Mr. Colebrooke, Sir Thomas Strange, and Sir William Macnaghten. (436-7.) (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOLTOO RAMALINGA SETHUPATHY. **(1868) 12 M. I. A. 397 = 10 W. R. P. C. 17 = 1 B. L. R. P. C. 1 = 2 Suth. 135 = 2 Sar. 361.**

———Dr. Jolly was at one time Tagore Law Professor in the Calcutta University, and is one of the translators of the Sacred Books of the East. (224.) (*Mr. Ameer Ali.*) BUDDHA SINGH *v.* LALTU SINGH. **(1915) 42 I.A. 208 = 37 A. 604 (620) = 20 C. W. N. 1 = 22 C. L. J. 481 = 13 A. L. J. 1007 = 17 Bom. L.R. 1022 = 30 I. C. 529 = (1915) M. W. N. 772 = 2 L. W. 897 = 18 M. L. T. 409 = 29 M. L. J. 434.**

———By far the most important authority is Mr. William Macnaghten, whose Principles and Precedents of Hindu law were composed, as appears from the preface, after collecting all the information that could be procured from all quarters, and after a careful examination of all the original euthotities and of all the opinions of Pundits recorded in the Supreme Court for a series of years. We are informed that this work of Mr. Macnaghten is constantly referred to In the Supreme Court as all but decisive of any point of Hindu law contained in it, and that much more respect would be paid to it by the Judges there than to the opinions of Pundits. (101.) (*Mr. Pemberton Leigh.*) RUNGAMMA *v.* ATCHAMA. **(1846) 4 M. I. A. 1 = 1 Sar. 313 = 7 W. R. 57 P. C. = 1 Suth. 197.**

———As Macnaghten's work (Hindu Law) was based upon an exhaustive examination of the cases which had actually come before the Courts in Bengal and of the opinions of Pundits given with reference to those cases, it is valuable evidence of the law as it was actually understood and applied at the time to which it relates. (*Sir Arthur Wilson.*) SHEO SHANKAR LAL *v.* DEBI SAHAI. **(1903) 30 I. A. 202 (208) = 25 468 (475) = 7 C. W.N. 831 = 8 Sar. 465 = 5 Bom. L. R. 828 = 13 M. L. J. 330.**

———Mr. Macnaghten's "Principles and Precedents of Hindu law," which was published at Calcutta in 1829 is a recognised authority on Hindu law. (*Sir John Edge.*) PERRAZU *v.* SUBBARAYUDU. **(1921) 48 I.A. 280 (292) = 44 M. 656 (668) = (1921) M. W. N. 541 = 34 C. L. J. 56 = 22 Bom. L. R. 920 = 14 L. W. 270 = 26 C. W. N. 1 = 3 U. P. L. R. (P.C.) 46 = 19 A.L.J. 621 = 61 I. C. 690 = 41 M. L. J. 33.**

HINDU LAW—(*Contd.*)

Authorities—(*Contd.*)

GENERAL HINDU LAW—RULE OF, LAID DOWN BY RECOGNISED AUTHORITY—ADOPTION OF, BY PEOPLE SUBJECT TO THAT GENERAL LAW—PROOF OF—NECESSITY.

———Observation in 12 M. I. A, 397 (436)—Effect of. *See* HINDU LAW—ADMINISTRATION—GENERAL HINDU LAW. **(1899) 26 I. A. 153 (164-6) = 21 A. 412 (423-4).**

HINDU WRITERS.

———Dr. Bhattacharya and Mr. Ghose are two recent Hindu writers of repute. (*Mr. Ameer Ali.*) BUDDHA SINGH *v.* LALTU SINGH. **(1915) 42 I. A. 208 (224) = 37 A. 604 (620) = 20 C.W.N. 1 = 22 C L. J. 481 = 13 A. L J. 1001 = 17 Bom.L.R 1022 = 18 M L.T. 409 = (1915) M. W. N 772 = 2 L. W. 897 = 30 I. C. 529 = 29 M. L. J. 434.**

———*Sarvadhikari.*

The authority of Dr. Rajkumar Sarvadhikari as an expounder of the Hindu law has been recognised by the Calcutta High Court and this Board. (223.) (*Mr. Ameer Ali.*) BUDDHA SINGH *v.* LALTU SINGH. **(1915) 42 I A. 203 = 37 A. 604 (619) = 20 C.W.N. 1 = 22 C.L.J. 481 = 13 A.L.J. 1007 = 17 Bom. L.R. 1022 = 2L.W. 897—(1915) M W. N. 772 = 18 M. L. T. 409 = 30 I. C. 529 = 29 M L. J. 434.**

———Shama Charan Sarkar. *See* HINDU LAW—AUTHORITIES—VYAVASTHA CHANDRIKA.

INTERPRETATION OF.

———Abstract reasoning—Analogies borrowed from other systems of law—Applicability of. *See* HINDU LAW—AUTHORITIES—TEXTS—INTERPRETATION OF—ABSTRACT REASONING.

———Ancient Texts—Interpretation of. *See* HINDU LAW—AUTHORITIES—ANCIENT TEXTS.

———Manu—Interpretation of laws of. *See* HINDU LAW—AUTHORITIES—MANU.

———Mithakshara—Interpretation of—Mode of. *See* HINDU LAW—AUTHORITIES—MITHAKSHARA—SCHEME OF. **(1914) 41 I.A. 290 = 42 C. 384 (406-7).**

———*Moral and legal obligations—Recommendations and prohibitions—Distinction between—Regard for—Necessity.*

All these old text-books and commentaries are apt to mingle religious and moral considerations, not being positive laws with rules intended for positive laws. In the preface to his valuable work on Hindu law Sir William Macnaghten says:—"It by no means follows that because an act has been prohibited it should therefore be considered as illegal. The distinction between the *Vinculum juris* and the *Vinculum pudons* is not always discernible." (69.) (*Lord Hobhouse.*) RAO BALWANT SINGH *v.* RANI KISHORI. **(1898) 25 I.A. 54 = 20 A. 267 (285-6) = 2 C.W.N. 273 = 7 Sar. 279.**

Great caution is necessary in interpreting books of mixed religion, morality and law (like the Smritis), lest foreign lawyers, accustomed to treat as laws what they find in authoritative books and to administer a fixed legal system, should too hastily take for strict law precepts which are meant to appeal to the moral sense, and should thus fetter individual judgments in private affairs, should introduce restrictions into Hindu society, and impart to it an inflexible rigidity never contemplated by the original law-givers. (*Lord Hobhouse.*) SRI BALUSU GURULINGASWAMI *v.* SRI BALUSU RAMALAKSHMAMMA. **(1899) 26 I. A. 113 (136) = 22 M. 398 (415-6) = 21 A. 460 = 3 C. W. N. 427 = 1 Bom L. R. 226 = 7 Sar. 330 = 9 M. L. J. 67.**

HINDU LAW—(*Contd.*)

Authorities—(*Contd.*)

INTERPRETATION OF—(*Contd.*)

——No system of law makes the province of legal obligation co-extensive with that of religious or moral obligation. A man may, in his conduct or in the disposition of his property, disregard the plainest dictates of duty. He may prefer an unworthy stranger to those who have the strongest natural claims upon him. He may be ungrateful, selfish, cruel, treacherous to those who have confided in him and whose affection for him ruined them, And yet he may be within his legal rights. The Hindu sages doubtless saw this distinction as clearly as we do and the precepts they have given for the guidance of life must be construed with reference to it. If a transaction is declared to be null and void in law, whether on a religious ground or another, it is so; and if its nullity is a necessary implication from a condemnation of it, the law must be so declared. But the mere fact that a transaction is condemned in books like the Smritis does not necessarily prove it to be void. It raises the question what kind of condemnation is meant. (*Lord Hobhouse.*) SRI BALUSU GURULINGASWAMI *v.* SRI BALUSU RAMALAKSHMAMMA.
(1899) 26 I. A. 113 (139-40) = 22 M. 398 (419) = 21 A. 460 = 3 C. W. N. 427 = 1 Bom. L. R. 226 = 7 Sar. 330 = 9 M. L. J. 67.

——*Precepts evenly balanced—Construction not annulling transactions acceptable to multitudes of familes and allowing individual freedom of choice—Preference of.*

If the authoritative precepts are evenly balanced between the two constructions (the construction according to which an adoption will be void and the construction according to which it will be valid, though reprehensible) the decision should be in favour of that which does not annul transactions acceptable to multitudes of families, and which allows individual freedom of choice. (*Lord Hobhouse.*) SRI BALUSU GURULINGASWAMI *v.* SRI BALUSU RAMALAKSHMAMMA. **(1899) 26 I. A. 113 (150) = 22 M. 398 (428) = 21 A. 460 = 3 C. W. N. 427 = 1 Bom. L. R. 226 = 7 Sar. 330 = 9 M. L. J. 67.**

——*Sanskrit works—Understanding of—Language and works of particular writer—Close study of—Necessity.*

It is averred probably with truth that the exact phases of meaning of a Sanskrit work cannot be caught except by those who have studied closely and as a whole the language and the works of the particular writer under consideration. (*Lord Hobhouse.*) SRI BALUSU GURULINGASWAMI *v.* SRI BALUSU RAMALAKSHMAMMA.
(1899) 26 I. A. 113 (128-9) = 22 M 398 (408-9) = 21 A. 460 = 3 C. W. N. 427 = 1 Bom. L. R. 226 = 7 Sar. 330 = 9 M. L. J. 67.

——Smritis—Interpretation of. *See* HINDU LAW—AUTHORITIES—SMRITIS.

——*Stare decisis—Principle of—Applicability.*

Had a course of decisions, or had the actual practice of Hindus confirmed the view, which some framers of genealogical tables appear to have taken of this subject, it would have been the duty of the courts of justice to interpret the language of the Mithakshara by the aid of this modern light. (*Sir Robert Phillimore.*) BHYAH RAM SINGH *v.* BHYAH UGUR SINGH. **(1870) 13 M. I. A. 373 (393) = 14 W. R. P. C. 1 = 5 B. L. R. P. C. 293 = 2 Suth. 330 = 2 Sar. 566.**

——The learned counsel for the appellant seemed to admit that the sister and her descendants were excluded from the tables of succession, according to the law of the Mithakshara, which have been framed by several persons of authority; but he contended that it had its origin in error, and pleaded for a return to what he contended was

HINDU LAW—(*Contd.*)

Authorities—(*Contd.*)

INTERPRETATION OF—(*Contd.*)

the correct interpretation of the texts, founding himself chiefly on the authority of Balam-Bhatta. But it is entirely opposed to the spirit of the Hindu customs to allow the words of the law to control its long received interpretation, as practically exhibited by rules of descent and rules of property founded on the decisions of the courts of the country, and it seems to their Lordships that it would be extremely mischievous to distrub upon points taken here for the first time any such course of decision (196). (*Sir James Colvile.*) KOOER GOOLAB SINGH *v.* RAO KURUN SING. **(1871) 14 M. I. A. 176 = 10 B. L. R. 1 = 2 Suth. 474 = 2 Sar. 722.**

——*See* HINDU LAW—INHERITANCE—RULE OF—DECISIONS UNIFORM.

——*See* HINDU LAW—INHERITANCE—QUESTION OF—STARE DECISIS.

——Texts—Interpretation of. *See* HINDU LAW—AUTHORITIES—TEXTS.

MANU.

——*See* HINDU LAW—AUTHORITIES—BOMBAY OR MAHRATTA SCHOOL.

——The most revered of all the Rishis or Sages is Manu. (*Lord Hobhouse.*) SRI BALUSU GURULINGASWAMI *v.* SRI BALUSU RAMALAKSHMAMMA.
(1899) 26 I. A. 113 (129) = 22 M. 398 (409) = 21 A. 460 = 3 C. W. N. 427 = 1 Bom. L. R. 226 = 7 Sar. 330 = 9 M. L. J. 67.

——*Interpretation of laws of—Glosses on, of writers and commentators of authority—Regard for—Necessity.*

The early versions of the Laws of Manu are very ancient, and it might be doing great mischief to construe the words of the original text literally, unaided by the gloss which has been put upon them by writers and commentators of authority, whose interpretation has been received as authentic. (6.) (*Sir Montague E. Smith.*) PEDDA RAMAPPA NAYANIVARU *v.* BANGARI SESHAMMA NAYANIVARU.
(1880) 8 I. A. 1 = 2 M. 286 (291) = 8 C. L. R. 315 = 4 Sar. 203.

——*Resort to, for first principles—Permissibility.*

Many of the precepts of Manu have been undoubtedly altered and modified by modern law and usage; but his authority may properly be referred to when it is necessary to resort to first principles in order to ascertain and declare the law. (7.) (*Sir Montague E. Smith.*) RAMALAKSHMI AMMAL *v.* SIVANANTHA PERUMAL SETHURAYAR.
(1872) Sup. I. A. 1 = 14 M. I. A. 570 = 17 W. R. 553 = 12 B. L. R. 396 = 2 Suth. 603 = 3 Sar. 108.

MITHAKSHARA.

——*Authorship and value of.*

The compiler of the Mithakshara is said to have been an Ascetic, or Devotee, and from that source nothing at variance with the religion of the Hindus is likely to have flowed. The Digest Subordinates in more than one place the language of texts to custom and approved usage. (390.) (*Sir Robert Phillimore.*) BHYAH RAM SINGH *v.* BHYAH UGUR SINGH. **(1870) 13 M. I. A. 373 = 14 W. R. P. C. 1 = 5 B. L. R. P. C. 293 = 2 Suth. 330 = 2 Sar 566.**

——*Benares School—Authority in.*

The governing authority of the Benares School is the Mithakshara. (*Sir Robert Phillimore.*) BHYAH RAM SINGH *v.* BHYAH UGUR SINGH.
(1870) 13 M. I. A. 373 (390) = 14 W. R. P. C. 1 = 5 B. L. R. P. C. 293 = 2 Suth. 330 = 2 Sar. 566.

HINDU LAW—(*Contd.*)

Authorities—(*Contd.*)

MITHAKSHARA—(*Contd.*)

———*Bengal—Authority in.*

The Mithakshara may be referred to in Bengal in cases where the Dayabhaga is silent. (153.) (*Sir Barnes Peacock.*) MONIRAM KOLITA *v.* KERRY KOLITANY.
(1880) 7 I. A. 115 = 5 C. 776 (788-9) = 6 C L. R. 322 = 4 Sar. 103 = 3 Suth. 765.

———*Bengal and elsewhere—Authority in—Distinction.*

The Mithakshara, which is universally accepted by all the Schools, except that of Bengal, as of the highest authority, and which in Bengal is received also as of high authority, yielding only to the Dayabhaga in those points where they differ, was a commentary on the Institutes of Yagnavalkya. (435.) (*Sir James Colvile.*) COLLECTOR OF MADURA *v.* MOOLTOO RAMALINGA SETHUPATHY.
(1868) 12 M. I. A. 397 = 10 W. R. P. C. 17 = 1 B. L. R. P. C. 1 = 2 Suth. 135 = 2 Sar. 361.

———Bombay School—Authority in. *See* HINDU LAW—AUTHORITIES—BOMBAY SCHOOL.

———Commentators or commentaries on (1) Balam Bhatta. *See* HINDU LAW—AUTHORITIES — BALAMBHATTA.

———(2) Mayukha. **(1920) 47 I. A. 213 (221) = 48 C. 30 (41).**

———(3) Subodhini. *See* HINDU LAW—AUTHORITIES—SUBODHINI.

———(4) Viramitrodaya. *See* HINDU LAW—AUTHORITIES—VIRAMITRODAYA.

———(5) Nanda Pandita. *See* HINDU LAW—AUTHORITIES—NANDA PANDITA.

———Matters left doubtful by—Viramitrodaya's authority on. **(1868) 12 M. I. A. 448 (466).**

———*Scheme of—Interpretation—Mode of.*

The Mithakshara consists of two books; the first called the Acharadhyaya "On Established Rules of conduct or Ordinances;" the second the Vyavaharadhyaya "On the Laws and Customs of the People." Both books, however, are so inter-related that the rules of the one can scarcely be construed without reference to the other. It is to be noted that in the Vyavastha Chandrika the book on "Established Rules of conduct" is cited as the Achara Adhyaya ("Chapter or Book on Established Rules of conduct"), whilst in the decisions of the Indian courts and recent works on Hindu law it is referred to under the name of the Achara-Kanda ("Division or Part relating to Established Rules of conduct"). (*Mr. Ameer Ali.*) RAMACHANDRA MARTANDA WAIKER *v* VINAYAK VENKATESH KOTHEKAR. **(1914) 41 I. A. 290 = 42 C. 384 (406-7) = 18 C. W. N. 1154 = 16 M. L. T. 447 = 10 N. L. R. 112 = (1914) M. W. N. 835 = 16 Bom. L. R. 863 = 12 A. L. J. 1281 = 20 C. L. J. 573 = 25 I. C. 290 = 27 M. L. J. 333.**

———*Scope of—Authority of, in Bombay and elsewhere.*

The Mithakshara of Vijnaneswara, who flourished about the end of the eleventh and the beginning of the twelfth century of the Christian era, purports to be a commentary on the Institutes of Yagnavalkya. Vijnaneswara analyses and discusses the text of his great predecessor, often at considerable length, explains the meaning of recondite passages, supplies omissions, and reconciles discrepancies by frequent reference to other old expounders of the law (214). The logical acumen of this great legist judging from his work seems to have been remarkable (220). In the Bombay Presidency also the doctrines of the Mithakshara are recognised subject to the interpretation of the Vyavahara Mayukha of Nilakanta Bhatta; but on many points there is considerable divergence between the Benares and the Maharashtra schools (225-6). (*Mr. Ameer Ali*). BUDDHA SINGH *v.* LALTU SINGH. **(1915) 42 I. A. 208 = 20 C. W. N. 1 = 37 A. 604 (611, 616, 621-2) = 22 C.L.J. 481 = 13 A. L. J. 1007 = 17 Bom. L. R. 1022 = 2 L. W. 897 = (1915) M. W. N. 772 = 18 M. L. T. 409 = 30 I. C. 529 = 29 M. L. J. 434.**

———Smriti Chandrika—Use of, to explain dubious term or phrase in Mithakshara. *See* HINDU LAW—AUTHORITIES—SMRITI CHANDRIKA.

MITHILA SCHOOL.

———The Vivada Chintamani is of high authority in the Mithila School, and in the District of Tirhoot. (*Sir James Colvile.*) MUSSUMAT THAKOOR DEYHEE *v.* RAI BALUK RAM. **(1866) 11 M.I.A. 139 (174-5) = 21 I.J.N.S. 106 = 10 W. R. (P.C.) 3 = 2 Suth. 49 = 2 Sar. 231.**

———The Mithila School follows implicitly the Vivada Chintamani and the Ratnacara (508). (*Sir James W. Colvile*). BHUGWANDEEN DOOBEY *v.* MYNA BAEE.
(1867) 11 M. I.A. 487 = 9 W.R. (P.C.) 23 = 2 Suth. 124 = 2 Sar. 327.

———The principal authority of the Mithila law is the Vivada Chintamani. RAJAH BISHEN PERKASH NARAIN SINGH *v.* BAWA MISSER. **(1873) 2 Suth. 878 = 20 W. R. 137 = 12 B. L. R. 430 = 3 Sar. 272.**

———The leading text-book in the Mithila law is the Vivada Chintamani (73). (*Lord Hobhouse*). RAO BALWANT SINGH *v.* RANI KISHORI. **(1898) 25 I. A. 54 = 20 A. 267 (290) = 2 C. W. N. 273 = 7 Sar. 279.**

———*Quaere* whether the Vivada Chintamani is a binding authority in the Mithila School of Hindu law. (*Sir John Edge.*) SOURENDRA MOHAN SINHA *v.* HARI PRASAD SINHA. **(1925) 52 I. A. 418 (438) = 5 Pat. 135 = 42 C. L. J. 592 = 24 A. L. J. 33 = (1926) M. W. N. 49 = 7 Pat. L. T. 97 = A. I. R. 1925 P. C. 280 = 91 I. C. 1033 = 50 M. L. J. 1.**

NANDA PANDITA—WORKS OF.

———*Dattaka Mimamsa and Vaijayanti—Authority of.*

Nanda Pandita, "an esteemed writer of the Benares School," and the author of the noted work on the law of adoption called the Dattaka Mimamsa, a standard treatise among the followers of the Mithakshara, has written commentaries both on the Mithakshara as well as on the Institutes of Vishnu. This latter work is called the Vaijayanti (222). (*Mr. Ameer Ali.*) BUDDHA SINGH *v.* LATTU LINGH. **(1915) 42 I. A. 208 = 37 A. 604 (618) = 20 C. W. N. 1 = 22 C. L. J. 481 = 13 A. L. J. 1007 = 17 Bom. L. R. 1022 = (1915) M. W. N. 772 = 2 L. W. 897 = 18 M. L. T. 409 = 30 I. C. 529 = 29 M. L. J. 434.**

PUNDITS—OPINIONS OF.

———*Irreconcilability apparent of, with works of current and established authority—Explanation for—Duty of court to obtain.*

When the opinion given by the Pundits on a question referred to them in a suit is apparently irreconcilable with the opinions of proved text-writers, those who give the opinion should be asked to explain that which appears *prima facie*, thus irreconcilable, so that they may show on what they ground an apparent exception from the general law, whether on general custom modifying texts, on local usage, family customs, or other exceptional matter (422). (*Lord Kingsdown.*) MYNA BOYEE *v.* OOTARAM.
(1861) 8 M. I. A. 400 = 2 W. R. 4 = 2 M. H. C. R. 196 = 1 Suth. 452 = 1 Sar. 797.

HINDU LAW—(*Coxtd.*)
Authorities—(*Contd.*)
PUNDITS—(*Contd.*)

———As regards the opinion of the Pundits, their Lordships can but repeat an observation made by them in 8 M. I. A. 400 at 422, to the following effect. Where an opinion apparently discordant from works of current and established authority is delivered by Pundits, it must not be taken on their authority to be a correct exposition of the law. They should be questioned further as to authorities, usage, and generally-received opinions. Such an inquiry might produce a conviction that the Pundits on a new case delivered rather their own notions of expedient law, as law, than delivered it on the force of the opinions of any writers or authoritative expounders of the Hindu law (552-3). (*Lord Justice Turner*). COLLECTOR OF MASULIPATAM *v.* CAVALY VENCATA NARRAINAPAH. **(1861) 8 M.I.A. 529 = 2 W. R. 61 = 1 Suth. 476 = 1 Sar. 820.**

———*Mode of taking—Special circumstances bearing upon question submitted—Statement of—Necessity.*

The question submitted to the Law Officers (Pundits) does not include some important facts which existed in this case. Every such reference in a suit, where it may bind a right, should embrace all important facts admitted or proved in the cause, which may affect the conclusion ; and it is the duty of the court itself so to frame the questions that they may elicit an opinion upon the very facts upon which the legal title depends. If the facts be not ascertained but stated, and disputed, then the questions should embrace either view of the facts (422). (*Lord Kingsdown.*) MYNA BOYEE *v.* OOTARAM. **(1861) 8 M.I.A. 400 = 2 W.R. 4 = 2 M.H.C.R. 196 = 1 Suth. 452 = 1 Sar. 797.**

———Whenever the opinion of Pundits is required, and there are any special circumstances which may bear upon the question to be submitted for their opinion, those special circumstances ought to be set forth in the case submitted to them. (245 6). (*Lord Kingsdown.*) ABRAHAM *v.* ABRAHAM. **(1863) 9 M.I.A. 195 = 1 W.R. 1 = 2 Sar. 10 = 1 Suth. 501.**

———*Object of obtaining.*

When questions are submitted to the Pundits, the object is not to examine them as witnesses, but to consult them upon matters of which they are supposed to be fully cognisant. (*Mr. Baron Parke*). SUMBHOOCHUNDER CHOWDHRY *v.* NARAINI DEBIA..
(1835) 5 W. R. 100 P.C. = 1 Suth. 25 (27) = 3 Knapp. 55 = 1 Sar. 65.

———*Rejection of—Propriety.*

The evidence that the doctrine has been sanctioned by usage consists partly of the opinions of Pundits, partly of decided cases. Their Lordships cannot but think that the opinions of the Pundits have been too summarily dealt with by the Judges of the High Court. These opinions, at one time enjoined to be followed, and long directed to be taken by the Courts, were official, and could not be shaken without weakening the foundation of much that is now received as the Hindu law in various parts of British India. Upon such materials the earlier works of European writers on the Hindu law and the earlier decisions of our Courts, were mainly founded. The opinion of a Pundit which is found to be in conflict with the translated works of authority may reasonably be rejected ; but those which are consistent with such works should be accepted as evidence that the doctrine which they embody has not become obsolete, but is still received as part of the customary law of the country. (*Sir James Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SATHUPATHY.
(1868) 12 M. I. A. 397 (438-9) = 10 W. R. P. C. 17 = 1 B. L. R. P. C. 1 = 2 Suth. 135 = 2 Sar. 361.

HINDU LAW—(*Contd.*)
Authorities—(*Contd.*)
PUNDITS—(*Contd.*)

———*Value of.*

The opinions of the Pundits on questions of Hindu law referred to them are by no means conclusive (95). (*Mr. Pemberton Leigh.*) RUNGAMMA *v.* ATCHAMMA.
(1846) 4 M. I. A. 1 = 7 W. R. 57 P. C. = 1 Suth. 197 = 1 Sar. 313.

———The Pundits may be taken as fair exponents of the views of the Hindu people on such subjects (as, inheritance.) (*Sir Robert Phillimore.*) BHYAH RAM SINGH *v.* BHYAH UGUR SINGH. **(1870) 13 M. I. A. 373 (394) = 14 W. R. P. C. 1 = 5 B. L. R. P. C. 293 = 2 Suth. 330 = 2 Sar. 566.**

SEVERAL SCHOOLS—AUTHORITIES IN.

———*Particular treatises of those schools.*

The Mithakshara is no doubt accepted as a high authority by all the schools, even by that of Bengal, when it is not controlled by the Daya-Bhaga, and other treatises peculiar to that school. But the other four schools have, like that of Bengal, though in a less marked degree, their particular treatises and commentaries which control passages of the Mithakshara, and give rise to the differences between those schools. Whilst the Mithila School follows implicitly the Vivada Chintamani and the Ratnacara, the South of India the Smriti Chandrika and the Madhavya ; and the Presidency of Bombay the Vyavahara Mayukha, these works are by no means held in equal estimation at Benares (507-8). (*Sir James Colvile.*) BHUGWANDEEN DOOBEY *v.* MYNA BAEE. **(1867) 11 M. I. A. 487 = 9 W. R. P. C. 23 = 2 Suth. 124 = 2 Sar. 327.**

SMRITIS.

———*Interpretation of—Jaimini—Authority of.*

Jaimini, who wrote in the 13th century, appears to have been received as a high authority in the interpretation of Smriti texts. (*Lord Hobhouse.*) SRI BALUSU GURULINGASWAMI *v.* SRI BALUSU RAMALAKSHMAMMA.
(1899) 26 I. A. 113 (146) = 22 M. 398 (425) = 21 A. 460 = 3 C. W. N. 427 = 1 Bom. L. R. 226 = 7 Sar. 330 = 9 M. L. J. 67.

———*Interpretation of—Jaimini's rule as regards precepts supported by assignment of reason.*

Jaimini lays down the rule that all precepts supported by the assignment of a reason are to be taken as recommendations only. The rule is rather starting. It may, however, be fairly argued that one who, having the power to give an absolute command, gives an injunction not expressed in unambiguous terms of absolute command, but resting on a reason, is addressing himself rather to the moral sense of his hearers than to their duty of implicit obedience. (*Lord Hobhouse.*) SRI BALUSU GURULINGASWAMI *v.* SRI BALUSU RAMALAKSHMAMMA.
(1899) 26 I. A. 113 (146) = 22 M. 398 (425) = 21 A. 460 = 3 C. W. N. 427 = 1 Bom. L. R. 226 = 7 Sar. 330 = 9 M. L. J. 67.

———*Nature and authority of.*

The Smritis are held by orthodox Hindus to have emanated from the Deity, and to have been recorded, not like the Sruti in the very words uttered by that being, but still in the language of inspired men. They contain precepts whose authority is beyond dispute, but whose meaning is open to various interpretations and has been and is the subject of much dispute, which must be determined by ordinary processes of reason. (*Lord Hobhouse.*) SRI BALUSU GURULINGASWAMI *v.* SRI BALUSU RAMALAKSHMAMMA.
(1899) 26 I. A. 113 (131) = 22 M. 398 (411) = 21 A. 460 = 3 C. W. N. 427 = 1 Bom. L. R. 226 = 7 Sar. 330 = 9 M. L. J. 67.

HINDU LAW—(*Contd.*)

Authorities—(*Contd.*)

SMRITI CHANDRIKA.

———*Authority of—Benares School—Southern India.*

The Smriti Chandrika contains only an authoritative exposition of the law as it prevails in the South of India, and is of no weight when set against the Mithakshara, and other authorities recognised by the Benares School (46). (*Sir James W. Colvile.*) SRIMATI UMA DEYI *v.* GOKOOLANUND DAS. **(1878) 5 I. A. 40 = 3 C. 587 (594) = 2 C. L. R. 51 = 3 Suth. 499 = 3 Sar. 786.**

———*Authority of, in Northern India—Application of, to explain dubious or indeterminate term or phrase in Mithakshara.*

Devananda Bhtta is the author of the Smriti Chandrika. Its doctrines are not recognised in Northern India. Devananda Bhatta, who is supposed to have been a contemporary of Apararka, admittedly differs from the author of the Mitakshara in several essential rules of law. It seems, to say the least, doubtful whether an enunciation in the Smriti Chandrika can be safely applied, except perhaps by way of analogy, to explain a dubious or indeterminate phrase or term in the Mithakshara. (*Mr. Ameer Ali.*) BUDDHA SINGH *v.* LALTU SINGH. **(1915) 42 I. A 208 (223) = 37 A. 604 (619, 622) = 20 C. W. N. 1 = 22 C. L. J. 481 = 13 A. L. J. 1007 = 17 Bom. L. R. 1022 = (1915) M. W. N. 772 = 2 L. W. 897 = 18 M. L. T. 409 = 30 I. C. 529 = 29 M. L. J. 434.**

———Benares School—Authority in. *See* HINDU LAW—AUTHORITIES—BENARIS SCHOOL.

(1867) 11 M. I. A. 487 (508).

SOUTHERN OR DRAVIDA SCHOOL.

———*Dattaka Mimamsa.*

The Dattaka Mimamsa, by the Author of the Madhavyam is also recognised as of high authority in the South of India by Mr. Ellis (437). (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v* MOOLTOO RAMALINGA SETHUPATHY.

(1868) 12 M. I. A. 397 = 10 W. R. P. C. 17 = 1 B. L. R P. C 1 = 2 Suth. 135 = 2 Sar. 361.

———The Dattaka Mimamsa of Sir Sri Rama Pandita is stated by the Judges of the High Court to be an authority very generally cited in the South of India (438). (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOLTOO RAMALINGA SETHUPATHY.

(1868) 12 M. I. A 397 = 10 W. R. P. C. 17 = 1 B. L. R. P C. 1 = 2 Suth. 135 = 2 Sar. 361.

———*European authorities in.*

Colebrooke and Sir Thomas Strange, are two of the highest European authorities upon this question of the Hindu Law current in the South of India. (*Sir James Colvile.*) COLLECTOR OF MADURA *v.* MOOLTOO RAMALINGA SETHUPATHY. **(1868) 12 M. I. A. 397 (434-5) = 10 W. R. P. C. 17 = 1 B. L. R. P. C. 1 = 2 Suth. 135 = 2 Sar. 361.**

———*Mithakshara—Smriti Chandrika—Madhavyam.*

The highest European authorities concur in treating as works of unquestionable authority in the South of India the Mithakshara, the Smriti Chandrika, and the Madhavyam, the two latter being, as it were, the peculiar treatises of the Southern or Dravada School. (*Sir James, W. Colvile.*) COLLECTOR OF MADURA *v.* MOOLTOO RAMALINGA SETHUPATHY. **(1868) 12 M. I. A 397 (436-7) = 10 W. R. P. C. 17 = 1 B. L. R. P. C. 1 = 2 Suth. 135 = 2 Sar. 361.**

———*Smriti Chandrika—Dayabhaga—Authority of.*

There are two commentaries which are received as authority in the Carnatic, the Smriti Chandrika and the Daya-Vibhaga by Madhavya (109). (*Sir Arthur Hobhouse.*) MUTTU VADUGANADHA TEVAR *v.* DORASINGA TEVAR. **(1881) 8 I. A. 99 = 3 M. 290 (302) = 4 Sar. 239.**

HINDU LAW—(*Contd.*)

Authorities—(*Contd.*)

SOUTHERN OR DRAVIDA SCHOOL—(*Contd.*)

———*Smriti Chandrika and the Madhavya—Authority of.*

The South of India follows implicitly the Smriti Chandrika and the Madhavya (508). (*Sir James W. Colvile.*) BHUGWANDEEN DOOBEY *v.* MYNA BAEE.

(1867) 11 M. I. A. 487 = 9 W. R. P. C. 23 = 2 Suth. 124 = 2 Sar. 327.

———*Smriti Chandrika and Madhavyam—Peculiar treatises of that school.*

The Smriti Chandrika and the Madhavyan are, as it were, the peculiar treatises of the Southern or Dravida School (437). (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOLTOO RAMALINGA SETHUPATHY.

(1868) 12 M. I. A. 397 = 10 W. R. P. C. 17 = 1 B. L. R. P. C. 1 = 2 Suth. 135 = 2 Sar. 361.

———Viramitrodaya—Authority of.

(1880) 7 I. A. 115 (153) = 5 C. 776 (788-9).

SUBODHINI.

———*Author of—Nature of—Authority of.*

Visveswara Bhatta is the author of the Subodhini. It no doubt professes to be a commentary on the Mithakshara, but it is clear that in several instances it diverges from the acknowledged interpretations of its doctrines (223). Their Lordships do not feel disposed to attach any canonical authority to the rules of the Subodhini (226). (*Mr. Ameer Ali.*) BUDDHA SINGH *v.* LALTU SINGH.

(1915) 42 I. A. 208 = 37 A. 604 (619, 622) = 20 C. W. N. 1 = 22 C. L. J. 481 = 13 A. L. J. 1007 = 17 Bom. L. R. 1022 = (1915) M. W. N. 772 = 2 L. W. 897 = 18 M. L. T. 409 = 30 I C. 529 = 29 M. L. J. 434.

TEXTS.

———(*See also* under this head—ANCIENT TEXTS.)

———*Interpretation of—Abstract reasoning—Analogy borrowed from other systems of law—Application of—Propriety.*

The Hindu law contains in itself the principles of its own exposition. Nothing from any foreign source should be introduced into it, nor should Courts interpret the text by the application to the language of strained analogies (390). (*Sir Robert Phillimore.*) BHYAH RAM SINGH *v.* BHYAH ULGUR SINGH. **(1870) 13 M. I. A. 373 = 14 W. R. P. C. 1 = 5 B. L. R. P. C. 293 = 2 Suth. 330 = 2 Sar. 566.**

———The Hindu Law contains its own principles of exposition, and questions arising under it cannot be determined on abstract reasoning or analogies borrowed from other systems of law, but must depend for their decision on the rules and doctrines enunciated by its own law-givers and recognised expounders (299). (*Mr. Ameer Ali.*) RAMCHANDRA MARTANDA WAIKAR *v.* VINAYAK VENKATESH KOTHEKAR. **(1914) 41 I. A. 290 = 42 C. 384 (406) = 18 C. W. N. 1154 = 16 M. L. T. 447 = 10 N. L. R. 112 = (1914) M. W. N. 835 = 16 Bom L. R. 863 = 12 A. L. J. 1281 = 20 C. L. J. 573 = 25 I. C. 290 = 27 M. L. J. 333.**

———*Interpretation of—Calluca Bhatta—Authority of.*

Speaking of Culluca Bhatta, Sir William Jones, himself a great Oriental lawyer and scholar, says: "At length appeared *Culluca Bhatta*, who, after a painful course of study and the collation of numerous manuscripts, produced a work of which it may perhaps be said very truly that it is the shortest yet the most luminous, the least ostentatious yet the most learned, deepest yet the most agreeable, commentary ever composed on any author, ancient or modern." It is impossible to have higher authority for an explanation of a

HINDU LAW—(*Contd.*)
Authorities—(*Contd.*)
TEXTS—(*Contd.*)

text (6). (*Sir Montague E. Smith.*) PEDDA RAMAPPA NAYANIVARU *v.* BANGARI SESHAMMA NAYANIVARU.
(1880) 8 I. A. 1 = 2 M. 286 (291-2) = 8 C. L. R. 315 = 4 Sar. 203.

———*Interpretation of—Earlier ambiguous text—Later unambiguous text of same writer—Which prevails.*

In a case in which the language of one verse of the Laws of Manu was reasonably free from ambiguity, while the meaning of the previous verses was at the best ambiguous and doubtful, their Lordships observed that the plain language of the one ought not to be overridden or controlled by the obscure utterances in the other (109). (*Lord Davey.*) JAGADISH BAHADUR *v.* SHEO PARTAB SINGH.
(1901) 28 I. A. 100 = 23 A. 369 (381-2) = 5 C. W. N. 802 = 3 Bom. L. R. 298 = 8 Sar. 19 = 11 M. L. J. 178.

———*Interpretation of—Earlier unambiguous text—Later ambiguous text of same writer—Which prevails.*

It is a well-settled principle of construction that an unambiguous direction in an earlier text is not controlled by a subsequent text, the language of which is of uncertain meaning. (*Lord Davey.*) BAI KESSERBAI *v.* HUNSRAJ MORARJI. **(1906) 33 I. A. 176 (196) = 30 B. 431 (451) = 10 C. W. N. 802 = 4 C. L. J. 9 = 8 Bom. L. R. 446 = 3 A. L. J. 484 = 1 M. L. T. 211 = 16 M. L. J. 446.**

———Transaction contrary to strict and natural view of Hindu Law—Texts prohibiting—Absence of—Inference from—Against, and not in favour of, validity of transaction. *See* HINDU LAW—AUTHORITIES—TRANSACTION CONTRARY TO, ETC.
(1927) 54 I. A. 248 (264-5) = 50 M. 508.

TRANSACTION CONTRARY TO STRICT AND NATURAL VIEW OF HINDU LAW—TEXT PROHIBITING—ABSENCE OF—INFERENCE FROM.

———*Against, and not in favour of, validity of transaction.*

An arrangement by which the natural father of an adopted son consents to restrict his rights as such is admittedly contrary to the strict and natural view of the Hindu law as to the true position of the adopted son in his new family. The remark that there is no text prohibiting such arrangements would seem to go exactly to the opposite effect. It would seem more to the point to say that there is no text which sanctions any contrary arrangement (264-5). (*Viscount Dunedin.*) KRISHNAMURTHI AYYAR *v.* KRISHNAMURTHI AYYAR. **(1927) 54 I. A. 248 = 50 M. 508 = 39 M. L. T. 52 = 25 A. L. J. 945 = (1927) M.W.N. 469 = 4 O. W. N. 621 = 31 C. W. N. 910 = 45 C. L. J. 620 = 26 L. W. 186 = 8 Pat. L. T. 719 = 29 Bom. L. R. 969 = 101 I. C. 779 = A. I. R. 1927 P. C. 139 = 53 M. L. J 57.**

VARADARAJA.

———*Dravida and Benares schools.*

The authority of Varadaraja is said to be great in Southern India, and his enunciations appear to be received with respect also by the expounders of the Benares school (222). (*Mr. Ameer Ali.*) BUDDHA SINGH *v.* LALTU SINGH.
(1915) 42 I. A. 208 = 37 A. 604 (618) = 20 C. W. N. 1 = 22 C. L. J. 481 = 13 A.L.J. 1007 = 17 Bom. L.R. 1022 = (1915) M. W. N. 772 = 2 L. W. 897 = 18 M. L. T. 409 = 30 I. C. 529 = 29 M. L. J. 434.

VASISHTA.

———Next to Manu in point of antiquity and of authority comes Vasishta. (*Lord Hobhouse.*) SRI BALUSU GURULINGASWAMI *v.* SRI BALUSU RAMALAKSHMAMMA.
(1899) 26 I.A. 113 (130) = 22 M. 398 (410) = 21 A. 460 = 3 C. W. N. 427 = 1 Bom. L. R. 226 = 7 Sar. 330 = 9 M. L. J. 67.

HINDU LAW—(*Contd.*)
Authorities—(*Contd.*)
VIRAMITRODAYA.

———Authoritative commentary on the Mithakshara—Mitra Misra its author. (*Mr. Ameer Ali.*) BUDDHA SINGH *v.* LALTU SINGH. **(1915) 42 I. A. 208 (227-8) = 37 A. 604 (623) = 20 C. W. N. 1 = 22 C. L. J. 481 = 13 A. L. J. 1007 = 17 Bom. L. R. 1022 = (1915) M. W. N. 772 = 2 L. W. 897 = 18 M. L. T. 409 = 30 I. C. 529 = 29 M. L. J. 434.**

———*Bengal and Southern India—Authority in.*

The Viramitrodaya is a book of authority in Southern India, but it may also be referred to in Bengal in cases where the Dayabhaga is silent (153). (*Sir Barnes Peacock.*) MONIRAM KOLITA *v.* KERRY KOLITANY.
(1880) 7 I. A. 115 = 5 C. 776 (788-9) = 6 C. L. R. 322 = 4 Sar. 103 = 3 Suth. 765.

———Commentary on the Mithakshara—Its value and importance repeatedly recognised by the Board. (*Mr. Ameer Ali.*) GIRJA BAI *v.* SADASHIV DHUNDIRAJ.
(1916) 43 I. A. 151 (159) = 43 C. 1031 = 37 I. C. 321 = 20 C. W. N. 1085 = 14 A. L. J. 822 = 20 M. L. T. 78 = (1916) 2 M. W. N. 65 = 18 Bom. L. R. 621 = 24 C. L. J. 207 = 4 L.W. 114 = 12 N. L. R. 65 = 31 M. L. J. 455.

———Treatise of especial authority at Benares. (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SETHUPATHY.
(1868) 12 M. I. A. 397 (438) = 1 B. L. R. (P. C.) 1 = 10 W. R (P. C.) 17 = 2 Suth. 135 = 2 Sar. 361.

———*Treatise of high authority at Benares—Authority of, on point left doubtful by Mithakshara.*

The Viramitrodaya, which by Mr. Colebrooke and others is stated to be a treatise of high authority at Benares, is properly receivable as an exposition of what may have been left doubtful by the Mithakshara, and declaratory of the law of the Benares school. (*Sir James W. Colvile.*) GRIDHARI LALL ROY *v.* THE BENGAL GOVERNMENT.
(1868) 12 M.I.A. 448 (466) = 10 W. R. (P. C.) 31 = 1 B. L. R. (P.C.) 44 = 2 Suth. 159 = 2 Sar. 382.

VISHNU.

———Vishnu was a predecessor of Yajnavalkya, and is frequently quoted by Vijnaneswara (222). (*Mr. Ameer Ali.*) BUDDHA SINGH *v.* LALTU SINGH. **(1915) 42 I A. 208 = 37 A. 604 (618) = 20 C. W. N. 1 = 22 C. L J. 481 = 13 A. L. J. 1007 = 17 Bom. L. R. 1022 = (1915) M. W. N. 772 = 2 L. W. 897 = 18 M. L. T. 409 = 30 I. C. 529 = 29 M. L. J. 434.**

VYAVASTHA CHANDRIKA OF SHAMA CHARAN SARKAR.

———Vidyabhushan Shama Charan Sarkar is a learned Hindu scholar who for many years held the post of principal oriental interpretor in the High Court of Calcutta, and at one time occupied the chair of Tagore Law Professor in the Calcutta University. He is the author of the well-known work called the Vyavastha Chandrika (222). (*Mr. Ameer Ali.*) BUDDHA SINGH *v.* LALTU SINGH.
(1915) 42 I. A. 208 = 37 A. 604 (618) = 20 C. W. N. 1 = 22 C. L. J. 481 = 13 A.L.J. 1007 = 17 Bom. L. R 1022 = (1915) M. W. N. 772 = 2 L. W. 897 = 18 M. L. T. 409 = 30 I. C. 529 = 29 M. L. J. 434.

Hindu.

———*See* all cases collected under HINDU.

Schools of.

———*Allied schools—Reception of particular doctrine by some of—Presumption from, of its prevalence in other schools.*

It must, however, be admitted that the fact of the reception of the doctrine in question by schools so closely allied to that of Dravida is in favour of the hypothesis that it also obtains in the latter, and strengthens the authorities which

HINDU LAW—(*Contd.*)

Schools of—(*Contd.*)

directly support that hypothesis (438). (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SETHUPATHY. **(1868) 12 M. I. A. 397 = 10 W.R. (P. C.) 17 = 1 B. L. R. (P.C.) 1 = 2 Suth. 135 = 2 Sar. 361.**

———Authorities in—Particular treatises of those schools. *See* HINDU LAW—AUTHORITIES—SEVERAL SCHOOLS OF LAW. **(1867) 11 M. I. A. 487 (507-8).**

———*Benares school—Most orthodox school.*

The Benares school is the most orthodox of the different schools of Hindu law. (*Sir Robert Phillimore.*) BHYAH RAM SINGH *v.* BHYAH UGUR SINGH.

(1870) 13 M. I. A. 373 (390) = 14 W. R. (P. C.) 1 = 5 B. L. R. (P. C.) 293 = 2 Suth. 330 = 2 Sar. 566.

———*Mithila and Mithakshara Schools—Similarity and distinction between.*

The Law of the Mithila School is the law of the Mithakshara except in a few matters in respect of which the law of the Mithila School has departed from the law of the Mithakshara. (*Sir John Edge.*) SOURENDRA MOHAN SINHA *v.* HARI PRASAD SINHA.

(1925) 52 I. A. 418 (437) = 5 Pat. 135 = 42 C.L J. 592 = 24 A. L. J. 33 = (1926) M. W. N. 49 = 7 Pat. L. T. 97 = A. I. R. 1925 P. C. 280 = 91 I.C. 1033 = 50 M. L. J. 1.

———*Origin and development of.*

The remoter sources of the Hindu law are common to all the different schools. The process by which those schools have been developed seems to have been of this kind. Works universally or very generally received became the subject of subsequent commentaries. The commentator put his own gloss on the ancient text ; and his authority having been received in one an l rejected in another part of India, schools with conflicting doctrines arose. Thus the Mitakshara, which is universally accepted by all the schools except that of Bengal as of the highest authority, and which in Bengal is received also as of high authority, yielding only to the Dayabhaga in those points where they differ, was a commentary on the Institutes of Yajnavalkya ; and the Dayabhaga, which wherever it differs from the Mithakshara, prevails in Bengal, and is the foundation of the principal divergences between that and the other schools, equally admits and relies on the authority of Yajnavalkya. In like manner there are glosses and commentaries upon the Mitakshara, which are received by some of the schools that acknowledge the supreme authority of that treatise, but are not received by all. This very point of the widow's right to adopt is an instance of the process in question (435). (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SETHUPATHY

(1868) 12 M. I. A. 397 = 10 W.R.P. C. 17 = 1 B. L. R. (P. C.) 1 = 2 Suth. 135 = 2 Sar. 361.

HINDU LAW.

ADOPTION—ADOPTED SON.
ADOPTION—AGREEMENT NOT TO MAKE.
ADOPTION—ANXIETY OF CHILDLESS HINDOO FOR.
ADOPTION—ANTE-ADOPTION AGREEMENT.
ADOPTION—AUTHORITY TO ADOPT.
ADOPTION—CAPACITY TO GIVE IN.
ADOPTION—CAPACITY TO BE ADOPTED.
ADOPTION—CAPACITY TO TAKE IN.
ADOPTION—CEREMONIES OF.
ADOPTION—CO-WIDOWS.
ADOPTION—CUSTOM AS TO.
ADOPTION—DECEASED PERSON.
ADOPTION—DECISION AS TO.
ADOPTION—DEEDS—ADOPTION BY.
ADOPTION—DEEDS RELATING TO.
ADOPTION—*De facto*, BUT INVALID, ADOPTION.

HINDU LAW—(*Contd.*)

Adoption—(*Contd.*)

ADOPTION—DHUSARS OF DISTRICT OF GURGAON.
ADOPTION—DISQUALIFIED PROPRIETOR.
ADOPTION—DVYAMUSHYAYANA FORM.
ADOPTION—EFFECT OF.
ADOPTION—EVIDENCE OF.
ADOPTION—FABRICATED ADOPTION.
ADOPTION—FACTUM AND VALIDITY OF.
ADOPTION—*Factum valet.*
ADOPTION—FORMS OF.
ADOPTION—GHARBARI GOSAVIS.
ADOPTION—GIRLS.
ADOPTION—ILLALONI SON-IN-LAW.
ADOPTION—INSTITUTION OF—TEMPORAL OR SPIRITUAL.
ADOPTION—JAINS.
ADOPTION—KRITRIMA FORM.
ADOPTION—LAW OF.
ADOPTION—ONUS OF PROOF OF.
ADOPTION—PRESUMPTION AGAINST—CIRCUMSTANCES RISE TO.
ADOPTION—PRESUMPTION IN FAVOUR OF—CIRCUMSTANCES GIVING RISE TO.
ADOPTION—PROOF OF.
ADOPTION—RELIGIOUS FEELING OF HINDOOS AS TO.
ADOPTION—RELIGIOUS THEORY OF.
ADOPTION—RETROSPECTIVE OPERATION OF.
ADOPTION—REVOCATION OF.
ADOPTION—SECOND ADOPTION—VALIDITY OF.
ADOPTION—SETTING ASIDE OF.
ADOPTION—SIMULTANEOUS ADOPTION.
ADOPTION—SPIRITUAL BENEFIT FROM—EXHAUSTION OF.
ADOPTION—SPIRITUAL OR TEMPORAL INSTITUTION.
ADOPTION—STATUS OF.
ADOPTION—SUDRAS.
ADOPTION—VALIDITY OF.
ADOPTION—WIDOW—ADOPTION BY.

Adoption—Adopted son.

(*See also* HINDU LAW—ADOPTION—WIDOW—ADOPTION BY—ADOPTED SON UNDER.)

ADOPTIVE FATHER.
ADOPTIVE MOTHER.
ADVERSE POSSESSION AGAINST.
AGREEMENT NOT TO ADOPT—ADOPTION MADE IN BREACH OF.
CEREMONIAL COMPETENCE—AGE OF.
COMPROMISE WITH REVERSIONER BUT FOR ADOPTION AND ALIENEE FROM WIDOW.
CO-PLAINTIFF WITH ADOPTIVE MOTHER IN SUIT BY HER TO BE MAINTAINED IN POSSESSION OF HUSBAND'S ESTATE—DECREE IN CASE OF.
De facto, BUT INVALID, ADOPTION.
GIFT TO—GIFT TO UNBORN PERSONS—RULE AS TO.
GIFT TO A PERSON DESCRIBED AS AN—INVALIDITY OF ADOPTION—EFFECT OF.
GUARDIANSHIP OF.
INHERITANCE BY.
INHERITANCE TO .
LEGAL CAPACITY TO CONTINUE THE LINE—ATTAINMENT OF FULL.
MATURITY—AGE OF—ATTAINMENT OF SUFFICIENT.
PARTITION OF JOINT FAMILY PROPERTY.
POSITION OF, IN NATURAL AND ADOPTIVE FAMILIES—"NEW BIRTH" IN ADOPTIVE FAMILY—THEORY OF.
RELIGIOUS CEREMONIES—CAPACITY TO PERFORM.
REVERSIONER BUT FOR ADOPTION AND ALIENEE FROM WIDOW—COMPROMISE WITH.
RIGHTS OF.

HINDU LAW—(*Contd.*)

Adoption—Adopted son—(*Contd.*)

ADOPTIVE FATHER.

SHEBAITSHIP OF DEBUTTER PROPERTIES — JOINT RIGHT OF, ALONG WITH NATURAL-BORN SON.

SPIRITUAL BENEFIT FROM—EXHAUSTION OF.

STATUS OF.

WIDOW—ADOPTION BY—ADOPTED SON UNDER.

———*Allotment of family property to stranger—Consent previous of adopted son necessary to—Ratification subsequent by him if equivalent to.*

Quaere whether, in a case in which the previous consent of the adopted son of a Hindu would be necessary to render binding upon him (the adopted son) an allotment by the father of family property to a stranger, a subsequent ratification by the son of the allotment would be equivalent for that purpose, in Hindoo Law, to previous consent (103). (*Mr. Pemberton Leigh.*) RUNGAMMA *v.* ATCHAMMA.

(1846) 4 M. I. A. 1 = 7 W. R. (P.C.) 57 = 1 Suth. 197 = 1 Sar. 313.

———*Allotment of family property to stranger—Ratification of—Binding nature of—Knowledge of rights—Ratification without—Effect.*

V, a Hindu, first adopted *J*, and, during the lifetime of *J*, afterwards adopted *R*. The adoption of *R* was found to be invalid under the Hindu law, and it was held that *R* could not succeed to the estate of *V* as such adopted son. *V* had, during his lifetime, however, divided his properties, ancestral and self-acquired, between *J* and *R*, and *R* was in possession of the properties allotted to him under the said division. The question arose whether *R's* title to the said properties could not be maintained on the ground that it was subsequently recognised by *J*, and that such subsequent recognition might be considered equivalent to a previous assent. The recognition was based on the fact that *J*, after he came of age, acquiesced in the division of property made by *V*.

Held, that it was impossible to maintain *R's* right upon the ground suggested, because, supposing *J* to have acquiesced after he came of age in the division of property made by *V*, it was an acquiescence on the footing of a right already asserted by the father to exist in *R*, and it did not appear that *J* possessed all the knowledge, or was placed in the circumstances which must exist in order to make his ratification binding, even if it was assumed, which was not by any means clear, that such subsequent ratification would be equivalent for that purpose, in Hindu law, to previous consent (103). (*Mr. Pemberton Leigh.*) RUNGAMMA *v.* ATCHAMMA. **(1846) 4 M. I. A. 1 = 7 W. R. (P. C.) 57 = 1 Suth. 197 = 1 Sar. 313.**

———Compromise binding on adopted son—Authority to enter into—Proof of. *See* C. P. C. OF 1908, O. 23, R. 3—COMPROMISE—CONSTRUCTION. **(1927) 53 M. L. J. 345.**

———*Gift of property to, as ancestral immovable property subject to Mithakshara law—What amounts to—Adopted son's rights in.*

The plaintiff-appellant was the nephew by birth and the son by adoption of the defendant and cross-appellant. The suit was instituted for the purpose of ascertaining and enforcing the rights and interests of the plaintiff as against the defendant in certain moveable and immoveable property which was the subject of a number of family transactions from the year 1864 onwards. The said transactions were evidenced by Exs. *C* 6, 7, 8 and 9 in the suit, the terms of which are set out on pp. 218-220 of the report of the case in L. R. 8 I. A.

Held that, according to the true construction of Exs. *C* 6, 7, 8 and 9, all the share and interest in the moveable and immoveable property of *M*, the natural father of the plaintiff, and in the talook of *K*, which was thereby stated

HINDU LAW—(*Contd.*)

Adoption—Adopted son—(*Contd.*)

ADOPTIVE FATHER—(*Contd.*)

to be given to the defendant or to the plaintiff, was given to the defendant for such interest and with such right of succession to the plaintiff as by virtue of the law of the Mithakshara attaches to ancestral immoveable property as between father and son (228). (*Sir Arthur Hobhouse.*) SETH JAIDIAL *v.* SETH SITA RAM. **(1881) 8 I. A. 215 = 4 Sar. 297 = Bald. 400 = R. & J.'s No. 65.**

———Gift deed of joint family property by — Validity against adopted son of—Execution of deed and delivery thereof to donee prior to adoption—Registration of deed subsequent—Effect. *See* T. P. ACT, S. 123—GIFT DEED OF JOINT FAMILY PROPERTY.

(1926) 54 I. A. 89 = 50 M. 193.

———*Inheritance to — Right of — Agreement barring—Validity.*

A stipulation that an adopted son should not ever take by descent from his father will have the effect of entirely altering the law of descent and is contrary to the principle laid down in the Tagore case (99). (*Sir Barnes Peacock.*) SRI RAJA RAO VENKATA MAHAPATI SURYA RAO BAHADUR *v.* THE HON. SRI RAJA RAO VENKATA MAHAPATI GANGADHARA RAMA RAO BAHADUR.

(1886) 13 I. A. 97 = 9 M. 499 (505) = 4 Sar. 725.

———*Inheritance to—Right of—Bar of—Possibility in law of.*

The position that, though adoption might be permissible in a particular family or clan, succession to the estate of the adoptive father did not follow from the adoption, would be so unusual and so contrary to Hindu ideas, that there was little chance of its being accepted. (*Lord Phillimore.*) SAHDEO NARAIN DEO *v.* KUSUM KUMARI.

(1922) 50 I. A. 58 (68) = 2 P. 230 = A. I. R. 1923 P. C. 21 = 32 M. L. T. 121 = 4 Pat. L. T. 217 = 37 C. L. J. 369 = 18 L. W. 597 = (1923) M. W. N. 377 = 27 C. W. N. 901 = 25 Bom. L. R. 560 = 71 I. C. 769 = 44 M. L. J. 476.

———Maintenance grant to descendible to his male descendants—Adopted son under adoption by widow of grantee—Right of, to take under grant—Custom excluding—Proof of—Onus—Quantum. *See* HINDU LAW—IMPARTIBLE ESTATE — JUNIOR MEMBERS — MAINTENANCE OF — GRANT FOR—(1) MALE DESCENDANTS OF GRANTEE, ETC. AND (2) MALE LINE OF GRANTEE.

(1918) 46 I. A. 97 = 43 B. 778.

———*Partition of self-acquisitions and joint family properties between adopted son and stranger — Adopted son suing to recover portion of joint family property given to stranger—Giving up of portion of self-acquisition received by him—Necessity.*

V, a Hindu, first adopted *J*, and during the lifetime of *J*, afterwards adopted *R*. The adoption of *R* was found to be invalid under the Hindu Law, and it was held that *R* could not succeed to the estate of *V* as such adopted son. *V* had, during his lifetime, however, divided his properties, ancestral and self-acquired, between *J* and *R*, and *R* was in possession of the properties allotted to him under the said division. *V* could not dispose of the ancestral property without the consent of *J*, but *J's* consent was not necessary to an alienation by *V* of his self-acquired property, real and personal.

In a suit by *J* to recover the whole of the estate of *V*, including that portion which was in the possession of *R*, on the ground that *R's* adoption was invalid and that, therefore, he was not entitled to succeed to any of the properties of *V*, *held* that, applying to the case a principle not peculiar to English law, but common to all law which is based on the rules of justice, namely, the principle that a party shall not at the same time affirm and disaffirm the same transaction—

HINDU LAW—(*Contd.*)

Adoption—Adopted son—(*Contd.*)

ADOPTIVE FATHER—(*Contd.*)

affirm it as far as it is for his benefit, and disaffirm it as far as it is to his prejudice,—effect must be given against *J* to the intentions of *V*, as far as he had the power of effecting them, and that if *J* took, as he was entitled to do, the whole ancestral property which the father could not dispose of without his consent, he must give up for the benefit of *R* the whole property included in the division to the disposition of which his consent was not necessary, namely, the personal property of *V* (103). (*Mr. Pemberton Leigh.*) RUNGAMMA *v.* ATCHAMMA. **(1846) 4 M. I. A. 1 = 7 W. R. (P. C.) 57 = 1 Suth. 197 = 1 Sar. 313.**

———*Property of—Suit for, against undivided brother of deceased placed in possession by Government on death of deceased—Mesne profits in—Period for which adopted son entitled to—Adoption by widow—No demand of possession prior to suit.*

The then holder of the impartible Zemindary of Chinnakimidy died on 23—11—1868. The appellant was his undivided half-brother; while the respondent was a person who, on 20—11—1870, had been adopted to the deceased by his widow.

On the death of the last holder the Government, in the exercise of its supposed power of nominating a successor, recognised the appellant as the successor to the estate, and placed him in possession of the estate in about September, 1869.

On 15—12—1870, the respondent commenced the suit out of which the appeal arose for the recovery from the appellant of the zemindary and of all the property appurtenant thereto, with mesne profits. The plaint stated that the cause of action accrued to the plaintiff on 20—11—1870, the date of his adoption. The plaint itself was filed on 15—12—1870, and there was no proof of a previous demand of possession.

The High Court nevertheless, by its decree, made the appellant accountable for mesne profits from the time when he was placed in possession by the order of Government in about September, 1869.

Held, modifying the High Court's decree, that the account of mesne profits should run only from the commencement of the suit (193 4).

At the time when the appellant was placed in possession by the order of Government, he was, in default of a son of the last holder, natural or adopted, unquestionably entitled to the zemindary, and there is no proof of a demand of possession before suit (193). (*Sir James W. Colvile*) SRI RAGHUNADHA *v.* SRI BROZO KISHORO.

(1876) 3 I. A. 154 = 1 M. 69 (83-4) = 25 W. R. 291 = 3 Sar. 583 = 3 Suth. 263.

———Shebaitship of debutter properties—Joint right of—Agreement giving to adopted son and natural-born son—What amounts to. *See* HINDU LAW — ADOPTION — ADOPTED SON—SHEBAITSHIP, ETC. **(1920) 47 I.A. 140.**

———*Will by—Validity against adopted son of—Adoption by widow after husband's death.*

When a disposition is made *intra vires* by one who has full power over property under which a portion of that property is carried away, no rights of a son who is subsequently adopted can affect that portion which is disposed of. The same is true when the disposition is by will and the adoption is subsequently made by a widow who has been given power to adopt. For the will speaks as at the death of the testator, and the property is carried away before the adoption takes place. The consent or non-consent of the natural father cannot in such cases affect the question (262). (*Viscount Dunedin.*) KRISHNAMURTHI AYYAR *v.* KRISHNAMURTHI AYYAR. **(1927) 54 I. A. 248 = 50 M. 508 = 39 M. L. T. 52 = 25 A. L. J. 945 = (1927) M. W. N. 469 = 4 O. W. N. 621 = 31 C. W. N. 910 = 45 C. L. J. 620 = 26 L. W. 186 = 8 Pat. L. T. 719 = 29 Bom. L. R. 969 = 101 I. C. 779 = A. I. R. 1927 P. C. 139 = 53 M. L. J. 57.**

HINDU LAW—(*Contd.*)

Adoption—Adopted son—(*Contd.*)

ADOPTIVE FATHER—(*Contd.*)

———*Will depriving adopted son of property—Contract by adoptive father not to make—Agreement saying that he had constituted adopted son heir to his property if amounts to.*

An agreement executed by a Rajah who had adopted the appellant, after stating that the Rajah had adopted the appellant and given him a certain name and constituted him heir to his zemindary of Pittapur, etc., and to all other properties moveable and immoveable, said: "I (the Rajah) agree in compliance with your (natural father's) request to your retaining with my adopted son the thirty servants you have been retaining and changing them from time to time and to permit you or any one of your family to see him whenever you or they may come to see him."

Held, that there was nothing in the agreement about the Rajah not exercising any power which he might have by law of making a will.

Saying he had constituted the appellant heir to his property means only that he had given him the same right of inheritance as a natural son would have. (*Sir Richard Couch.*) SRI RAJA RAO VENKATA SURYA MAHIPATI RAMA KRISHNA RAO BAHADUR *v.* COURT OF WARDS.

(1899) 26 I. A. 83 (88-9) = 22 M. 383 (390) = 3 C. W. N. 415 = 1 Bom. L.R. 277 = 7 Sar. 481.

———*Will depriving adopted son of property—Contract by adoptive father not to make—Implication of, from fact of adoption itself—Propriety.*

The argument that on the adoption of a son by a Hindu there is an implied contract by him not to make a will, the consideration for it being the giving of the son by the natural father, is a novel one and without any authority to support it. If it were right, an adopted son would be in a higher position than a natural son. A Hindu would be unable to adopt a son without depriving himself of any power which he might have by law of alienating his property, or at least of disposing of it by will. (*Sir Richard Couch.*) SRI RAJA RAO VENKATA SURYA MAHIPATI RAMA KRISHNA RAO BAHADUR *v.* COURT OF WARDS.

(1899) 26 I. A. 83 (89) = 22 M. 383 (390) = 3 C. W. N. 415 = 1 Bom. L. R. 277 = 7 Sar. 481.

———*Will postponing right of adopted son till after death of widow and making gift over in event of his death without issue before—Validity—Dayabhaga law—Widow constituted executrix.*

A Hindu, subject to the Dayabhaga school, executed a will by which he appointed his wife his sole executrix and authorised her to adopt Dattaka putra. The will provided, "In case of death of an adopted son my said wife shall adopt one after another five sons in succession. If my said wife dies without adopting a son, or if such adopted son predeceases her without leaving any male issue, in such case my estate after the death of my said wife shall pass to the sons of my sister *B* who may be living at the time of my death."

On the testator's death his widow applied for and obtained probate of the will. She adopted a son who died without issue and herself died shortly after without making a further adoption. Both the Courts in India held, on the construction of the will, that, as the adopted son died without leaving male issue, on the death of the widow the bequest to the sons of *B* took effect.

On appeal to the Privy Council, it was urged that on the adoption of the infant the estate vested in him as full owner by virtue of the Hindu law of inheritance, that he took it in

HINDU LAW—(*Contd.*)

Adoption—Adopted son—(*Contd.*)

ADOPTIVE FATHER—(*Contd.*)

his capacity of son and not as devisee under the will, and on his death the property devolved on his heirs, and the executory devise in favour of the sons of *B* failed.

Held that, on the right construction of the will the estate vested in the widow during her life, that it could pass only to the son who survived her, or in case of his death in her lifetime, to his male issue, if he left any, and that in the events that had happened the gift over took effect (18).

Had the testator given to the widow a power to adopt without constituting her his executrix, she would have taken merely a widow's interest which would have become divested on her adopting a son (17-8). (*Mr. Ameer Ali.*) BHUPENDRA KRISHNA GHOSE *v.* AMARENDRA NATH DEY.

(1915) 43 I. A. 12 = 43 C. 432 (439) = 34 I. C. 892 = (1916) 1 M. W. N. 73 = 20 C. W. N. 169 = 14 A. L. J. 167 = 3 L. W. 252 = 19 M.L.T. 97 = 23 C. L. J. 169 = 18 Bom. L. R. 347 = 30 M. L. J. 110.

———Will subsequent to adoption by, disposing of ancestral property—Validity against adopted son of. *See* HINDU LAW—JOINT FAMILY — FATHER — ANCESTRAL PROPERTY—WILL BEQUEATHING.

(1915) 43 I.A. 20 (23-4) = 39 M. 107.

ADOPTIVE MOTHER.

(*A. B.*—All other cases will be found collected under Hindu Law—Adoption—Widow—Adoption by—Adopted son under.)

———*Admission in pleadings by—Binding character of, on adopted son brought on record in her place.*

Suit No. 316 was brought on behalf of *B*, a minor, by his natural father, as his next friend, for a declaration that he was the validly adopted son of one *K*, having been adopted by the appellant, *K*'s widow, under an authority to adopt executed by him in her favour. One of the defendants in the suit was a daughter-in-law of *K*, who had herself adopted one *G* under an authority to adopt alleged to have been given to her by her husband. Pending the suit the daughter-in-law died, and *G* was admitted as a defendant on the record. One of the issues in the case was as to the execution of the authority to adopt relied upon in the plaint. It was contended that the daughter-in-law had by her answer admitted the validity of that instrument and that it was therefore unnecessary for the plaintiff to prove it.

Held that, assuming that there was such an admission by the daughter-in-law, *G* would not be bound by it (301).

G did not come in as the heir of the daughter-in-law, for, if he were truly adopted, his title was paramount to hers (301). (*Lord Kingsdown.*) MUSSUMAT ANUNDMOYEE CHOWDHOORAYAN *v.* SHEEB CHUNDER ROY.

(1862) 9 M. I. A. 287 = 2 W. R (P. C.) 19 = Marsh. 455 = 1 Suth. 485 = 1 Sar. 854.

———*Bond given by, and guardian—Statement of account in—Binding character of, against adopted son.*

A bond purporting to be made by a Hindu widow on the settlement of an account between the widow and the obligee under the bond, and to be given for moneys partly due from her deceased husband, and partly advanced to the widow herself, purported to bind nobody but the widow.

Held, that the statement of the account in the bond could not bind her adopted son, who was a minor at the time and was living under her protection, and was entitled to the estate of the deceased as adopted son, because he was no party to the instrument (322-3). (*Lord Kingsdown.*) CHETTY COLUM COOMARA VENCATACHELLA REDDYAR *v.* RAJAH RUNGASWAMI SREEMUNTH JEYNGAR BAHADOOR. **(1861) 8 M I. A. 319 = 4 W. R. 71 = 1 Suth. 437 = 1 Sar. 785.**

———*Bond given by, and guardian—Validity against adopted son of—Recognition by him thereof after attaining age.*

HINDU LAW—(*Contd.*)

Adoption—Adopted son—(*Contd.*)

ADOPTIVE MOTHER—(*Contd.*)

The suit was to enforce against an adopted son a bond executed by his adoptive mother and guardian during his minority. The bond was executed for the purpose of paying off a debt due by the deceased adoptive father and charged upon his estate, and to discharge certain debts contracted by the adoptive mother in the management of the estate. The validity of the bond was recognised by the adopted son after he came of age.

Held, that the bond was binding on the adopted son. (*Lord Kingsdown.*) CHETTY COLUM COOMARA VENCATACHELLA REDDYAR *v.* RAJAH RUNGASAWMY STREEMUNTH JEYNGAR BAHADOOR. **(1861) 8 M.I.A. 319 = 4 W. R (P. C.) 71 = 1 Suth. 437 = 1 Sar. 785.**

———Guardianship of adopted son—Right of—Agreement giving right to natural father in consideration of his giving in adoption—Effect of. *See* HINDU LAW—ADOPTION—ANTE-ADOPTION AGREEMENT — WIDOW ADOPTING AND NATURAL FATHER. **(1880) 7 I.A. 173 (179-80) = 2 M. 270 (281).**

———Inheritance to adopted son—Right of. *See* HINDU LAW—ADOPTION—ADOPTED SON—INHERITANCE TO.

———Maintenance and affectionate treatment by adopted son of—Condition imposed by will as to—Precedent or subsequent—Breach of—Effect. *See* HINDU LAW—WILL—CONSTRUCTION—ADOPTIVE MOTHER.

(1920) 47 I. A. 202 (206) = 47 C. 1012.

———*Position of—Person entitled to—Receiving mother—Other wives of adoptive father—Distinction—Inheritance to adopted son—Rights of several wives as to—Distinction.*

When a Hindu having more than one wife adopts a son in conjunction with one of them only the other wives do not acquire the same legal status with respect to the adopted son as the wife who joins her husband in making the adoption and are postponed to the latter in the order of inheritance to the boy adopted. (*Lord Hobhouse.*) ANNAPURNI NACHIAR *v.* FORBES. **(1899) 26 I.A. 246 = 23 M. 1 = 3 C. W. N. 730 = 1 Bom. L.R. 611 = 7 Sar. 591.**

———*Position of—Person entitled to—Receiving mother—Other wives of adoptive father—Maternal grand-parents—Inheritance to—Adopted son's right to—Parents of receiving mother—Parents of other wives—Distinction.*

Only one wife can receive the child in adoption so as to step into the position of being its adoptive mother. This is evident from the cases which establish that the receiving mother acquires in the eye of the law the same position as a natural mother to such an extent that her parents become legally the maternal grand-parents of the child. To hold that a child could bear such a relationship to more than one mother would be entirely contrary to settled law and would produce inextricable confusion in the law of inheritance. (*Lord Moulton.*) VENKATA NARASIMHA APPA ROW *v.* PARTHASARATHY APPA ROW. **(1913) 41 I.A. 51 = 37 M. 199 (220) = 18 C.W.N. 554 = (1914) M.W.N. 299 = 16 Bom. L. R. 328 = 19 C. L J. 369 = 15 M. L. T. 285 = 12 A. L J 315 = 23 I.C. 166 = 26 M. L. J. 411.**

———Validity of adoption—Right to dispute, on ground of absence of authority to adopt—Estoppel. *See* HINDU LAW—ADOPTION—ADOPTED SON—STATUS OF—RIGHT TO DISPUTE—ESTOPPEL—ADOPTIVE MOTHER.

ADVERSE POSSESSION AGAINST.

———*Female members of adoptive father's family—Possession of, if and when adverse.*

Respondent, the adopted son of one *R* deceased, sued the appellants, the daughter of *R* and her son, for the recovery of a house at Amritzar, the property of *R*. The appellants pleaded adverse possession.

The house was a family house and was naturally the proper place in which the widow of *R*, the widow of a previous.

HINDU LAW—(*Contd.*)

Adoption—Adopted son—(*Contd.*)

ADVERSE POSSESSION AGAINST—(*Contd.*)

ly adopted son of *R*, and the daughter of *R* (until her marriage) should live. The respondent, who was employed at Lahore, allowed the ladies to live in that house. The rents of the property were trifling, and he allowed the ladies to enjoy those rents for their maintenance.

Held that, under those circumstances, the possession of the ladies was not adverse to the respondent. (*Sir John Edge.*) DURGA DEVI *v.* SHAMBHU NATH.

(1924) 51 I.A. 182 (191) = 5 Lah. 200 = 34 M.L. T. 93 = 26 Bom. L. R. 557 = 22 A. L J. 394 = 80 I. C. 965 = A.I.R. 1924 P. C. 113 = (1924) M. W. N. 434 20 L. W. 216 = 29 C.W.N. 106 = 46 M. L.J. 661.

AGREEMENT NOT TO ADOPT—ADOPTION MADE IN BREACH OF.

———Validity—Rights of adopted son in case of. *See* HINDU LAW—JOINT FAMILY—FATHER—ADOPTION.

(1886) 12 I. A. 97 (99) = 9 M. 499 (505).

CEREMONIAL COMPETENCE—AGE OF.

———Attainment of—What amounts to. *See* HINDU LAW—SON—CEREMONIAL COMPETENCE.

(1903) 30 I. A. 234 (237) = 27 B. 492.

COMPROMISE WITH REVERSIONER BUT FOR ADOPTION AND ALIENEE FROM WIDOW.

———Undertaking by reversioner not to dispute validity of adoption—Undertaking by adopted son to confirm alienation and to settle other properties on reversioner's wife in consideration of—Breach by reversioner of his undertaking—Right to insist upon undertaking by adopted son—Effect on. *See* COMPROMISE—CONSIDERATION FOR—EXECUTED OR.

(1904) 31 I. A. 107 = 31 C. 584.

CO-PLAINTIFF WITH ADOPTIVE MOTHER IN SUIT BY HER TO BE MAINTAINED IN POSSESSION OF HUSBAND'S ESTATE—DECREE IN CASE OF.

———Declaration of her right as proprietor or as guardian for adopted son—Propriety. *See* DECREE—HINDU LAW—WIDOW—ADOPTED SON (MINOR).

(1878) 5 I. A. 87 (115) = 1 A. 688 (708-9).

DE FACTO, BUT INVALID, ADOPTION.

———*Effect of, on personal and legal status of adopted son.*

It is no slight matter for a boy to be passed from one family into another. Even in England such a thing cannot be done without a serious effect, for good or ill, on the boy's welfare. In India the ties of family life are far stricter, and if a boy has been transplanted from his own family into another by a *de facto* adoption, and then the adoption turns out to be invalid in law, and he is rejected out of his adopted family, his relations to his natural family must be seriously disturbed. Whether his previously existing legal *status* would be taken away is a point not calling for any opinion. Assuming that the invalidly adopted boy could return after an absence of five years, and so resume his legal position, it is impossible that his personal position should be the same as if the tie to his family had never been broken (129). (*Lord Hobhouse.*) SURENDRAKESHAV ROY *v.* DOORGASUNDARI DASSEE. **(1892) 19 I. A. 108 = 19 C. 513 (532-3) = 6 Sar. 150.**

GIFT TO—GIFT TO UNBORN PERSONS—RULE AS TO.

———Inapplicability of. *See* HINDU LAW—GIFT—DONEES UNDER—PERSONS IN EXISTENCE, ETC.

(1872) Sup. I. A. 47 (67).

GIFT TO A PERSON DESCRIBED AS AN—INVALIDITY OF ADOPTION—EFFECT OF.

———*Gift held to be valid notwithstanding, as being one to the donee as* persona designata.

The material passages of the will of a childless Hindu were in these terms :—"And as I am desirous of adopting

HINDU LAW—(*Contd.*)

Adoption—Adopted son—(*Contd.*)

GIFT TO A PERSON DESCRIBED AS AN—INVALIDITY OF ADOPTION—EFFECT OF—(*Contd.*)

a son, I declare that I have adopted *K*, third son of my eldest brother. My wives shall perform the ceremonies according to the shastras, and bring him up, and until that adopted son comes of age, those executors shall look after and superintend all the property, moveable and immoveable, in my own name or benami, left by me, also that adopted son. When he comes to maturity the executors shall make over everything to him to his satisfaction. The executors are empowered to perform the daily and occasional family ceremonies and pay the expenses of suits, etc., after due consideration. The minor, when he attains maturity, shall be incompetent to object to anything done by them in this respect. God forbid, but should this adopted son die, and my younger brother *N* have more than one son, then my wives shall adopt a son of his. If at that time, *N* has not a son eligible to adoption, they shall adopt another son of my eldest brother, and the wives and executors shall perform all the afore-mentioned acts."

Held that, on the true construction of the will, there was a gift of his property by the testator to a designated person, *K*, and that the taking of the property by *K* under the will was not dependent on whether the testator's wives chose or did not choose to perform the ceremonies (257-8).

The effect of the will according to their Lordships' view is this :—"I declare that I give my property to *K*, whom I have adopted." There is a gift of his property by the testator to a designated person. This direction follows, "my wives shall perform the ceremonies according to the shastras, and bring him up." Undoubtedly the testator desired and expected that the wives should perform certain ceremonies. He requested them to do so. But it appears to their Lordships that it would be an altogether erroneous reading of the will to suppose that he intended the taking of his property by *K* to be entirely dependent on whether the wives chose or did not choose to perform the ceremonies. Even if they did not, and the adoption was not in all respects complete, the gift of the property nevertheless took effect (257-8). (*Sir Robert P. Collier.*) NIDHOOMONI DEBYA *v.* SARODA PERSHAD MOOKERJEE.

(1876) 3 I. A. 253 = 26 W.R. (P. C.) 91 = 3 Sar. 652 = Bald. 78 = 3 Suth. 338.

———The portion of the will of a Hindu which contained the bequest to *A* was as follows :—

"Having no son, I loved and supported *A* as my son. And as the said boy was very attached to me and my wife, and was an object of affection to us, I had a mind, granting to my daughters and daughters' sons a proper portion of my share of the ancestral property and self-acquired property, to give the remainder of the moveable and immoveable property to the said boy. Since then I have taken the said boy in adoption, in virtue of the consent and gift of his father and mother, after getting the vyavasthas (opinions) of pundits, and on performing the ceremony of jag according to the shastras. Therefore, the said dear boy *A* will be the heir to the whole of moveable and immoveable property. But I direct that, excepting the property granted by me as stated in paragraph 11 of this will, the said *A*, and after him his son, and after him his grandson, and on the death of the latter, his great grandson shall obtain the proper share, ancestral, of my father, and the four annas share out of the proper share of my uncle, obtained by me by gift under his will, and the self-acquired moveable and immoveable property of me and my father which will be left. If, through my misfortune, *the said boy* die without leaving a son, then I give permission to my wife that she may, for the purpose of providing for the preservation of funeral cakes and

HINDU LAW—(*Contd.*)

Adoption—Adopted son—(*Contd.*)

GIFT TO A PERSON DESCRIBED AS AN—INVALIDITY OF ADOPTION—EFFECT OF—(*Contd.*)

libations, take in adoption two sons in succession, one on the death of the other, from one of my paternal cousins who may have sons." And there was a direction that if no son could be had of his paternal cousins all his daughter's sons should be in equal shares entitled to his paternal and self-acquired property.

Though the testator went through the ceremonies of adopting *A*, the adoption was found to be invalid, because there was no giving and taking as required by the law. The question was whether nevertheless *A* took under the will.

Held, affirming the Courts below, that the bequest was to *A* by name, and was not dependent upon the adoption, and that *A* took under the will notwithstanding the invalidity of his adoption (107). (*Sir Richard Couch.*) BIRESWAR MOOKERJI *v.* ARDHA CHUNDER ROY CHOWDHRY.
(1892) **19 I.A. 101=19 C. 452 (461-2)=6 Sar. 171.**

———Where the will of a Hindu stated that he had been keeping the minor son of his brother-in law as adopted son and gave the testator's properties to him absolutely, *held* that, on the true construction of the will, there was a valid gift to the minor as *persona designata* and that the validity of the gift was not conditional upon his adoption as a son to the testator having been validly effected.

The testator no doubt refers to the minor as his adopted son, but he explains what is meant by that expression by stating that he had been keeping the minor "as adopted son"—that is, with a view to his adoption. The gift to the minor is therefore not conditional on adoption. (*Lord Macnaghten.*) SUBBARAYAR *v.* SUBBAMMAL.
(1900) **27 I.A. 162=24 M. 214=4 C.W.N. 805=2 Bom. L.R. 982=7 Sar. 782.**

———*Gift held to be invalid and ineffectual.*

An angikar-patra, addressed to *J.* ran as follows :—

"To *D.* This angikar-patra, executed in the year 1284 (1877) by Jogendra Deb Raikat, zemindar of Pergunnah Baikuntpore, etc., showeth,—

"That your father in his lifetime and in the presence of his agnatic relations, gave you away to me for adoption both verbally and under a written deed. I accepted the gift, and duly received the son (in adoption); but I have not hitherto made this fact known to any person in the hope that a son may be born to me of my loins. I have in the meantime supported you and educated you. Besides, to provide against the contingency of my dying without leaving behind me any son born of my loins or taken by me in adoption, I, on Cheyt 1278 (9th April, 1872), executed a will with permission for adoption, wherein I authorised my three wives to take sons in adoption, each of these Ranis to exercise this right on the death of the other. Subsequently on 10th Falgoon, 1279 (20th of February, 1873), I executed a codicil to that will, and in that codicil I appointed the Ranis as principal executors, and I appointed other men assistant executors to assist the Ranis in the management and protection of the estate during the minority of any son who might be born to me or of any son who may be received in adoption either by me or by the Ranis. At present I am suffering from many diseases, and to this day no son has been born to me of my loins. The body is frail; who can say what (ill) (which God forbid) may befall me. Wherefore I have thought it proper to disclose the fact of my having taken a son in adoption, and accordingly I have received you in adoption this day publicly, agreeably to the gift made by your father, and I made you over to your sister by your former step-mother. I authorise you by this angikar-patra to offer oblations of water and pinda to me and my ancestors after my death by virtue of your being my adopted son. Moreover you shall become the proprietor of all the moveable and immoveable properties which I own and which I may leave behind; you shall become entitled to my dena-pawana (debts and dues), and you and your sons and grandsons shall enjoy and own them agreeably to the custom of the family. During your lifetime, and as long as son or grandson of yours is alive, the Ranis shall not be able to take any other son in adoption under the term of the will. But should you die leaving behind you neither a son begotten of your loins nor an adopted son, and without leaving a permission for adoption (which God forbid), in that case the Ranis may take a son in adoption under the terms of the will, and shall thereby protect the estate."

According to the custom of the family *J* could not adopt a son who would be entitled to inherit the estate. The question, therefore, was whether *D* was entitled to take *J's* estate under the terms of the angikar-patra, irrespective of the validity of his adoption.

Held, that *D* was not so entitled, the intention of *J*, on the true construction of the angikar-patra, being to give his property to *D* as his adopted son, capable of inheriting by virtue of the adoption (90) (*Sir Richard Couch.*) FARINDRA DEB RAIKAT *v.* RAJESWAR DASS.
(1885) **12 I.A. 72=11 C. 463 (485)=4 Sar. 610.**

———A Hindu, being at the point of death, made his will in the following terms :—

"I am now ill. God forbid it, but if any mishap occur therefrom, and from fear thereof, I do while of sound mind dedicate and give to Annapoorna Thakooranee, the Thakur established by my deceased father, all the ancestral and self-acquired moveable and immoveable properties, zemindaries, and putnee, etc., whether as my own name or benamee, to which I am entitled and of which I am in possession. I have no sons or daughters of my loins. I have two wives living. Each of the two Ranees will adopt one son. The two adopted sons of both wives shall remain the shebaits of the whole of the moveable and immoveable property dedicated to Annapoorna Thakooranee aforesaid. They will carry out the supervision and the improvement of the said property. But they will do everything according to the advice of all the principal officers appointed by me. They will not be competent to make gift or sale of the different properties. Up to the time that the said two adopted sons do not attain their majority, my aforesaid two wives will exercise the care and control of all the said properties, and in carrying out these duties they shall take the advice of all the principal officers which have been appointed by me. They will not be competent to act otherwise. When the two adopted sons shall have attained their majority, and shall have acquired sufficient knowledge for the preservation of the property, my two wives shall make over to them as shebaits, to their satisfaction, all the property dedicated to the Issur Deb Sheba. Out of the income of the property dedicated to the Deb Sheba, etc., after performing the Sheba of the above-mentioned Annapoorna Thakooranee, and the Sree Sree Issurs established by my ancestors and myself, and after meeting the prescribed monthly allowances, and after performing the daily and fixed rites and ceremonies, as they are now performed and met, out of the profits which shall remain, each adopted son shall receive at the rate of 1,000 rupees monthly. Therefore I execute this instrument of will."

After the testator's death, each of the widows adopted a son. The adoptions being simultaneous and therefore invalid under the Hindu law, the adopted sons could not

HINDU LAW—(*Contd.*)

Adoption—Adopted son—(*Contd.*)

GIFT TO A PERSON DESCRIBED AS AN—INVALIDITY OF ADOPTION—EFFECT OF—(*Contd.*)

take anything under the will as such. The question was whether they were sufficiently described to enable them to take as *persona designata*.

Held, that they did not take as *personae designata* (126).

There is no gift to the adopted sons except in the character of shebaits. And it would require very strong and clear expressions indeed to show that a Hindu gentleman contemplated introducing as shebaits of his family Thakoor, two persons unknown to himself and strangers to his family. There is not a trace in this will to shew any such intention, or to shew that the testator doubted the legality of his scheme, or thought of any adoption but a legal one (126). (*Lord Hobhouse.*) SURENDRA KESHAV ROY *v.* DOORGA-SUNDARI DASSEE. **(1892) 19 I.A. 108 = 19 C. 513 (529-30) = 6 Sar. 150.**

———By the first 27 clauses of his will a Hindu gave a great number of legacies and directions about his property. Clause 28 of the will was as follows :—

"28. There is my nephew's son Karamsi now (living). It is my wish to adopt him as my son. If I should not be able to do so in my lifetime, then my son's widow *L*, is to take the said Karamsi in adoption. His adoption ceremony (Dattvidhan) is to be performed. My property which may remain as residue after all the things mentioned in my will have been done I give to this lad as (his) inheritance. And (I) appoint (him) as my heir. *L* is to get him betrothed (the outlays being made) out of my property. For the same about Rs. 5,000 are to be spent."

By clauses 29 and 30 of the will the testator directed that after Karamsi was adopted he should take the name of Kessowji, and provided for the costs of his marriage and for his residence, which till he was 18 was to be with *L*. By clause 31 he directed his executors to make over the property to Karamsi on his attaining 21, if his conduct was good, with alternative provisions if his conduct was bad, in favour of a well-behaved son. Clause 46 provided for the contingency of the death of Karamsi after adoption without leaving any descendants. The clause provided that in that event another boy should be adopted.

L refused to adopt Karamsi. On a question arising thereupon whether the bequest to him was to take effect only upon the condition that the adoption should have taken place or was a legacy validly made in his favour, as a person designated, without the adoption having been carried out, *held*, that the adoption was a condition precedent, and that the boy not having been adopted could not take under the will. (*Lord Hobhouse.*) KARAMSI MADHOWJI *v.* KARSANDAS NATHA. **(1898) 23 B. 271 = 7 Sar. 427.**

———A *wajib-ul-arz*, recorded under Act XIX of 1873 and relating to a village called *D*, contained, under the head of "Inheritance, second marriage, and adoption," the following statement :—

"I am the only Zemindar in this Village. I am a Marwari Brahmin. Seven years ago, I adopted my sister's son *M*. He is my heir and will be the owner. If, after this agreement, a son is born to me, half the property will be received by him and half by the adopted son. If more than one son are born to me, the property will be equally divided among them, including the adopted son, as brothers. I have two wives now. They will receive their maintenance from him (*M*) during their lifetime."

This statement was signed by Dhanraj, the owner of the village *D*.

Held that, assuming that the statement could be treated as a will in favour of the adopted son *M*, it was the intention of Dhanraj to give his property to *M* as his adopted son capable of inheriting by virtue of the adoption ; and that as the adoption was invalid, it gave *M* no right to inherit, and the gift therefore had no effect upon the property.

The point to be considered is whether it was the intention of Dhanraj to make the boy whom he had adopted his heir irrespective of adoption, or whether "the assumed fact of his adoption was not the reason and motive of the gift, and indeed a condition of it." The distinction between what is descriptive only, and what is the reason or motive of a gift or bequest, may often be very fine, but it is a distinction which must be drawn from a consideration of the language and the surrounding circumstances.

In the present case the words used are descriptive only. The right of *M* to inherit is based entirely on the fact that he was an adopted son, adopted seven years previously in virtue of a special custom which is thus stated : "A sharer shall be at liberty to adopt his sister's son or brother's son or daughter's son, whomsoever he may like, and after his death his adopted son will inherit his property." The words in the *wajib-ul-arz*, "If, after this agreement, a son is born to me, half the property will be received by him, and half by the adopted son" indicate that the gift is not a gift to *M* personally, but a division of the estate according to the family custom which Dhanraj was endeavouring to establish, and according to which the adopted son was to take an equal share with natural-born sons. (*Sir Andrew Scoble.*) MUSSAMMAT LALI *v.* MURLI DHAR. **(1906) 33 I. A. 97 (104-5) = 28 A. 488 (495-6) = 3 A. L. J. 415 = 10 C. W. N. 730 = 8 Bom. L. R. 402 = 3 C. L. J. 594 = 1 M. L. T. 171.**

GUARDIANSHIP OF.

———Adoptive mother's right to—Agreement by her giving up right to natural father in consideration of his giving in adoption—Effect of. *See* HINDU LAW—ADOPTION—ANTE-ADOPTION AGREEMENT—WIDOW AND NATURAL FATHER—AGREEMENT BETWEEN.

(1880) 7 I. A. 173 (179-80) = 2 M. 276 (281).

———Natural father—Right of. (*Lord Macnaghten.*) BHAIYA RABIDAT SINGH *v.* MAHARANI INDAR KUNWAR. **(1888) 16 I. A. 53 (58-9) = 16 C. 556 (564) = 5 Sar. 505.**

———The natural father loses all power over the son from the moment when he is adopted (262). (*Viscount Dunedin.*) KRISHNAMURTHI AYYAR *v.* KRISHNAMURTHI AYYAR. **(1927) 54 I. A. 248 = 50 M. 508 = 39 M. L. T. 52 = 25 A. L. J. 945 = 1927 M. W. N. 469 = 4 O. W. N. 621 = 31 C. W. N. 910 = 45 C. L J. 620 = 26 L. W. 186 = 8 Pat. L. T. 719 = 29 Bom. L. R. 969 = 101 I. C. 779 = A. I. R. 1927 P. C. 139 = 53 M. L. J. 57.**

INHERITANCE BY.

———An adopted son, as such, takes by inheritance, and not by devise (311). (*Lord Kingsdown.*) MUSSUMAT BHOOBUN MOYEE DEBIA *v.* RAM KISHORE ACHARJ CHOWDHRY. **(1865) 10 M. I. A. 279 = 3 W. R. (P. C.) 15 = 1 Suth. 574 = 2 Sar. 111.**

———Adoptive father—Inheritance to—Right of—Agreement barring—Validity. *See* HINDU LAW—ADOPTION—ADOPTED SON—ADOPTIVE FATHER—IHHERITANCE TO.

(1886) 13 I. A. 97 (99) = 9 M. 499 (505).

———Adoptive father—Inheritance to—Right of—Bar of—Validity in law of. *See* HINDU LAW—ADOPTION—ADOPTED SON—ADOPTIVE FATHER—INHERITANCE TO.

(1922) 50 I. A. 58 (68) = 2 P. 230.

HINDU LAW—(*Contd.*)

Adoption—Adopted son—(*Contd.*)

INHERITANCE BY—(*Contd.*)

———*Another adopted son—Brother and heir of—Right as.* *Quære*, whether one adopted son could claim to be the brother and heir of another adopted son. (*Lord Phillimore.*) KALYANADAPPA *v.* CHANBASAPPA.

(1924) 51 I. A. 220 (235) = 48 B. 411 = 28 C. W. N. 666 = 22 A. L. J. 508 = 26 Bom. L.R. 509 = 10 O. & A. L. R. 1114 = A. I. R. 1924 P. C. 137 = (1924) M.W.N. 414 = 34 M. L. T. 111 = 20 L.W. 109 = 10 O. L. J. 181 = 79 I.C. 971 = 46 M. L J. 598.

———*Collateral succession—Right of.*

According to Hindu law, an adopted son succeeds not only lineally but collaterally to the inheritance of his relations; the reason pointed out being that, according to that law, he becomes for all purposes the son of the father. (*Mr. Baron Parke.*) SUMBHOO CHUNDER CHOWDHRY *v.* NARAINI DEBIA. **(1836) 5 W. R. (P. C.) 100 = 1 Suth. 25 (27-8) = 3 Knapp. 55 = 1 Sar. 65.**

———*Collateral succession—Right of—Adoption after opening of such succession—Effect.*

According to the law as laid down in the decided cases, an adoption after the death of a collateral does not entitle the adopted son to come in as heir of the collateral (141). (*Sir Barnes Peacock.*) BHUBANESWARI DEBI *v.* NILKOMUL LAHIRI. **(1885) 12 I. A. 137 = 12 C. 18 = 4 Sar. 651.**

———*Collateral succession—Right of—Adoption after opening of such succession—Delay due to fraud of rival claimant—Right in case of—Adopted son not even in existence at the time of opening of succession—Effect.*

The suit was to recover from the respondent one half of the estate which had belonged to one *R*, and was instituted by the appellant as mother and guardian of her adopted son *J*. *R* had died childless, leaving a widow *C*. The respondent was the only son of a brother of *R*. The appellant was the widow of another brother of *R*. That other brother died during the lifetime of *C*, having given the appellant power to adopt a son. The appellant adopted *J* in pursuance of that authority after the death of *C*. It further appeared that *J* was not even in existence at that time, and was born only subsequently. The appellant alleged that, in consequence of the respondent's fraud in setting up a forged will, the appellant was unable to get any one to give her a son in adoption, and could not adopt until after the death of *C*. She, therefore, contended that, but for the fraud and forgery of the respondent, she would have adopted a boy during the lifetime of *C*, who would have been entitled to half of the estate of *R*.

Held that, as *J* was not even existence at the time of *C*'s death, he could not, even apart from the fraud of the respondent, have taken *R*'s estate. (*Sir Barnes Peacock.*) BHUBANESWARI DEBI *v.* NILKOMUL LAHIRI.

(1885) 12 I. A. 137 = 12 C. 18 = 4 Sar. 651.

———*Collateral succession—Right of—Gotra of adoptive father—Relatives of adoptive father not of—Right if extends to.*

The question was whether *G*, an adopted son, was entitled to succeed to the estate of *B*. *G* was the adopted son of *K*, the maternal grandfather of *B*, and was not of the same gotra as *B*, whose gotra was that of his father. It was contended that, although *G* as an adopted son might inherit collaterally, it must be in the same gotra, and consequently he was not heir to *B*.

Held, affirming the High Court, that *G* was heir to *B* (246).

The limitation of the right of an adopted son to succeed to his collateral relations now contended for is contrary to the whole theory of the Hindu law of adoption. No text has been produced to shew that an adopted son cannot succeed to the estate of such relatives of his father as are sprung from a different family (246). (*Sir Richard Couch.*) PUDMA COOMARI DEBI *v.* COURT OF WARDS.

(1881) 8 I. A. 229 = 8 C. 302 (310-1) = 4 Sar. 285.

———*Daughter who has brothers alive and who is not appointed daughter—Succession as adopted son of—Right of.*

According to Hindu law, a person cannot succeed as the adopted son of a daughter who has brothers alive, and who could not be appointed daughter, because she had brothers when she was married. (*Mr. Baron Parke.*) YACHEREDDY CHINNA BASSAVAPPA *v.* YACHEREDDY GOWDAPA.

(1835) 5 W. R. (P. C.) 114 = 1 Suth. 41 (43) = 1 Sar. 84.

———Maintenance grant descendible to male descendants of grantee—Adopted son of grantee under adoption by his widow—Right of, to inherit property subject of grant—Custom excluding—Proof of—Onus—Quantum. *See* HINDU LAW—IMPARTIBLE ESTATE—JUNIOR MEMBERS—MAINTENANCE OF—GRANT FOR (1) MALE DESCENDANTS, ETC., AND (2) MALE LINE, ETC. **(1918) 46 I. A. 97 = 43 B. 778 (794).**

———Maternal grand parents—Right of inheritance to—Receiving mother—Other wives of adoptive father—Parents of—Distinction. *See* Hindu LAW—ADOPTION—ADOPTED SON—ADOPTIVE MOTHER—POSITION OF.

(1913) 41 I. A. 51 = 37 M. 199 (220).

and next case. **(1883) 10 I.A. 138 = 10 C. 232.**

———*Maternal uncle by adoption- Succession to -Right of.*

The suit was brought by the respondent against the appellant to recover certain property which he claimed as an adopted son.

The former full owner of the property was *K*, who died in 1815, leaving a widow, *B*, and a son, who died in the following year unmarried, and a daughter *H*, who was married to *J S*, and died in April, 1872. *B* died on 1st December 1873, and the respondent claimed to be entitled to the property on her death, as having been adopted by *H*, with the permission of her husband, who died in 1843. *M*, the original defendant, was the nephew of *K*, and took possession of the property on the death of *B*. The appellants were the sons of *M*. The question for decision was whether the respondent, as an adopted son, could succeed to the property in suit.

Held, affirming the High Court, that the respondent was entitled to succeed as being the daughter's son, and consequently the heir of his maternal uncle at the death of the widow, which he would be if he were a natural-born son (149).

That this is so is clear from the Dattaka Mimamsa, S. 6, p. 50, where it is said: "The forefathers of the adoptive mother only are also the maternal grand-sires of sons given and the rest, for the rule regarding paternal is equally applicable to maternal grand sires (of adopted sons)" (149). (*Sir Richard Couch.*) KALI KOMUL MOZOOMDAR *v.* UMA SHUNKUR MOITRA. **(1883) 10 I. A. 138 = 10 C. 232 (237) = 13 C.L. R. 379 = 4 Sar. 458.**

———Oudh Estates Act of 1869—Oudh Estates Act of 1910—Schemes of succession under—Distinction. *See* OUDH ESTATES ACT OF 1869—ADOPTED SON.

(1928) 55 I. A. 139 = 3 Luck. 76.

———*Right of—Existence at father's death—Fiction of—Right based on.*

In contemplation of law an adopted child is begotten by the father who adopts him, or for and on behalf of whom he is adopted. The law gives such child the capacity of inheriting as if he had existed at the time of his father's death. (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.*

HINDU LAW—(*Contd.*)

Adoption—Adopted son—(*Contd.*)

INHERITANCE BY—(*Contd.*)

GNANENDROMOHUN TAGORE.

(1872) Sup. I. A. 47 (67) = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.

———Rights of—Restrictions on—Ante-adoption agreement imposing. *See* HINDU LAW—ADOPTION—ANTE-ADOPTION AGREEMENT.

———Rights of—Restrictions on—Authority to adopt imposing—Validity of—Dayabhaga Law. *See* HINDU LAW—ADOPTION—AUTHORITY TO ADOPT—SUCCESSIVE ADOPTIONS. **(1915) 43 I. A. 12 (17) = 43 C. 432.**

———Right of—Will by adoptive father postponing, till after death of widow and making gift over in event of his death without issue before—Validity—Dayabhaga law. *See* HINDU LAW—ADOPTION—ADOPTED SON—ADOPTIVE FATHER—WILL POSTPONING, ETC.

(1915) 43 I. A. 12 (17-8) = 43 C. 432 (439).

INHERITANCE TO.

———*Adoptive mother—Right of.*

The widow of a childless member of a divided Hindu family is entitled to a life interest in her husband's estate after the death of an adopted son before attaining majority. SOONDUR KOOMAREE DEBEA *v.* GUDADHUR PERSHAD TEWAREE. **(1858) 7 M. I. A. 54 = 1 Suth. 294 = 4 W. R. (P. C.) 116 = 1 Sar. 604.**

———*Natural brother—Right of.*

Held, that the natural brother of a person who had been adopted into a different family was not entitled to inherit the property to which the adopted son was entitled as such (*Viscount Summer.*) TEWARI RAGHURAJ CHANDRA *v.* RANI SUBHADRA KUNWAR. **(1928) 55 I. A. 139 = 3 Luck. 76 = 5 O. W. N. 443 = 26 A. L. J. 609 = 108 I. C. 673 = 30 Bom. L. R. 829 = 32 C. W. N. 1009 = A. I. R. (1928) P. C. 87 = 55 M. L. J. 778.**

———Receving mother—Other wives of adoptive father—Rights of—Distinction. *See* HINDU LAW—ADOPTION—ADOPTED SON—ADOPTIVE MOTHER—POSITION OF.

(1899) 26 I. C. 246 = 23 M. 1.

LEGAL CAPACITY TO CONTINUE THE LINE—ATTAINMENT OF FULL.

———*What amounts to.*

Where a person who was adopted in 1870, held the estate until his death in 1906, leaving a widow but no son, it was observed that he died after attaining full legal capacity to continue the line. (*Viscount Haldane.*) MADANA MOHANA *v.* PURUSHOTTAMA. **(1918) 45 I.A. 156 (161-2) = 41 M. 855 (859-60) = 24 M. L. T. 231 = (1918) M. W. N. 621 = 20 Bom. L. R. 1041 = 23 C. W. N. 177 = 28 C. L. J. 403 = 8 L. W. 167 = 5 P. L. W. 179 = 16 A. L. J. 725 = 46 I. C. 481 = 35 M. L. J. 138.**

MATURITY—AGE OF—ATTAINMENT OF SUFFICIENT.

———*What amounts to—Effect of.*

An adopted son attaining an age of sufficient maturity and by performing the religious services enjoined by the Shasters, cannot exhaust the whole of the spiritual benefit which a son is capable of conferring upon the soul of his deceased father.—Per Romesh Chunder Mitter, J., quoted with approval by their Lordships. (*Sir Andrew Scoble.*) SURYANARAYANA *v.* VENKATARAMANA.

(1906) 33 I. A. 145 (154-5) = 29 M. 382 (389) = 10 C. W. N. 921 = 4 C. L. J. 171 = 1 M. L. T. 260 = 8 Bom. L. R. 700 = 3 A. L. J. 702 = 16 M. L. J. 276.

PARTITION OF JOINT FAMILY PROPERTY.

———*Adoptive father's brother's natural-born son—Partition with—Share on.*

Two brothers who were members of a joint Hindu family governed by the Mithakshara, as altered or interpreted by the Vyavahara Mayukha, died leaving their wives surviving. The wife of one of the brothers was pregnant at the time of his death, and subsequently gave birth to a son, the defendant. Subsequent to the birth of the defendant, the widow of the other brother adopted the plaintiff as a son to her deceased husband in pursuance of an authority to adopt given by him. On a question arising as to the share in the joint family property to which the plaintiff was on partition with the defendant entitled, *held*, reversing the court below, that the plaintiff was entitled to share equally with the defendant. (*Sir John Edge.*) NAGINDAS BHUGWANDAS *v.* BACHOO HURKISSONDAS. **(1915) 43 I. A. 56 = 40 B. 270 = 14 A. L. J. 185 = 3 L W. 259 = 19 M. L T. 193 = 20 C. W. N. 702 = 23 C. L. J. 395 = (1916) 1 M. W. N. 258 = 18 Bom. L. R. 172 = 32 I. C. 403 = 30 M. L. J. 193.**

———*Natural-born son—Partition with—Share on—Sudras.*

Quære, whether the Dattaka Chandrika (V, 29 to 32) is authority for the view that among Sudras an adopted son shares equally with an after-born natural son (145). (*Sir John Edge.*) ASITA MOHAN GHOSH *v.* NIRODE MOHAN GHOSH. **(1920) 47 I. A. 140 = 24 C. W. N. 794 = (1920) M. W. N. 541 = 12 L. W. 556.**

———*Natural-born son—Partition with—Share on—Sudras—Madras Presidency.*

Amongst Sudras in the Madras Presidency an adopted son on partition of the family property shares equally with a son of his adoptive father born subsequently to his adoption. (*Sir John Edge.*) PERRAZU *v.* SUBBARAYUDU, **(1921) 48 I. A. 280 (288) = 44 M. 656 (675) = (1921) M. W. N. 541 = 34 C. L. J. 56 = 14 L. W. 270 = 23 Bom. L. R. 920 = 3 U. P. L. R. (P. C.) 46 = 26 C. W. N. 1 = 19 A. L. J. 621 = 61 I. C. 690 = 41 M. L. J. 33.**

———Suit against natural father on behalf of—Guardian of adopted boy in—Adoptive mother's right to be—Agreement between her and natural father giving right of guardianship to natural father in consideration of his giving in adoption—Effect of. *See* HINDU LAW—ADOPTION—ANTE-ADOPTION AGREEMENT—WIDOW AND NATURAL FATHER—AGREEMENT BETWEEN.

(1880) 7 I. A. 173 (179-80) = 2 M. 270 (281).

POSITION OF, IN NATURAL AND ADOPTIVE FAMILIES—"NEW BIRTH" IN ADOPTIVE FAMILY—THEORY OF.

———According to Hidu Law, an adopted son becomes for all purposes the son of his father. (*Mr. Baron Parke.*) SUMBHOO CHUNDER CHOWDRY *v*, NARAINI DEBIA.

(1835) 5 W R. (P.C.) 100 = 1 Suth. 25 (27-8) = 3 Knapp 55 = 1 Sar. 65.

———The Hindu law recognises an adopted child, whether adopted by the father himself in his lifetime, or by the person to whom he has given the power of adoption after his death from amongst those of his class, of one to stand in the place of a child actually begotten by the father. In contemplation of law such child is begotten by the father who adopts him, or for and on behalf of whom he is adopted. Such child may be provided for as a person whom the law recognises as in existence at the death of the testator, or to whom, by way of exception, not by way of rule, it gives the capacity of inheriting or otherwise taking from the testator, as if he had existed at the time of the testator's death having been actually begotten by him (67). (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE. **(1872) Sup. I. A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.**

HINDU LAW—(*Contd.*)

Adoption—Adopted son—(*Contd.*)

POSITION OF, IN NATURAL AND ADOPTIVE FAMILIES—"NEW BIRTH" IN ADOPTIVE FAMILY—THEORY OF—(*Contd.*)

———An adopted son occupies the same position in the family of the adopter as a natural-born son, except in a few instances, which are accurately defined both in the Dattaka Chandrika and Dattaka Mimamsa (246). (*Sir Richard Couch.*) PUDMA COOMARI DEBI *v.* COURT OF WARDS.
(1881) 8 I A. 229 = 8 C. 302 (311) = 4 Sar. 285.

———An adopted son occupies the same position in the family of the adopter as a natural born son, except in a few instances, which are accurately defined both in the Dattaka Chandrika and Dattaka Mimamsa (149). *Sir Richard Couch.*) KALI KOMUL MOZOOMDAR *v.* UMA SHUNKUR MOITRA. **(1883) 10 I. A. 138 = 10 C. 232 = 13 C. L. R. 379 = 4 Sar. 458.**

———Under the Hindu Law, a man who has been adopted ceases by virtue of that adoption to be regarded as the son of his natural father, and becomes for the purpose of inheritance or succession, the son of his adoptive father. (*Lord Atkinson.*) CHANDRA KUNWAR *v.* NARPAT SINGH.
(1906) 34 I. A. 27 (30-1) = 29 A. 184 (190) = 2 M. L. T. 109 = 5 C. L. J. 115 = 11 C. W. N. 321 = 9 Bom. L. R. 267 = 4 A. L. J. 102 = 17 M. L. J. 103.

———Under the Hindu law an adopted son becomes for all purposes the son of his father, and his rights unless curtailed by express texts are in every respect the same as those of a natural-born son. An adopted son is the continuator of his adoptive father's line exactly as an aurasa son, and an adoption, so far as the continuity of the line is concerned, has a retrospective effect; whenever the adoption may be made there is no hiatus in the continuity of the line (*Mr. Ameer Ali.*) PRATAPSINGH SHIVSINGH *v.* AGARSINGJI RAISINGJI. **(1918) 46 I. A. 97 = 43 B. 778 (792) = 17 A. L. J. 522 = (1919) M. W. N. 313 = 21 Bom. L. R. 496 = 24 C. W. N. 57 = 10 L. W. 339 = 27 M. L. T. 47 = 50 I. C. 457 = 36 M. L. J. 511.**

———In the last-mentioned Full Bench case of the High Court at Calcutta, Romesh Chunder Mitter, J. held that "According to Hindu law an adopted son occupies the same position, and has the same rights and privileges in the family of the adopter, as the legitimate son, except in a few specified instances, which have been clearly and carefully noted and defined by writers on the subject of adoption. The theory of adoption involves the principle of a complete severance of the child adopted from the family in which he is born, both in respect to the paternal and the material line, and his complete substitution into the adopter's family as if he were born in it." With that statement as to the Hindu law of adoption their Lordships agree (68). (*Sir John Edge.*) NAGINDAS BHUGWANDAS *v.* BACHOO HURKISSONDAS. **(1915) 43 I. A. 56 = 40 B. 270 = 14 A. L. J. 185 = 3 L. W. 259 = 19 M. L. T. 193 = 20 C. W. N. 702 = (1916) 1 M. W. N. 258 = 18 Bom. L. R. 172 = 32 I. C. 403 = 23 C. L. J. 395 = 30 M. L. J. 193.**

———The adopted son has in his new family precisely the same rights as a natural son, save only when the question is one that raises a competition between the natural and the adopted son (262). (*Viscount Dunedin.*) KRISHNAMURTHI AYYAR *v.* KRISHNAMURTHI AYYAR.
(1927) 54 I. A. 248 = 50 M. 508 = 39 M. L. T. 52 = 25 A. L. J. 945 = (1927) M. W. N. 469 = 4 O. W. N. 621 = 31 C. W. N. 910 = 45 C. L. J. 620 = 26 L. W. 186 = 8 Pat. L. T. 719 = 29 Bom. L. R 969 = 101 I. C. 779 = A. I. R. (1927) P. C. 139 = 53 M. L J. 57.

HINDU LAW—(*Contd.*)

Adoption—Adopted son—(*Contd.*)

POSITION OF, IN NATURAL AND ADOPTIVE FAMILIES—"NEW BIRTH" IN ADOPTIVE FAMILY—THEORY OF—(*Contd.*)

———Adoption has been spoken of as "new birth" in many cases, a term sanctioned by the theory of Hindu law. Nor is the expression a mere figure of speech. The theory itself involves the principle "of a complete severance of the child adopted from the family in which he is born .... and complete substitution into the adoptive family, as if he were born in it." "The fundamental idea is that the boy given in adoption gives up the natural family and everything connected with the family." The expressions "Civilly dead or as if he had never been born in the family" are not for all purposes correct or logically applicable, but they are complimentary to the term "new birth." It is not merely the ceremonies for the natural father, who has given, or for the adoptive father, who has taken, a son in adoption that are involved, but those for the ritual number of ancestors in each case. "Let no man give or accept an only son, since he must remain to raise up a progeny for the obsequies of ancestors. He who means to adopt a son,.....may receive as his son by adoption, even one more remotely related.....The class ought to be known, for through one son the adopter rescues many ancestors." Consideration of the intimate connection, which primitive Hindu laws established between the funeral offerings and ceremonies on behalf of the dead and the right of succession to his property, will show that ceremonially the adopted son only becomes new-born in the family of his adoptive father, so as to be qualified to provide efficaciously the offerings of which the dead have need, by first dying in the family of his birth, out of which he is given by his natural to his adoptive parent, and in which his offerings will be no longer efficacious or desired. (*Viscount Sumner.*) TEWARI RAGHURAJ CHANDRA *v.* RANI SUBHADRA KUNWAR.
(1928) 55 I.A. 139 = 3 Luck. 76 = 5 O. W. N. 443 = 26 A. L J. 609 = 108 I. C. 673 = 30 Bom. L R. 829 = 32 C. W. N. 1009 = A. I. R. (1928) P. C. 87 = 55 M. L. J. 778 (784 5).

RELIGIOUS CEREMONIES—CAPACITY TO PERFORM.

———Natural—Born son—Distinction. *See* HINDU LAW—RELIGIOUS CEREMONIES. **(1920) 12 L. W. 556 (560).**

REVERSIONER BUT FOR ADOPTION AND ALIENEE FROM WIDOW—COMPROMISE WITH.

———Undertaking by reversioner not to dispute validity of adoption—Undertaking by adopted son to confirm alienation and to settle other properties on reversioner's wife in consideration of—Breach by reversioner of his undertaking—Right to enforce undertaking by adopted son—Effect on. *See* COMPROMISE—CONSIDERATION FOR—EXECUTED OR EXECUTORY. **(1904) 31 I. A. 107 = 31 C. 584.**

RIGHTS OF.

———*See* (1) HINDU LAW—ADOPTION—ADOPTED SON—INHERITANCE BY AND (2) HINDU LAW—ADOPTION—ADOPTED SON—POSITION OF, ETC.

SHEBAITSHIP OF DEBUTTER PROPERTIES—JOINT RIGHT OF, ALONG WITH NATURAL-BORN SON.

———*Agreement by adoptive father conferring, on adopted son—What amounts to.*

In 1876 a sonless Bengali Zemindar adopted a son under a registered agreement which provided as follows: "From this day the aforesaid adopted son has become entitled to all my properties, moveable and immoveable, and to perform the services of the idols and all rites and ceremonies in connection with maternal and paternal ancestors. After my death, he shall perform the services of the deities, and live in my ancestral residence, and being vested with all my

HINDU LAW—(*Contd.*)

Adoption—Adopted son—(*Contd.*)

SHEBAITSHIP OF DEBUTTER PROPERTIES—JOINT RIGHT OF ALONG WITH NATURAL-BORN SON —(*Contd.*)

rights, and entitled to the ownership of those properties, he shall protect, enjoy and possess them by exercising the rights of sale and gift, and shall maintain all my rites and ceremonies. If a son of my loins is born, both of them shall be equally entitled to all the aforesaid moveable and immoveable properties which may be left by me, and the son born of my loins shall not be entitled to claim a larger share in them, and if he does so it shall be rejected." The immoveable property of the zemindar referred to in the agreement consisted of villages which were his private or secular property, and of debutter villages which were in his possession as shebait.

In 1878 the appellant, a natural-born son, was born to the zemindar. In 1905, the zemindar died leaving private or secular and debutter properties, and a dispute arose between the appellant and the respondents, the sons of the adopted son, who had died during the interval, with regard to the properties.

Held, that upon the true construction of the agreement the respondents were entitled, equally with the appellant, to a half share in the debutter properties as shebaits; and that the High Court had rightly decreed that the period of the shebas might be divided into six monthly or annual palas, as the parties might arrange, with liberty to apply if no arrangement were made. (*Sir John Edge.*) ASITA MOHAN GHOSH *v.* NIRODE MOHAN GHOSH.

(1920) 47 I. A. 140 = 24 C. W. N. 794 = (1920) M. W. N. 541 = 12 L. W. 556.

SPIRITUAL BENEFIT FROM—EXHAUSTION OF.

———*See* HINDU LAW—ADOPTION—SPIRITUAL BENEFIT FROM.

STATUS OF.

———*Acquisition by estoppel of—Possibility of.*

Quaere, whether a status that rests on religious rules and religious sanctions and involves the performance of religious duties such as that of an adopted son can be established by applying the doctrine of equitable estoppel embodied in S. 115 of the Evidence Act, so as to affect the rights of persons other than the adopter (241.) (*Mr. Ameer Ali.*) DHANRAJ JOHARMAL *v.* SONI BAI.

(1925) 52 I. A. 231 = 52 C. 482 = 23 A. L. J. 273 = 2 O. W. N. 335 = 21 N. L. R 50 = 6 L. R P. C. 97 = 27 Bom. L. R. 837 = (1925) M. W. N. 692 = A. I R (1925) P. C. 118 = 87 I. C. 357 = 49 M. L. J. 173.

———*Finding on—Effect of*, inter partes — *Properties in two suits different.*

The appellant, claiming to be reversionary heir of *V S* sued for a declaration that alienations of portions of the property of *V S* made by his mother (1st defendant) in favour of his sisters (defendants 2 and 3) were invalid and inoperative beyond the life time of the 1st defendant, and that the appellant was entitled as reversionary heir to the portions so alienated. The reversionary character of the plaintiff-appellant depended upon the correctness of his allegation that the father of *V S* had been adopted by the appellant's father's father.

In a prior suit between the father of the appellant and the father of *V S* it had, however, been conclusively determined, upon an issue raised in a Court of competent jurisdiction, that the father of *V S* had not been adopted,

Held, that the appellant's suit was barred by *res judicata* (21).

Appellant contended that he is not bound by the finding as to adaption in the former suit, because that suit did not relate to the property which is the subject of the present suit,

HINDU LAW—(*Contd.*)

Adoption—Adopted son—(*Contd.*)

STATUS OF—(*Contd.*)

It is true that the former suit did not relate to the same property as that which is the subject of the present suit; but the issue has been tried and determined by a court of competent jurisdiction whether the father of *V S* had been adopted by the appellant's father's father. The authorities cited for the appellant do not establish that in order that an estoppel may be binding the two suits must relate to the same subject-matter (18). Their Lordships are clearly of opinion that the issue which was tried in the former suit is the same as that which the plaintiff wished to be tried in this suit, and that the plaintiff is estopped from making the allegation which he attempts now to support (21). (*Sir Barnes Peacock.*) RAJAH OF PITTAPUR *v.* SRI RAJAH ROW BUCHI SITTAYA GARU. **(1884) 12 I.A. 16 = 8 M. 219 = 4 Sar. 598.**

———*Nizam's Dominions—Finding of Courts of—Effect of, in British Indian Courts—C. P. C. of* 1908, *S.* 13.

Quaere, whether a person who was at the time resident in and was a subject of the State of the Nizam, can rely upon the fact that his status as the adopted son of a deceased person was accepted by the Courts in the Nizam's dominions as a decision binding on the British Indian Courts on the question of his status precluding all dispute as to the fact and lawfulness of his adoption. (*Lord Phillimore,*) RAJAH KEESARA VENKATAPPAYYA *v.* RAJAH NAYANI VENKATARANGA RAO, **(1928) 56 I.A. 21 = 52 M. 175 = 29 L. W. 118 = 1929 M. W. N. 47 = 33 C.W.N. 261 = 27 A L. J. 41 = 49 C. L J. 148 = 31 Bom. L. R. 299 = 114 I. C. 17 = I. D. (1929) P. C. 57 = A. I. R. 1929 P. C. 24 = 56 M. L. J. 218.**

———*Oudh talukdars—Committee of — Finding of, on claim by adopted son for maintenance—Effect of, in Civil suit—Finding affirmed by Financial Commissioner.*

On a claim for maintenance or for a 4-annas share in an Oudh taluq brought forward against the taluqdar by the respondent, his brother, the committee of Taluqdars made an award dismissing the claim on the ground that the respondent had been adopted by one *B's* widow, and had consequently ceased "to have any interest in the heritage of his natural father," and that award was affirmed by the Financial Commissioner.

Held, that the Committee of Taluqdars was not in any sense a Court, much less a Court with jurisdiction to decide the question of adoption within the meaning of S. 13 of C. P. C. of 1882, and that their award was therefore, no bar to the trial of the same issue in a subsequent Civil suit (131).

The affirmation by the Financial Commissioner of the refusal of the Committee to award maintenance could not give judicial validity to their decision on a point outside their jurisdiction (131). (*Lord Collins.*) HAR SHANKAR PARTAB SINGH *v.* LAL RAGHURAJ SINGH.

(1907) 34 I. A 125 = 29 A. 519 (532-3) = 6 C. L. J. 13 = 2 M. L. T. 391 = 11 C. W. N 841 = 9 Bom. L. R. 757 = 4 A. L. J 497 = 10 O. C. 343 = 9 Sar. 266 = 17 M. L J. 354.

———*Right to dispute—Estoppel—Admissions solemn by opposite party of his being adopted son if and when operate as.*

C, one of the defendants in the suit and the father of the appellant, contested the validity of the adoption of the plaintiff-respondent. It appeared, however, that three depositions had been made by *C*, upon the occasion of his becoming surety for persons appointed to the office of Sheristadar, and that in all of them, in answer to inquiries directed to ascertain the value and other particulars relating to the lands offered as security, he (*C*) stated that "the respondent was the adopted son of the deceased *S*," the alleged adoptive

HINDU LAW—(*Contd.*)

Adoption—Adopted son—(*Contd.*)

STATUS OF—(*Contd.*)

father. *C* upon being called as a witness by the respondent and those documents being shown to him, contented himself with merely denying their genuineness, a denial which was found to be false.

Held, that if the depositions were genuine they were decisive of the case (515).

In them *C*, three times deliberately styles the respondent an adopted son. Now, if there were no adoption at all, or if the actual adoption were for any reason legally invalid, the respondent would, of course, not be entitled to that designation. They amount, therefore, to a complete admission of the whole title of the respondent, both in fact and in law, and show that the objections which have been urged to his claim, in the opinion of the appellant's father, who probably was well acquainted with all the circumstances, and may be assumed to have known the Hindu laws and customs, had no foundation (515).

N. B.—The objection to the validity of the adoption was on the ground that the adopter was under pollution when he made the adoption. (*Lord Chelmsford.*) RAMALINGA PILLAI *v.* SADASIVA PILLAI. **(1864) 9 M. I. A. 506 = 1 W.R. 25 P. C. = 1 Suth. 538 = 2 Sar. 51.**

———*Rights to dispute—Estoppel—Adoptive father's brother—Acts or representations of, operating as estoppel.*

Appellant claimed to have been validly adopted by the brother of one *R* and contended that *R*, was estopped from questioning the validity of his adoption. The parties belonged to the caste or sect of Agarvallas. The only acts and representations of *R*, relied upon as creating the estoppel were that he brought the appellant to the alleged adoptive father's village, from his native village, and had become a witness to a deed of adoption relating to the appellant; that he (*R*) allowed the appellant to perform the cremation ceremony of his (*R*'s.) brother; and that at the time of the appellant's marriage, he (*R*) represented the appellant to be the adopted son of his brother.

Held, that there was no substance whatever in the plea of estoppel raised by the appellant (243). (*Mr. Ameer Ali.*) DHANRAJ JOHARMAL *v.* SONI BAI. **(1925) 52 I.A. 231 = 52 C. 482 = 23 A. L J. 273 = 2 O. W. N. 335 = 21 N. L. R. 50 = 6 L R P C. 97 = 27 Bom. L. R 837 = (1925) M W. N. 692 = A. I. R. 1925 P. C. 118 = 87 I. C. 357 = 49 M. L. J. 173.**

———*Right to dispute—Estoppel—Adoptive mother—Dispute as to validity by, on ground of absence of authority to adopt—Estoppel.*

The appellant sued the respondent for a declaration that she had not in fact adopted him as a son to her deceased husband, and that if, in fact, any ceremony of adoption had been performed, it was invalid, owing to the absence of an authority to adopt from her husband to make such adoption. She further prayed that a document purporting to be a deed of adoption should be declared void as being executed by her without such authority as aforesaid.

The evidence showed that the appellant had asserted her authority in the most solemn manner under her hand and seal, and that her conduct both before and after that assertion had been of a like unequivocal character. The respondent was severed from his natural family; he underwent a change of social status which might or might not be beneficial to him, but which certainly so altered his mode of life as to make a relapse into his former condition a grievous hardship upon him. He and his friends were driven to expenses in the maintenance of the privileges with which the appellant purported to endow him. He married on the faith of his adoptive mother's word, and his creditors dealt with him in like reliance on her good faith.

HINDU LAW—(*Contd.*)

Adoption—Adopted son—(*Contd.*)

STATUS OF—(*Contd.*)

Held that, the appellant was clearly estopped from denying her authority to adopt the respondent, and from pleading the invalidity of the adoption of the ground of absence of authority (148-9.) (*Lord Robson.*) RANI DHARAM KUNWAR *v.* BALWANT SINGH. **(1912) 39 I. A. 142 = 34 A. 398 (404) = 16 C. W. N. 675 = 12 M. L. T. 95 = 9 A. L. J. 730 = 14 Bom. L. R. 485 = 15 I. C. 673 = (1912) M. W. N 641 = 16 C L. J. 60 = 23 M. L. J. 200.**

———*See also*, HINDU LAW—ADOPTION—AUTHORITY TO ADOPT — EVIDENCE OF — TREATMENT LONG BY WIDOW OF BOY AS ADOPTED SON. **(1897) 24 I.A. 191 = 25 C. 187.**

———*Right to dispute—Estoppel—Validity of adoption in law—Representation as to—Estoppel by reason merely of—Factum of adoption—No misrepresentation as to—Effect.*

It has been argued that the defendants are estopped from setting up the true facts of the case or even asserting the law in their favour, inasmuch as they have represented in former suits and in various ways, by letters and by their actions, that *L* (through whom the plaintiff claimed) was the adopted son of *D*. But there is no estoppel in the case. There has been no misrepresentation by *L* or the defendant on any matter of fact. They are alleged to have represented that *L*, was adopted. The plaintiff's case is that *L*, was in fact adopted. So far as the fact is concerned there is no misrepresentation. It comes to no more than this, that they have arrived at a conclusion that the adoption which is admitted in fact was valid in law, a conclusion which is erroneous; but that creates no estoppel whatever between the parties (133). (*Sir Robert P. Collier.*) GOPEE LALL *v.* MUSSAMAT SREE CHUNDRAOLEE BUHOOJEE. **(1872) Sup I. A. 131 = 11 B. L R. 391 = 19 W. R. 12 = 3 Sar. 217 = 2 Suth. 752.**

———In a case in which the factum of adoption is admitted and there is no misapprehension as to it, *held* that an erroneous representation that it is valid in law creates no estoppel whatever between the parties. Such a case is to be distinguished from cases relating to adoptions acquiesced in and recognised for a number of years by the person making the adoption, in which the Courts considered in substance that a long course of recognition and acquiescence on the part of the person, who was best acquainted with the circumstances, gave rise to the inference that the conditions relating to the adoption were duly fulfilled (242-3). (*Mr. Ameer Ali*). DHANRAJ JOHARMAL *v.* SONI BAI. **(1925) 52 I. A. 231 = 52 C. 482 = 23 A. L. J. 273 = 2 O.W.N. 335 = 21 N.L.R. 50 = 6 L. R. P. C. 97 = 27 Bom. L. R. 837 = (1925) M.W.N. 692 = A. I. R. (1925) P.C. 118 = 87 I. C. 357 = 49 M.L.J. 173.**

———*Validity of—Representations as to—Fact or Law.*

Their Lordships would have great difficulty in holding that a series of acts by which an adoption is professedly made and subsequently recognised, constitute a representation in law only and not of fact (218). (*Lord Shand*). SARAT CHUNDER DEY *v.* GOPAL CHUNDER LAHA. **(1892) 19 I.A. 203 = 20 C. 296 (313-4) = 6 Sar. 224.**

WIDOW—ADOPTION BY—ADOPTED SON UNDER.

———*See* HINDU LAW—ADOPTION—WIDOW—ADOPTION BY—ADOPTED SON UNDER.

Adoption—Agreement not to make.

———Validity and binding nature of—Adoption in breach of—Adopted son's right in case of. *See* HINDU LAW—JOINT FAMILY—FATHER—ADOPTION. **(1886) 12 I A. 97 (99) = 9 M. 499 (505).**

HINDU LAW—(*Contd.*)

Adoption—Anxiety of childless Hindu for.

———A Hindu dying without male issue would be most anxious before his death, by writing or by parol, to give a power of adoption to his widow, in order that the sacrifices which are required may be performed, and that his departed spirit may be introduced to a state of happiness (243). (*Lord Campbell*). DHURM DAS PANDEY *v.* MUSSUMAT SHAMA SOONDARI DEBEIAH. (1843) 3 **M.I A. 229** = 6 **W.R. 43 P.C.** = 1 **Suth. 147** = 1 **Sar. 271.**

———(*Mr. Pemberton Leigh*). NAGALUTCHMEE AMMAL *v.* GOPOO NADARAJA CHETTY.
(1856) 6 **M.I.A.** 309 (342-3) = 1 **Sar. 543.**

———No one can doubt of the great importance attached by the Hindus to the existence of a son—their salvation depending upon it (64) (*Lord Justice Turner*). SOONDUR KOOMAREE DEBBEA *v.* GUDADHUR PERSHAD TEWAREE. (1858) 7 **M.I.A. 54** = 4 **W.R. 116** = 1 **Suth. 294** = 1 **Sar. 604.**

———Childless Hindus are generally anxious to provide a son by adoption (308). (*Lord Kingsdown*). MUSSUMAT BHOOBUN MOYEE DEBIA *v.* RAM KISHORE ACHARJ CHOWDHRY. (1865) 10 **M.I.A. 279** = 3 **W.R. P.C. 15** = 1 **Suth. 574** = 2 **Sar. 111.**

———(*Sir James W. Colvile*). SRI RAGHUNADHA *v.* SRI BROZO KISHORO. (1876) 3 **I. A. 154 (177)** = 1 **M. 69** = 25 **W. R. 291** = 3 **Sar. 583** = 3 **Suth 263.**

———There is a strong presumption that a Hindu testator would have desired that in the event of his having no child who survived him and attained maturity, a son should be adopted to him by his widow. (*Viscount Cave*). BHAGWAT KOER *v.* DHANUKTIDHARI PRASHAD SINGH.
(1919) **46 I.A. 259 (267)** = **47 C. 466 (478-9)** = **17 A.L.J. 1036** = (1919) **M.W.N. 360** = **24 C. W. N. 274** = **53 I.C. 347** = **12 L.W. 105** = **1 Pat. L.T. 1** = **22 Bom.L.R. 477** = **37 M.L.J. 513.**

Adoption—Ante-adoption agreement.

ADOPTIVE FATHER AND NATURAL FATHER—AGREEMENT BETWEEN.

———*Oral agreement—Proof strict of—Necessity.*

It is very improbable that *P* should have adopted the defendant upon the condition that the widow should enjoy the property for life, and that his daughters should take his self-acquired property after her death, without a single line in writing as evidence of the arrangement. Such a conditional adoption without a writing to support it would, like a nuncupative will, require very strong evidence to establish it. (*Sir Barnes Peacock*). MUSSUMAT IMRIT KONWAR *v.* ROOP NARAIN SINGH. (1879) 3 **Suth. 612 (615)** = 6 **C.L.R. 76** = **Bald 227** = 3 **I. J. 328.**

———*Validity against adopted son of—Basis proper of—Custom—Limits imposed by.*

A childless Hindu in possession of ancestral lands and not living joint with any relative made a will by which he disposed of his property roughly in part to the appellant, in part to his widow for life, in part to charity, and in part to the respondents (relatives of the testator, who were in no case within the degrees entitled to maintenance). Under the will, the land which the widow held for life was, after her death, to go in part to the appellant and in part to the respondents. On the same day, the natural father of the appellant, then a minor, executed a deed consenting to the provisions of the will. Immediately thereafter the appellant was adopted by the testator. It was found, in fact, that the will was executed *unico contextu* with the deed of consent by the natural father of the appellant, and that both were executed in view of the adoption which took place subsequently. It was also admitted that the natural father of the appellant was a poor man

HINDU LAW—(*Contd.*)

Adoption—Ante-Adoption agreement—(*Contd.*)

ADOPTIVE FATHER AND NATURAL FATHER—AGREEMENT BETWEEN—(*Contd.*)

and had two other sons at the time, and had two subsequently.

Held that the will, taken along with the deed of consent, was not binding on the appellant so as to cut down what would have been his rights had he been a natural instead of an adopted son.

When the adoption is antecedent to the date at which the disposition is meant to take effect, inasmuch as the rights which flow from adoption are immediate, the disposition if given effect to, is inconsistent with these rights and cannot of itself *vi propria* affect them. The natural father loses all power over the son from the moment when he is adopted. His consent cannot, therefore, by virtue of any power in himself, take any effect on the rights of the boy which only arise when his rights as a natural father are non-existent He cannot give such consent as guardian of the infant so as to bind him. It is impossible to ascribe any value to the guardianship power of the natural father to bind the son as to property in which he cannot have an interest until the time when the guardianship has ceased. The case cannot be solved by the doctrine of approbate and reprobate, for that doctrine assumes election, and the adopted son has no election. He cannot undo the adoption and be as he was. The same fact destroys the idea of conditional adoption. The adoption cannot be undone; it cannot, therefore, be conditional.

The only ground on which such arrangement can be sanctioned is custom. There is such a consensus of decision in the cases that it may fairly be concluded that custom has sanctioned such arrangements in so far as they regulate the right of the widow as against the adopted son. It seems part of the custom that one *sine qua non* of such an arrangement should be the consent of the natural father. The consensus of judgments seems to treat the consent of the natural father as showing that the arrangement is for the advantage of the boy, and to regard the mere postponement of his interest to the widow's interest, even though it should be one extending to a life interest in the whole property, as not incompatible with his position as a son. Their Lordships are, therefore, prepared to hold that custom sanctions such arrangements.

As soon, however, as the arrangements go beyond that, *i.e.*, either give the widow property absolutely or give the property to strangers, their Lordships think no custom as to this has been proved to exist and that such arrangements are against the radical view of the Hindu law. Their Lordships are, therefore, against the idea of a general proposition that all arrangements consented to by a natural father, and of benefit to the boy in the sense that half a loaf being better than no bread, he is better with an adoption with truncated rights than with no adoption at all, are valid. (*Viscount Dunedin*). KRISHNAMURTHI AYYAR *v.* KRISHNAMURTHI AYYAR. (1927) **54 I.A. 248** = **50 M. 508** = **39 M.L.T. 52** = **25 A.LJ 945** = **4 O.W.N. 621** = **31 C.W.N. 910** = **45 C.L.J. 620** = (1927) **M.W.N. 469** = **26 L.W. 186** = **8 Pat. L.T. 719** = **29 Bom. L. R. 969** = **101 I.C. 779** = (1927) **P.C. 139** = **53 M,L.J. 57.**

WIDOW (ADOPTING) AND NATURAL FATHER—AGREEMENT BETWEEN.

———*Giving up to widow and her relatives greater part of adoptive father's estate—Agreement providing for—Adoption pursuant to—Validity of.*

Quaere an authority to adopt asked and given for religious motives and in order to keep up the line of succession to the deceased is properly exercised by the adoption

HINDU LAW—(*Contd.*)

Adoption—Ante-Adoption agreement—(*Contd.*)

WIDOW (ADOPTING) AND NATURAL FATHER—AGREEMENT BETWEEN.

of a boy on the terms that he should give up to the adopting widow or to her relatives the greater part of her late husband's estate (107). (*Viscount Cave*). ADUSUMILLI KRISTNAYYA *v.* ADUSUMILLI LAKSHMIPATHI.

(1920) 47 I.A. 99 = 43 M. 650 (659) = 28 M.L.T. 70 = 18 A.L.J. 601 = (1920) M.W.N. 385 = 24 C.W.N, 905 = 12 L.W. 625 = 56 I.C. 391 = 39 M.L.J. 70.

———*Guardianship of adopted boy — Agreement giving right of, to natural father in consideration of his giving in adoption—Suit by widow as guardian of adopted boy against natural father—Right of—Effect on.*

S, who constitutd with a deceased Hindu a joint Hindu family, gave his assent to an adoption of his own son by the widow of the deceased, stipulating with the widow as part of the consideration for giving his consent to the adoption that he should become guardian of the adopted child until he attained majority; and the widow made the adoption subject to that stipulation.

Held that by reason of such stipulation the widow could not have asked in the name of her son for a partition between him and *S*; and that to a suit for a partition brought by the widow on behalf of her son against *S* the guardianship for which the latter had stipulated would have presented exceptional obstacles (179 80), (*Sir Barnes Peacock.*) KARUNABDHI GANES RATNAMAIYAR *v.* GOPALA RATNAMAIYAR. (1880) 7 I.A. 173 = 2 M. 270 (281) = 4 Sar. 149 = 3 Suth. 740.

———*Life interest to widow in husband's estate—Agreement reserving—Adoption made pursuance to—Fraud upon authority to adopt if a—Validity of adoption and of agreement in case of.*

An Oudh talukdar authorised his senior widow, to whom he gave a life estate in all his property, to adopt such minor male child of his family as she might think fit. The adopted son was, according to the authority, to "be in place of an actual son the owner of the entire riasat, and the assets, moveable and immoveable," and the widow was, in the event of adoption, to have a provision for her maintenance.

The widow adopted the second defendant. The ceremonies of adoption were duly performed, and a deed of adoption was executed by her, which declared, *inter alia*, that the second defendant would be the proprietor of the deceased's estate and property both moveable and immoveable like a real son. There was not either in the ceremonial of adoption or in the said deed of adoption any condition limiting or curtailing the rights of the adopted son. It appeared, however, that, prior to the adoption, the widow had obtained from the natural father of the second defendant a deed which declared that she should have full control during her lifetime over the property left by her husband; and she executed a second and subsequent deed of adoption, by which she purported to revoke the prior one on the allegation that it ought to have contained a provision postponing the interest of the adopted son until her death.

Held, that the adoption was not a fraud upon the authority to adopt, and was not void on that ground (58).

The conduct of the widow is not altogether to be commended, but it would be extravagant to describe it as fraudulent, or to maintain that the adoption was made for a corrupt purpose or for a pupose foreign to the real object for which the authority to adopt was conferred. The ceremonies or adoption are unimpeached. The deed of adoption is open to no objection. The second deed is admittedly inoperative. No conditions, therefore, were

HINDU LAW—(*Contd.*)

Adoption-Ante—Adoption agreement—(*Contd.*)

WIDOW (ADOPTING) AND NATURAL FATHER—AGREEMENT BETWEEN.

attached to the adoption. Had it been otherwise, the analogy, such as it is, presented by the doctrines of courts of equity in this country relating to the execution of powers of appointment would rather suggest that, even in that case, the adoption would have been valid and the conditions void (58-9). (*Lord Macnaghten.*) BHAIYA RABIDAT SINGH *v.* MAHARANI INDAR KUNWAR.

(1888) 16 I. A. 53 = 16 C. 556 (563-4) = 5 Sar. 505.

———*Ratification by adopted son of—Evidence.*

The natural father of a minor boy gave him in adoption to a Hindu widow on the understanding that he would inherit only about one-third of his adoptive father's estate. The remaining two-thirds of the said estate had, previously to the adoption, been alienated by the widow in favour of third parties. The natural father consented to give the minor in adoption, being aware of the said alienations or not caring to inquire how the said two-thirds had been disposed of.

The adopted son, two years after coming of age, and his adoptive mother executed an agreement on 19—8—1871, reciting the alienations aforesaid of the two-thirds of the adoptive father's estate, whereby mother and son entered into a family arrangement with respect to the residue. When he executed that agreement the adopted son was sufficiently alive to his rights, and he executed it after consulting members of his wife's family, upon whose advice he acted. Further, in a suit brought about 12 months after the date of the agreement the plaintiff stated that he enjoyed the property of his adoptive father under that agreement.

Held, that the agreement of the natural father was validly ratified by the adopted son by the instrument of 1871 (208-9). (*Sir Robert P. Collier.*) RAMASWAMI AIYAN *v.* VENCATARAMAIYAN. (1879) 6 I. A. 196 = 2 M. 91 (101-2) = 5 C. L. R. 347 = 4 Sar. 42 = 3 Suth. 663.

——— *Validity against adopted son of.*

How far the natural father of a boy given in adoption can by agreement before the adoption renounce all or part of his son's rights, so as to bind that son when he becomes of age, is a question not altogether unattended with difficulty, although the case in 11 B. H. C. R. 199, certainly decides that an agreement on the part of the father that his son's interest shall be postponed to the life interest of the widow is valid and binding (208). (*Sir Robert P. Collier.*) RAMASWAMI AIYAN *v.* VENCATARAMAIYAN.

(1879) 6 I. A. 196 = 2 M. 91 (101) = 5 C. L. R. 347 = 4 Sar. 42 = 3 Suth. 663.

———In a case where a Hindu widow adopted a son to her husband in pursuance of an authority to adopt given to her by him, it appeared that, prior to the adoption, the natural father of the adopted son executed a deed in favour of the widow which declared that she should have full control during her lifetime over the property left by her husband.

Quære how a declaration by the natural father of the adopted boy, or an agreement by him postponing the interest of the adopted son until the death of the widow, could prejudice or affect the rights of the adopted son, which could only arise when his parental control and authority determined (58-9). (*Lord Macnaghten.*) BHAIYA RABIDAT SINGH *v.* MAHARANI INDAR KUNWAR.

(1888) 16 I. A. 53 = 16 C. 556 (564) = 5 Sar. 505.

———*Void or Voidable—Ratification by adopted son of—Possibility of.*

Where the natural father of a boy consented to give him in adoption to a Hindu widow on the understanding that

HINDU LAW—(*Contd.*)

Adoption—Ante-Adoption agreement—(*Contd.*)

WIDOW (ADOPTING) AND NATURAL FATHER—AGREEMENT BETWEEN (*Contd*).

he would inherit only about one-third of his adoptive father's property, being aware or not caring to inquire how the remaining two-thirds had been disposed of by the widow, *held*, that the agreement of the natural father was not void, but was, at the least, capable of ratification when his son became of age (204, 208). (*Sir Robert P. Collier.*) RAMASWAMI AIYAN *v.* VENCATARAMAIYAN.

(1879) 6 I. A. 196 = 2 M. 91 (101) = 5 C. L. R. 347 = 4 Sar. 42 = 3 Suth. 663.

Adoption—Authority to adopt.

WHAT AMOUNTS TO AN.
ABSENCE OF—PLEA OF—MAINTAINABILITY.
ABSENCE OF—WIDOWS' POWER TO ADOPT IN CASE OF.
ADOPTED SON—RIGHTS OF—RESTRICTIONS ON—AUTHORITY IMPOSING.
ADOPTION UNDER.
CAPACITY TO GIVE.
COMPLIANCE STRICT WITH.
CONSTRUCTION OF.
CO-WIDOWS.
DEED OF.
DIRECTION MANDATORY IN.
DISQUALIFIED PROPRIETOR—AUTHORITY TO ADOPT GIVEN BY—SANCTION FOR—NECESSITY.
EVIDENCE OF.
IMPLICATION OF.
ISSUE AS TO—DECISION OF—PROPRIETY.
ORAL AUTHORITY.
PLEA IN PLAINT OF—ADMISSION OF, BY NON-TRAVERSAL IN WRITTEN STATEMENT.
PRESUMPTION AGAINST.
PRESUMPTION IN FAVOUR OF.
REVOCATION OF.
SECOND OR SUCCESSIVE ADOPTIONS.
STRICT COMPLIANCE WITH—NECESSITY.
SUCCESSIVE ADOPTIONS.
TRUSTEES WHOSE CONSENT IS REQUIRED BY.
VALIDITY OF.
WIDOW'S RIGHT TO SUE ON BEHALF OF ESTATE.
WILL—AUTHORITY TO ADOPT GIVEN BY—REVOCATION OF, BY LATER WILL.
WILL GIVING.
WILL INOPERATIVE AS SUCH IF MAY BE A VALID.
WILL OR—TEST—DEED—CONSTRUCTION.
WRITING—REGISTRATION—OUDH ESTATES ACT OF 1869.

WHAT AMOUNTS TO AN.

———*Dying man telling his wife then pregnant that she would produce a son, and, if not, she could adopt one if amounts to an.*

The question was whether the appellant, a Hindu widow, was really authorised by him to adopt a son to him, in the event of the child with which she was then pregnant being a girl.

The evidence of the alleged authority consisted of witnesses who deposed to hearing the deceased say, by way of consoling his widow, who was deeply distressed at the prospect of his death, that she should not be so much grieved; that she would produce a son, and, if not, she could adopt one.

Their Lordships observed: "Surely this is not the language which would be used by a person who, on the prospect of death, with a view to the salvation of his soul, was at that moment laying injunctions on his widow for the performance of a solemn and important duty" (343). (*Mr. Pemberton Leigh.*) NAGALUTCHMEE UMMAL *v.* GOPOO NADARAJA CHETTY. **(1856) 6 M. I. A. 309 = 1 Sar. 543.**

HINDU LAW—(*Contd.*)

Adoption—Authority to adopt—(*Contd.*)

ABSENCE OF—PLEA OF—MAINTAINABILITY.

———*Admission of existence of authority by predecessor in interest of party raising plea—Effect.*

The suit was by the widow of one *G* to recover possession of property which had formerly belonged to *G*'s nephew. The plaintiffs' case was that the nephew died leaving a widow, but no male issue, that, on the death of the nephew's widow, *G.* her husband, became entitled to the property of his nephew, and that *G* had devised the property to her (plaintiff). The defendant claimed to be the adopted son of the nephew, his case being that he had been adopted by the widow of the nephew in pursuance of a verbal authority given by him to her. The plaintiff denied that the nephew had given his widow any authority to adopt.

It appeared that, during *G*'s lifetime, a solehnama or instrument of compromise had been executed between him and his nephew's widow, and that it contained clear admissions on the part of *G* that his nephew's widow had an authority from her husband to adopt five sons in succession.

Held, that it was impossible for the representative of *G*, claiming through him, to contend in the face of the solehnamah that the widow of the nephew had no power to adopt (30-1). (*Sir James Colvile.*) INDRAMONI CHOWDHRANI *v.* BEHARI LAL MULLICK. **(1879) 7 I. A. 24 = 5 C. 770 = 6 C. L. R. 183 = 3 Suth. 719 = 4 Sar. 120.**

ABSENCE OF—WIDOW'S POWER TO ADOPT IN CASE OF.

———*Bareilly District—Power in.*

In the District of Bareilly the authority of the husband is essential to the validity of an adoption by a widow. (*Mr. Justice Parke.*) RAJAH HAIMUN CHULL SINGH *v.* KOOMER GUNSHEAN SINGH. **(1834) 5 W. R. 69 = 1 Suth. 4 (6) = 2 Knapp. 203 = 1 Sar. 37.**

———*Benares Mithakshara—Power under.*

According to the law of the Mithakshara as interpreted by the school of Benares an adoption by a widow of a son to her deceased husband would be invalid if made without an authority to adopt given to her by her husband, unless such an adoption was authorised by a custom of the family. (*Sir John Edge.*) BISHWA NATH SINGH *v.* JUGAL KISHORE. **(1923) 50 I. A. 179 (181) = 28 C. W. N. 790 = 38 C. L. J. 299 = 18 L.W. 88 = A. I. R. (1923) P. C. 90 = 33 M. L. T. 289 = (1923) M. W. N. 620 = 26 O. C. 228 = 10 O. L. J. 379 = 9 O. & A. L. R. 563 = 73 I.C. 244 = 45 M. L. J. 215.**

———*Custom authorising—Evidence—Wajib-ul-arzes—Statement in some of, that widows could adopt in absence of authority—Statement in others merely to the effect that they could adopt—Latter if inconsistent with custom.*

The question was as to whether there was adequate proof of a custom empowering a widow, who had not the authority of her husband, to adopt a son to him.

The evidence of the alleged custom consisted of statements in the wajib-ul-arzes of eight villages which had been recorded about 44 years before the adoption in question. In the wajib-ul-arz of the village in which the last male owner lived and in some of the other wajib-ul-arzes it was stated that widows could adopt sons to their deceased husbands without having had the authority of their husbands to adopt. In the other wajib-ul arzes it was simply stated that widows could adopt.

Held, that there was no inconsistency between the statements in the different wajib-ul-arzes and that the custom was proved.

The mere statement that the widows could adopt in some of the wajib ul-arzes also means that they could adopt, although they had not the requisite authority. Otherwise the statement would not be a statement of a special family

HINDU LAW—(*Contd.*)

Adoption—Authority to adopt—(*Contd.*)

ABSENCE OF—WIDOW'S POWER TO ADOPT IN CASE OF—(*Contd.*)

custom, and would be unnecessary, as it would be merely a statement of a right which a Hindu widow of a sonless Hindu would have under the general Hindu law. (*Sir John Edge.*) BISHWA NATH SINGH *v.* JUGAL KISHORE.

(1923) **50 I. A. 179** (181-2) = **28 C. W. N. 790** = **38 C. L. J. 299** = **A. I. R.** (1923) **P.C. 90** = **18 L.W. 88** = **33 M. L. T. 289** = (1923) **M. W. N. 620** = **26 O. C. 228** = **9 O. & A. L. R. 563** = **10 O. L. J. 379** = **73 I. C. 244** = **45 M. L. J. 215.**

———*Exercise of—Condition.*

The power of, a Hindu widow to adopt when not actually given by the husband can only be exercised when a foundation for it is laid in the otherwise neglected observance of religious duty, as understood by Hindus (442). (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SATHUPATHY. (1868) **12 M. I. A. 397** = **10 W. R. P. C. 17** = **1 B. L. R. P. C. 1** = **2 Suth. 135** = **2 Sar. 361.**

———*Mahratta states to the west of the Peninsula—Power in.*

According to the Native text writers it seems to be clear, that the ancient law of Hindustan required the authority of the husband ; but it is also clear that the strictness of that law has been in many districts relaxed or modified by local usage ; and the opinion of the sastries is very strong to show that in the Mahratta States to the west of the Peninsula, the law does not require any such authority to render the act valid. (*Mr. Justice Parke.*) RAJAH HAIMUN CHULL SINGH *v.* KOOMER GUNSHEAM SINGH.

(1834) **5 W. R. 69** = **1 Suth. 4** (6) = **2 Knapp. 203** = **1 Sar. 37.**

———*Vasishta's text as to—Interpretation of, in different schools.*

All the schools accept as authoritative the text of Vasishta, which says :—

' Nor let a woman give or accept a son unless with the assent of her Lord.' But the Mithila school apparently takes this to mean that the assent of the husband must be given at the time of the adoption, and, therefore, that a widow cannot receive a son in adoption, according to the Dattaka form, at all. The Bengal school interprets the text as requiring an express permission given by the husband in his lifetime, but capable of taking effect after his death ; whilst the Mayukha and Koustubha Treatises, which govern the Maratha school, explain the text away by saying that it applies only to an adoption made in the husband's lifetime, and is not to be taken to restrict the widow's power to do that which the general law prescribes as beneficial to her husband's soul. Thus upon a careful review of all these writers, it appears that the difference rather relates to what shall be taken to constitute, in cases of necessity, evidence of authority from the husband, than to the authority to adopt being independent of the husband (435-6). (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SATHUPATHY. (1868) **12 M. I. A. 397** = **10 W. R P. C. 17** = **1 B. L. R. P. C. 1** = **2 Suth. 135** = **2 Sar. 361.**

ADOPTED SON—RIGHTS OF—RESTRICTIONS ON—AUTHORITY IMPOSING.

———Validity of—Dayabhaga law. *See* HINDU LAW—ADOPTION—AUTHORITY TO ADOPT—SUCCESSIVE ADOPTIONS. (1915) **43 I. A. 12** (17) = **43 C. 432.**

ADOPTION UNDER.

———*Boy to be adopted—Choice of—Consent of other persons made necessary for—Consent not procurable—Effect on power of adoption.*

HINDU LAW—(*Contd.*)

Adoption—Authority to adopt—(*Contd.*)

ADOPTION UNDER—(*Contd.*)

A widow's choice of a boy (to be adopted to her husband), may be restricted in various ways, and among them by requiring the consent of persons named by the husband. If it turns out that such consent cannot be procured, she has no authority to adopt (134). (*Lord Hobhouse.*) AMRITO LAL DUTT *v.* SURNOMOYEE DASI.

(1900) **27 I. A. 128** = **27 C. 996** = **4 C. W. N. 549** = **2 Bom. L.R. 446** = **7 Sar. 633.**

———*Brother's son—Adoption by widow of her own—Validity of.*

An adoption by a Hindu widow in virtue of an authority to adopt given to her by her deceased husband, of her brother's son is not, according to Hindu law, an invalid adoption (160).

The test of eligibility of the adopted son for adoption in such case must be the test which would have applied had the adoption been made by the husband himself in his lifetime.

The extension by Nanda Pandita in the Dattaka Mimamsa to adoption by females of the rule of Hindu law that no one can be adopted as a son whose mother the adopter could not have legally married, is not supported by any text of the Dattaka Chandrika, or by any of the texts of the sages Saunaka and Sakala from which most of the rules of the Dattaka Mimamsa were deduced (161-2) (*Sir John Edge.*) PUTTU LAL *v.* PARBATE KUNWAR.

(1915) **42 I. A. 155** = **37 A. 359** (366-8) = **13 A. L. J. 721** = **19 C. W. N. 841** = **22 C. L. J. 190** = **17 Bom. L. R. 549** = **18 M. L. T. 61** = **2 L. W. 881** = (1915) **M. W. N. 514** = **29 I. C. 617** = **29 M. L. J. 63.**

———*Claim based on—Proof required of claimant in case of.*

A person who claims to be the adopted son of a deceased Hindu by virtue of an adoption made by the widow of the deceased in pursuance of an authority to adopt alleged to have been conferred upon her by the deceased must, to establish the validity of his adoption, prove (1) the authority given by the deceased to his wife to make the adoption; and (2) the actual adoption by the widow of the claimant as the son of the deceased (356-7). (*Sir James W. Colvile.*) CHOWDRY PUDUM SINGH *v.* KOER OODEY SINGH.

(1869) **12 M. I. A. 350** = **12 W. R. P. C. 1** = **2 B. L. R.P. C. 101** = **2 Suth. 219** = **2 Sar. 447.**

———To establish the fact that a person was effectually adopted by a Hindu widow as the son of her deceased husband, it must be proved that, if the adoption was ever formally made at all by the widow, as alleged, it was made by the direction of her husband, and further that the alleged adopted son's father had given him in adoption. (*Lord Collins.*) HAR SHANKAR PARTAB SINGH *v.* LAL RAGHURAJ SINGH. (1907) **34 I. A. 125** (132) = **29 A. 519** (534) = **2 M. L. T. 391** = **6 C. L. J. 13** = **11 C. W. N. 841** = **9 Bom. L. R. 757** = **4 A. L. J. 497** = **10 O. C. 343** = **9 Sar. 266** = **17 M. L J. 354.**

———Corrupt purpose—Adoption made for a—Adoption pursuant to agreement with natural father reserving life interest to widow in husband's estate if an—Validity of adoption and of agreement in case of. *See* HINDU LAW—ADOPTION— ANTE-ADOPTION AGREEMENT— WIDOW AND NATURAL FATHER—AGREEMENT BETWEEN.

(1888) **16 I. A. 53** (58-9) = **16 C. 556** (563-4).

———*Boy not in existence at time of authority—Adoption of—Validity.*

Where a Hindu authorised his wife to adopt one of the sons of *H* within a year or two, *i.e.*, at any time, she liked after his death, *held* than an adoption by her of a son of *H* (not born at the time the authority was given) made about

HINDU LAW—(*Contd.*)

Adoption—Authority to adopt—(*Contd.*)

ADOPTION UNDER—(*Contd.*)

6 years after the death of her husband was not invalid as not being in pursuance of the authority. (*Sir Andrew Scoble.*) MUTSADDI LAL *v.* KUNDAN LALL. **9 Sar. 42 = (1905) 33 I. A. 55 = 28 A. 377 (382) = 3 A. L. J. 246 = 1 M. L. T. 93 = 8 Bom. L. R. 371 = 16 M. L. J. 174.**

———*Discretion as to, rests s lely with widow.*

A Hindu widow cannot be compelled to act upon an authority to adopt given by her husband unless and until she chooses to do so. (*Sir Andrew Scoble.*) MUTSADDI LAL *v.* KUNDAN LALL. **(1905) 33 I. A. 55 = 28 A. 377 (380) = 3 A. L. J. 246 = 1 M. L. T. 93 = 8 Bom. L. R. 371 = 9 Sar. 42 = 16 M. L. J. 174.**

———*See also* UNDER THIS SUB-HEAD TIME LIMIT FOR.

———Fraud upon authority to adopt — Ante Adoption agreement reserving life interest to widow in husband's estate—Adoption made pursuant to—Validity of adoption and of agreement in case of. *See* HINDU LAW—ADOPTION—ANTE-ADOPTION AGREEMENT— WIDOW AND NATURAL FATHER—AGREEMENT BETWEEN.

(1888) 16 I. A. 53 (58-9) = 16 C. 556 (563-4).

———Power of—Limits to. *See* ALL CASES COLLECTED UNDER HINDU LAW— ADOPTION— WIDOW—ADOPTION BY—POWER OF.

———*Proof of—Quantum.*

The question was whether the appellant had been adopted to a deceased Hindu by his widow in pursuance of an authority to adopt conferred upon her by the deceased.

Held, on the evidence affirming the Court below, that the appellant had failed to establish that he had been adopted to the deceased by his widow. (*Sir James W. Colvile.*) CHOWDRY PUDUM SINGH *v.* KOER OODEY SINGH. **(1869) 12 M. I. A. 350 = 12 W. R. P. C. 1 = 2 B. L. R. P. C. 101 = 2 Suth. 219 = 2 Sar. 447.**

———*Right of.*

An adoption might be made by a widow under an authority conferred upon her for that purpose by her husband (356). (*Sir James W. Colvile.*) CHOWDRY PUDUM SINGH *v.* KOER OODEY SINGH. **(1869) 12 M. I. A. 350 = 12 W. R. P. C. 1 = 2 B. L. R. P. C. 101 = 2 Suth. 219 = 2 Sar. 447.**

———*Time limit for.*

In the absence of express direction to the contrary, there is no limit to the time within which a widow may exercise the power of adoption conferred upon her by her husband. (*Sir Andrew Scoble.*) MUTSADDI LAL *v.* KUNDAN LALL. **(1905) 33 I. A. 55 = 28 A. 377 (380) = 3 A. L. J. 246 = 1 M. L. T. 93 = 8 Bom. L. R. 371 = 9 Sar. 42 = 16 M. L. J. 174.**

———There is no power under the Hindu Law to compel a widow to adopt ; and, in the absence of a time limit imposed on the authority which empowers her to adopt, or of a direction that she should adopt promptly, she may make the adoption so long as the power is not extinguished or exhausted. (*Mr. Ameer Ali.*) PRATAP SINGH SHIVSINGH *v.* AGARSINGJI RAISINGJI. **(1918) 46 I. A. 97 = 43 B. 778 (793) = 17 A. L. J. 522 = (1919) M. W. N. 313 = 21 Bom. L. R. 496 = 24 C. W. N. 57 = 10 L. W. 339 = 27 M. L. T. 47 = 50 I. C. 457 = 36 M. L. J. 511.**

———*See also* HINDU LAW—ADOPTION—AUTHORITY TO ADOPT—PRESUMPTION AGAINST.

(1926) A. I. R. (1926) P. C. (99).

———Validity of. For cases not found under this head —*See* HINDU LAW—ADOPTION—WIDOW—ADOPTION BY—VALIDITY OF.

———*Validity of—Presumption of, from long lapse of time—Conditions.*

HINDU LAW—(*Contd.*)

Adoption—Authority to adopt—(*Contd.*)

ADOPTION UNDER—(*Contd.*)

Where the question was whether the respondent had been effectually adopted by a Hindu widow as the son of *B*, her husband, the appellants contended that having regard to the long lapse of time the Court ought to presume that the adoption was made by the widow by the direction of her husband, and that the respondent's father had given him in adoption.

Held that to justify such a presumption the appellants ought to establish an initial probability that the adoption was likely to have been validly made, and that the conduct of the parties cognizant of the facts had been at least consistent with such an hypothesis (132). (*Lord Collins.*) HAR SHANKAR PARTAB SINGH *v.* LAL RAGHURAJ SINGH. **(1907) 34 I. A. 125 (131) = 29 A. 519 (533) = 2 M. L. T. 391 = 6 C. L. J. 13 = 11 C. W. N. 841 = 9 Bom. L. R. 757 = 4 A. L. J. 497 = 10 O. C. 343 = 9 Sar. 266 = 17 M. L. J. 354.**

CAPACITY TO GIVE.

———*Person over 18 years of age but a minor by reason of being under guardianship if has.*

An authority to adopt, whether oral or in writing, is within the legal capacity of a Hindu who is over 18 years of age, but who, by reason of his being under guardianship, cannot be deemed to have attained his majority until he has completed his age of 21 years (308). (*Lord Salvesen.*) KONDAPALLI VIJAYARATNAM *v.* MANDAPAKA SUDARSANA RAO. **(1925) 52 I. A. 305 = 48 M. 614 = 23 A. L. J. 799 = 42 C.L. J. 38 = (1925) M. W. N. 522 = 27 Bom. L. R. 1082 = 22 L.W. 435 = 6 L. R. P. C. 157 = 30 C. W. N. 193 = A I. R. (1925) P. C. 196 = 89 I. C. 733 = 49 M. L. J. 247.**

COMPLIANCE STRICT WITH.

———Necessity. *See* HINDU LAW — ADOPTION—AUTHORITY TO ADOPT—STRICT COMPLIANCE WITH.

CONSTRUCTION OF.

———*Boy named—Adoption of—Mandatory direction as to—What amounts to—Adoption in violation of, on ground of ill-feeling between widow and family of boy named—Validity of.*

Where the direction as to adoption in the will of a Mahratta governed by the Bombay School of law ran in these terms : " If I did not adopt a son during my lifetime my wife should, as far as possible, adopt *S*, the second son of my elder brother. If he (the boy) cannot be obtained, any other boy should be adopted with the advice of the trustees."

Held that the direction was not merely an appeal to the wife to exercise her discretion in the manner indicated, but imposed upon her a mandate to exercise it.

" Should as far as possible" means that unless there are conditions outside the will preventing the possibility of the adoption, the widow, when she does adopt, is to exercise her power in favor of *S*.

Subsequent to the death of the testator ill feeling arose between his widow and *S* and his family, and the widow adopted her sister's son with the consent of the trustees. *Held further* that the adoption was invalid.

It has been suggested that the ill-feeling between the widow and *S* and his family prevents the possibility of his adoption, and two clauses in the will are referred to in both of which the testator in strong language directed that the adopted son should keep the widow, treat her with affection, and give her maintenance, which it is said is in the circumstances impossible. That condition is, however, subsequent to the appointment, and not a condition precedent to the

HINDU LAW—(*Contd.*)

Adoption—Authority to adopt—(*Contd.*)

CONSTRUCTION OF—(*Contd.*)

exercise of the power (205-6). (*Lord Buckmaster*). SITABAI *v.* BAPU ANNA PATIL. **(1920) 47 I. A. 202 = 47 C. 1012 = (1920) M. W. N. 556 = 12 L. W. 386 = 22 Bom. L. R. 1359 = 16 N. L. R. 162 = 57 I. C. 1 = 25 C. W. N. 97 = 2 U. P. L. R. (P. C.) 106 = 39 M. L. J. 106.**

———*Boy named—Death of, after his adoption a minor and unmarried—Adoption of different boy on—Prohibition of—What amounts to.*

Where the evidence showed that a deceased Hindu intended, if he adopted any boy as his son, to adopt *P*, and that, if his statements could be construed as a direction to his wife, that direction was that she should adopt *P*, and that he gave no direction as to what should be done by her if *P* should be unavilable or should die after he was adopted, *held* that there was no prohibition by him of the adoption of another boy by his wife in the event of the death of *P* after his adoption a minor and unmarried. (*Sir John Edge*). YADAO *v.* NAMDEO. **(1921) 48 I. A. 513 (523) = 49 C. 1 (12-3) = 26 C. W. N. 393 = 30 M. L. T. 53 = L. R. 3 P. C. 41 = 15 L. W. 565 = 20 A. L. J. 481 = 24 Bom. L. R. 609 = A. I. R. (1922) P. C. 216 = 64 I, C. 536 = 42 M. L. J. 219.**

———*Boy named—Prohibition of adoption of any other boy when implied from—Adoption of different boy—Validity of, when prohibited by husband.*

Where it is proved that a deceased Hindu had in fact expressed as a direction to be followed by his wife his wish that no boy except the one named by him should at any time be adopted to him, it must be held that the direction prohibited the widow from adopting any other boy than the one named. But such a direction to operate as a prohibition against his widow adopting any boy to him as a son excepting the boy named by him must be explicitly made and clearly intended by the husband to limit the discretion of his widow for all time, and on every occasion on which otherwise after his death his widow might validly make an adoption to him. Such a direction may be given by the husband orally or in writing, as for instance by a will. The duty of a Hindu widow is to obey such directions as her husband may have given as to the way in which she should exercise a power of adoption to him. That is a general principle of Hindu law as to adoptions, and is not applicable only in cases in which the husband and wife were subject to the Bombay School of Hindu law (522). (*Sir John Edge*). YADAO *v*, NAMDEO. **(1921) 48 I. A. 513 = 49 C. 1 (11-2) = 26 C. W. N. 393 = 30 M. L. T. 53 = L. R. 3 P. C. 41 = 15 L. W. 565 = 20 A. L. J. 481 = 24 Bom. L. R. 609 = A. I. R. (1922) P. C. 216 = 64 I. C. 536 = 42 M. L. J. 219.**

———*Considerations applicable to.*

How then is the deed to be construed when we regard it merely as a deed of permission to adopt? What is the intention to be collected from it, and how far will the law permit such intention to be effected? (309). (*Lord Kingsdown*). MUSSUMAT BHOOBUN MOYEE DEBIA *v.* RAM KISHORE ACHARJ CHOWDHRY. **(1865) 10 M. I. A. 279 = 3 W. R. P. C. 15 = 1 Suth. 574 = 2 Sar. 111.**

———*General authority—Authority restricted to adoption of second boy in case of death of first adopted son—Test.*

Where an authority to adopt given by a Hindu to his wife was to the following effect:—"If (God forbid) you give birth to a daughter, or if a son be born but die after his birth, I stictly order you to adopt some boy to me so that he might perform my Sraddh ceremony and yours, and perpetuate my name, and after your death become the absolute owner and possessor of the whole of my estate. If (God forbid) the son who might be adopted under this authority should die in your lifetime, you will have power to adopt another boy;" *held* that the authority was a general authority and was not restricted to the adoption of a second boy in case the first adopted son died.

What the deceased Rajah (husband) intended was that, if necessary, "some boy" should be adopted to him "so that he might perform my Sraddh ceremony and yours, and perpetuate my name, and after your death become the absolute owner and possessor of the whole of my estate," but in expressing this intention he saw that it might be defeated by death if construed in a restrictive sense as meaning some "one" boy, so he went on to deal with that contingency by directing, in substance, that effect was, in any event, to be given to the general intention, and if one boy died another boy was to be adopted (147-8). (*Lord Robson*). RANI DHARAM KUNWAR *v.* BALWANT SINGH. **(1912) 39 I. A. 142 = 34 A. 398 (403) = 16 C.W.N. 675 = 12 M. L. T. 95 = 9 A. L. J. 730 = 14 Bom. L. R. 485 = (1912) M. W. N. 641 = 16 C. L. J. 60 = 15 I. C. 673 = 23 M. L. J. 200.**

———*Male or female child not being born—Authority to adopt in event of—Posthumous daughter—Birth and death of—Adoption in event of—Authority if extends to.*

A Hindu by his will authorised his widow to adopt a son if no male or female child should be born to him. He died without issue, but had a posthumous daughter. After the death of the posthumous daughter the testator's widow purported to adopt a son to him. *Held* that in the events which happened the power of adoption did not arise.

Though there is a strong presumption that a Hindu testator would have desired that in the event of his having no child who survived him and attained maturity, a son should be adopted to him by his widow, and the courts would not be astute to defeat an adoption by the widow which is not clearly in excess of the power conferred upon her, *held* it was impossible, without unduly straining the words of the will in question, to hold that in the events which happened the power took effect. (*Viscount Cave*). BHAGWAT KOER *v* DHANUKTIDHARI PRASHAD SINGH. **(1919) 46 I. A. 259 (267) = 47 C. 466 (478-9) = 17 A. L. J. 1036 = (1919) M. W. N. 360 = 53 I. C. 347 = 24 C. W. N. 274 = 12 L. W. 105 = 1 Pat. L. T. 1 = 22 Bom. L. R. 477 = 37 M. L. J. 513.**

———*Motive predominant of husband in giving—Religious or secular—Test.*

Where the words of an authority to adopt given by a Hindu by his will to his two widows were: "You should adopt a boy who is our *Sannihita* (one closely related) whenever it strikes you that our *Samastanam* (family) should continue," *held* that the language of the testator pointed to the predominance of the secular, rather than the religious, motive as the overmastering one.

The testator does not direct that there shall be an adoption, as he would naturally have done had he wished in all events to secure that there should be a son to perform the due religious rites. He makes it depend on the opinion of his widows whether and when an adoption should take place. (*Lord Moulton.*) VENKATA NARASIMHA APPA ROW *v.* PARTHASARATHY APPA ROW. **(1913) 41 I. A. 51 = 37 M. 199 (223) = 18 C. W. N. 554 = (1914) M. W. N. 299 = 23 I.C. 166 = 16 Bom. L. R. 328 = 19 C. L. J. 369 = 15 M. L. T 285 = 12 A. L. J. 315 = 26 M. L. J. 411.**

HINDU LAW—(*Contd.*)

Adoption—Authority to adopt—(*Contd.*)

CONSTRUCTION OF—(*Contd.*)

———*Second adoption—Power of—Authority if confers.*

Where an authority to adopt given to a widow by her husband was couched in general terms, requiring her to adopt so as to continue his line and to provide for his spiritual benefit, did not indicate any particular person for adoption, by name or otherwise, and placed no restriction whatever on her discretion, *held* that the authority was not exhausted by one adoption, and, that, on the death of the son first adopted, authority survived so as to empower the widow to make a second adoption.

In the present case it is abundantly clear that the husband desired to be represented by a son after his death, and that he placed no specific limitation on the power to adopt, which he entrusted to his widow. His object was twofold—to secure spiritual benefit to himself, and to continue his line. Both these objects are meritorious in the view of the Hindu law, and both are in consonance with the feelings known to prevail throughout the Hindu community. In the absence of a natural son, both can be obtained only by adoption. (*Sir Andrew Scoble.*) KANNAPALLI SURYANARAYANA *v.* PUCHA VENKATA RAMANNA.

(1906) 33 I. A. 145 = 29 M. 382 = 10 C. W. N. 921 = 4 C. L. J. 171 = 1 M. L. T. 260 = 8 Bom. L. R. 700 = 3 A. L. J. 702 = 16 M. L. J. 276.

———Before his death, the holder of an impartible zemindary, who was a member of a joint Hindu family subject to the Mitakshara law, gave to his widow, who was at that time *enceinte*, a written authority to adopt in the following terms; "As I know that my end is approaching, I do hereby declare that in case you, who are at present pregnant, be delivered of a male issue, the said child alone shall inherit my taluk as well as all my property, both movable and immoveable. Becoming the owner of movable and immovable properties, till he arrives at the proper age you will look after him; or if a daughter be the result of your present pregnancy, you, adopting a son, who may be in your opinion worthy of the throne, and making him owner of the taluk, etc., shall, pending the attainment of the said boys' majority, take care of him. This agreement is executed with my free will."

Quaere whether the authority could be construed as by its terms enabling a second adoption to be made (161). (*Viscount Haldane.*) MADANA MOHANA *v.* PURUSHOTTAMA.

(1918) 45 I. A. 156 = 41 M. 855 (859) = 24 M. L. T. 231 = (1918) M. W. N. 621 = 20 Bom. L. R. 1041 = 23 C. W. N. 177 = 8 L. W. 167 = 28 C. L. J. 403 = 5 Pat. L. J. 179 = 16 A. L. J. 725 = 46 I. C. 481 = 35 M. L. J. 138.

———*Validating construction—Necessity.*

In construing the document (an authority to adopt given to two widows) their Lordships would consider that the person giving the authority intended his widows to do that which the law allowed, and not to do something which was, if not absolutely illegal, very unusual and not practised amongst Hindus (202). (*Sir Richard Couch.*) AKHOY CHUNDER BAGCHI *v.* KALAPAHAR HAJI. **(1885) 12 I. A. 198 = 12 C. 406 (411) = 4 Sar. 678.**

———*Widow and her co-executors—Authority to, or to widow subject to consent of co-executors—Validity of authority in former case.*

A Hindu by his will appointed his wife executrix and his father and uncle executors and trustees of his will. And, in case of the testator's death before adopting a son, the will authorised and empowered his wife and executrix and his executors and trustees to adopt a son to him. The will further provided that, in the event of the death of the testator's wife before adoption of a male child, his surviving executors should adopt a male issue.

Held that the will did not give any authority at all to the testator's widow to make an adoption, not even an authority restricted by the consent of the executors and trustees named in the will; that, on the literal construction of the terms of the will, the testator authorised an appointment, not by his wife, but by her and the two others whom he had appointed executors and trustees, and that such an authority to adopt was invalid.

No one can adopt a son to a dead man except his widow.

Assuming that the testator intended the authority to be attached to the office, it was given, not to a single person, but to several. (*Lord Hobhouse.*) AMRITO LAL DUTT *v.* SURNOMOYE DASI. **(1900) 27 I. A. 128 (134) = 27 C. 996 (1002-3) = 4 C. W. N. 549 = 2 Bom. L. R. 446 = 7 Sar. 633.**

———Widows—Construction put by—Reference to—Permissibility. **(1913) 41 I. A. 51 = 37 M. 199 (214).**

CO-WIDOWS.

———Authority to adopt to. *See* HINDU LAW—ADOPTION—CO-WIDOWS.

DEED OF.

———Attempt to enforce—What amounts to. *See* LIMITATION ACT OF 1871, ART. 93.

———*Disposition of property—Deed containing, and giving authority to adopt—Registration of, as a will and not as authority to adopt—Validity of authority in case of.*

A Hindu, who was admittedly only 19 years age and was under guardianship, executed a document, which purported to be a disposition of his property and at the same time conferred a power of adoption on his widow. The document was registered as a will at the instance of a legatee. The testator being a minor at the date of the execution of the document it was inoperative as a will. The question was whether it was effectual as a valid authority to adopt.

The widow, who, at the time of the registration of the document as a will, was the only one who could present it for registration, did not do so herself and did not give authority for the registration. And she failed to register it within the period of 4 months provided by S. 19 of the Registration Act.

Held that the authority to adopt was invalid (309). (*Lord Salvesen.*) KONDAPALLI VIJAYARATNAM *v.* MANDAPAKA SUDARSANA RAO. **(1925) 52 I. A. 305 = 48 M. 614 = 23 A. L. J. 799 = 42 C. L. J. 38 = (1925) M. W. N. 522 = 27 Bom. L. R. 1082 = 22 L. W. 435 = 6 L. R. P. C. 157 = 30 C. W. N. 193 = A. I. R. (1925) P. C. 196 = 89 I. C. 733 = 49 M. L. J. 247.**

———*Evidence against—Proceedings between widow and surviving co-parceners as if there was no such deed—Value of.*

One *D* died leaving a son and a widow, the appellant. That son died subsequently, and many years after his death the appellant purported to make an adoption to *D*, alleging that he had given her authority to do so by a deed in writing. The question was whether the deed of authority to adopt so set up was genuine.

It appeared that on the death of *D's* son, his property was claimed by his uncle, the eldest brother of *D*, and that he instituted a suit against the younger brother and the appellant claiming the property. In that suit the parties came to a compromise, and executed a deed of Solehnamah. It was essential to that compromise that the fact of there not

HINDU LAW—(*Contd.*)

Adoption—Authority to adopt—(*Contd.*)

DEED OF—(*Contd.*)

being anybody in existence who could dispute the validity of that agreement should be stated. The deed accordingly stated that *D's* son who had been in existence was dead. The deed not only had the seal of the appellant attached to it, but was produced in Court. The judge before whom it was produced took steps to satisfy himself that the deed was actually executed with the knowledge of the appellant, and, after being so satisfied, allowed it to be filed in court, and, from that time down to the date of the suit out of which the appeal arose, it remained impeached.

Held that the Solehnamah was a distinct recognition that there was no such instrument as the deed of authority set up (491). (*Lord Kingsdown.*) CHUNDERMONEE DEBIA CHOUDHOORAYN *v.* MUNMOHEENEE DEBIA.

(1861) 8 M. I. A. 477 = 1 Sar. 809.

———*Evidence against—Registration—Communication to parties interested—Absence of.*

The first objection to the Unumattee Puttro set up is, that the instrument itself ought to have been, and in ordinary circumstances (considering the nature of the instrument, the importance to the family, and the amount of the property to which it relates) would have been registered, and would have been communicated to the different parties, the persons whose rights were likely to be affected by such an adoption. Nothing of the sort took place, although the party executing the instrument lived 6 months after the date of it (489-90). (*Lord Kingsdown.*) CHUNDERMONEE DEBIA CHOWDHOORAYN *v.* MUNMOHEENEE DEBIA. **(1861) 8 M. I. A. 477 = 1 Sar. 809**

———*Evidence of—Authenticated copy—Admissibility.*

In a case in which the question was whether *H*, the widow of *J.S.* had permission from him to adopt, the Sub-Judge held that an authenticated copy of a written permission purporting to be executed by *J. S.*, empowering *H* to adopt three sons in succession was admissible in evidence. The High Court, on the other hand, held that it was not admissible, as there was no evidence that a search was made for the original.

Quaere as to which view was right, that of the Sub-Judge, or that of the High Court (148). (*Sir Richard Couch.*) KALI KOMUL MOZOOMDAR *v.* UMA SHUNKUR MOITRA.

(1883) 10 I. A. 138 = 10 C. 232 (236) = 13 C. L. R. 379 = 4 Sar. 458.

———Evidence of—Oral admission of deceased executant —Evidence of—Weight of. *See* ADMISSION—DECEASED —ORAL ADMISSION OF. **(1876) 3 I. A. 154 (181) = 1 M. 69**

———*Evidence of—Will subsequent by husband reciting authority—Value of.*

The question was as to the genuineness of an *anumati-patra* alleged to have been executed by the last male owner authorising his widow to adopt a son to him. It appeared that, subsequent to the date of the *anumati-patra* in question, the last male owner executed a will which recited that he had left behind him an *anumati-patra* to his wife to adopt a son in order to the preservation of the pindas of his ancestors and himself.

Held, that the will, if genuine, was a very important document, for it not only supported the evidence as to the *anumati-patra*, but amounted to an assertion by the last male owner, through whom the plaintiff, who attacked the *anumati-patra*, claimed, that he had given power to his wife to adopt, which, in the absence of evidence to prove the revocation of the power, would have been sufficient to support the adoption made in pursuance of that power

HINDU LAW—(*Contd.*)

Adoption—Authority to adopt—(*Contd.*)

DEED OF—(*Contd.*)

(167-8). (*Sir Barnes Peacock.*) KALIKISHORE DUTT GUPTA MOZUMDAR *v.* BHUSHUN CHUNDER.

(1890) 17 I. A. 159 = 18 C. 201 (211) = 5 Sar. 607.

———*Genuineness of—Concurrent findings as to—P. C.'s reversal of.*

In a case in which the question was as to the genuineness of an *anumati-patra*, deed of authority to adopt, the courts below held against the genuineness of the deed.

Their Lordships reversed the Courts below and held the *anumati-patra* to be genuine, observing that they had less difficulty in doing so, as the question to be decided depended much more upon the documentary than upon the parol evidence (63). (*Lord Justice Turner.*) SOONDUR KOOMAREE DEBBEEA *v.* GUDADHUR PERSHAD TEWAREE.

(1858) 7 M. I. A. 54 = 4 W.R. 116 = 1 Suth. 294 = 1 Sar. 604.

———*Genuineness of son's deed—Issue as to, in suit by his mother to set aside adoption by her daughter-in-law—Examination of mother in—Necessity—Failure—Inference from—Deed alleged to have been executed with her consent.*

In a suit brought by a Hindu widow to set aside an adoption alleged to have been made by the widow of her deceased son under an authority alleged to have been given by him, the two questions were (1) as to the execution by the deceased son of the alleged deed of authority and (2) as to the age of the deceased at the time. The daughter-in-law alleged that the deed of authority had been executed by her husband with the concurrence of his mother. There were also prior admissions by the mother-in-law which were inconsistent with the case she attempted to make in the suit.

Held, that on both the questions for decision in the case, the mother-in-law's evidence was most material, and that, by omitting to examine herself, she failed to produce the best evidence in her power in support of her own case (81-2). (*Sir James W. Colvile.*) JUMOONA DASSYA CHOWDRANI *v.* BAMASOONDERAI DASSYA CHOWDHRANI.

(1876) 3 I. A. 72 = 1 C. 289 = 25 W. R. 235 = 3 Sar. 602 = 3 Suth. 222.

———Proof of—Concurrent findings as to—P. C's interference with. *See* P. C.—PRACTICE—QUESTION OF FACT—CONCURRENT FINDINGS—INTERFERENCE WITH —CASES UNDER HEAD OF.

———*Proof of—Quantum.*

The object of the suit was to establish an adoption, under a deed, called an *anumati-patra*, giving authority to adopt. The husband died within 6 months after the date of the alleged deed, and the adoption alleged to have been made in pursuance of it was not completed until 17 years after the death of the husband. The only excuse for the delay was that there was a son then in existence, and that so long as that son lived there was no necessity for the adoption of another son ; but that son died nearly 12 years before the adoption in dispute, and there was no proof whatever, nor even an allegation, of any such power having existed.

Held, affirming the courts below, that the alleged authority to adopt was not genuine. (*Lord Kingsdown*). CHUNDERMONEE DEBIA CHOWDHOORAYN *v.* MUNMOHEENEE DEBIA. **(1861) 8 M. I. A. 477 = 1 Sar 809.**

———The Privy Council, after a very careful consideration of the evidence in this case, came to the conclusion that the judgment of the High Court was perfectly right ; that there was direct evidence of the execution of the *anumati-patru* and of the *kottriko patro*, which was, if not so clear as to remove all doubts, at least so satisfactory that, in the absence of contrary evidence or very strong presumptions to the contrary, it ought to prevail ; and that whilst the direct

HINDU LAW—(*Contd.*)

Adoption—Authority to adopt—(*Contd.*)

DEED OF—(*Contd.*)

evidence was satisfactory, the presumptions which existed on the one side and the other, when weighed, very strongly preponderated in favour of the execution of these deeds. RAJAH CHUNDERNATH ROY *v.* KOOER GOBINDANATH ROY. **(1872) 11 B. L. R. 86 = 18 W. R. 221 = 2 Suth. 608.**

———The suit was brought by the appellant, a Hindu widow, against her daughter-in law, who was sued in her own right, and also as the guardian of *M*, whom she had adopted under an authority alleged to have been executed by her deceased husband. One of the chief questions in the case was as to the factum of that instrument.

Held, that their Lordships had not sufficient grounds, whatever doubts they might entertain as to certain parts of the evidence for the defendant, for interfering with the finding of the High Court that the authority to adopt was duly executed by the deceased (82-3). (*Sir James W. Colvile.*) JUMOONA DASSYA CHOWDHRANI *v.* BAMASOONDERAI DASSYA CHOWDHRANI. **(1876) 3 I. A. 72 = 1 C. 289 (295) = 25 W.R. 235 = 3 Sar. 602 = 3 Suth. 222.**

———The respondent instituted the suit out of which the appeal arose for the recovery from the appellant of the suit zemindary and of all the property appurtenant thereto. The respondent claimed to be the adopted son of the last holder of the estate and to be entitled to the suit property as such adopted son. The respondent's case was that he had been adopted by the widow of the last holder in pursuance of a written authority to adopt executed by the deceased in her favour. And one of the principal questions for decision was whether the alleged written authority was in fact executed by the deceased. The appellant was the undivided brother of the deceased who would have been entitled to the estate and its appurtenances but for the adoption.

Their Lordships, weighing the evidence and the probabilities in favour of the plaintiff's case, against the evidence and the probabilities in favour of the defendant's case, not without doubt or difficulty, came to the conclusion that the former so preponderated over the latter that they ought to pronounce in favour of the alleged deed of authority, as a valid written authority to adopt executed by the decea ed (187-8). (*Sir James W. Colvile.*) SRI RAGHUNADHA *v.* SRI BROZO KISHORO. **(1876) 3 I. A 154 = 1 M. 69 (78) = 25 W. R. 291 = 3 Sar. 583 = 3 Suth. 263.**

———The question was whether *H*, the widow of *J. S.*, had permission from him to adopt the respondent. It was satisfactorily proved that *H* adopted the respondent and performed the requisite ceremonies in 1854, having pre viously adopted a son, who died in October 1853.

A hibanama, or deed of gift, executed by *J.S.* in favour of *H* contained a statement that he had executed in her favour a deed of permission to adopt. In the deed by which the first adopted son was given in adoption by his mother to *H* there was this passage :—"your husband, *J.S.*, being without issue, gave you during his lifetime permission to adopt a son, and has since died." That deed was witnessed by the original defendant, who contested the validity of the respondent's adoption and claimed the suit property as against him. And in his deposition taken in the suit out of which the appeal arose the original defendant admitted that "the respondent was treated and acted as a son to *H*, calling her mother, and her mother grandmother, and *M*" (the original defendant himself) 'mama' or meternal uncle, and he answered accordingly."

Held, that there was sufficient evidence of the permission to adopt (148). (*Sir Richard Couch*). KALI KORNUL MOZOOMDAR *v.* UMA SHUNKUR MOITRA.
(1883) 10 I. A. 138 = 10 C. 232 (236-7) = 13 C. L. R. 379 = 4 Sar. 458.

HINDU LAW—(*Contd.*)

Adoption—Authority to adopt—(*Contd.*)

DEED OF—(*Contd.*)

———*Public document under S. 74 of Evidence Act—If a.*

An anumati-patra (a power to adopt) is not a public document within the meaning of S. 74 of the Evidence Act (74-5). (*Sir Barnes Peacock*). KRISHNA KISHORI CHOWDHRANI *v*, KISHORI LAL ROY.
(1887) 14 I.A. 71 = 14 C. 486 (491) = 5 Sar. 13.

———Registration of — Communication to parties interested—Practice of — Absence of — Presumption against genuineness of deed from. *See* HINDU LAW—ADOPTION AUTHORITY TO ADOPT—EVIDENCE AGAINST—REGISTRATION. **(1861) 8 M.I.A. 477 (489-90).**

———*Registration of—Desirability of.*

Their Lordships observed that it would be very much for the interest of the proprietors in India, if, when they executed deeds giving their widows after their death power to adopt, they would take the precaution to register the deeds. RAJAH CHUNDERNATH ROY *v.* KOOER GOBINDANATH ROY. **(1872) 11 B.L.R. 86 = 18 W. R. 221 = 2 Suth. 608.**

———*Validity of—Issue as to—Points for consideration in case of.*

In considering the validity of instruments of this description (authority to adopt), it is of great importance, in the first place, to ascertain the position of the parties at the time when the instruments are alleged to have come into existence, and the motives which may have led to the execution of them (64). (*Lord Justice Turner.*) SOONDUR KOOMAREE DEBBEEA *v.* GUDADHUR PERSHAD TEWAREE. **(1858) 7 M. I. A. 54 = 1 Suth. 294 = 4 W. R. 116 = 1 Sar. 604.**

DIRECTION MANDATORY IN.

———*Compliance with—Necessity—Bombay school.*

According to the Bombay school of law the duty of a Hindu widow to obey her husband's command compels her to act upon any mandatory direction that he may give by will as to the way in which her power of adoption should be exercised (205). (*Lord Buckmaster*). SITABAI *v.* BAPU ANNA PATIL. **(1920) 47 I.A. 202 = 47 C. 1012 = (1922) M.W.N. 556 = 22 Bom. L.R. 1359 = 12 L. W. 386 = 16 N.L.R. 162 = 25 C.W.N. 97 = 2 U.P.L.R. (P.C.) 106 = 57 I.C. I = 39 M.L.J. 106.**

DISQUALIFIED PROPRIETOR—AUTHORITY TO ADOPT GIVEN BY—SANCTION FOR—NECESSITY.

———Adoption without sanction—Prohibition of—Effect. *See* BENGAL REGULATIONS—COURT OF WARDS REGULATION X OF 1793—DISQUALIFIED PROPRIETOR.
(1876) 3 I.A. 72 (83) = 1 C. 289 (295).

EVIDENCE OF.

———*Seldom complete or satisfactory.*

In cases in which the question arises as to whether or not an alleged authority to adopt was in fact given, the evidence is seldom entirlely complete or satisfactory. (*Sir Andrew Scoble*). MUTSADDI LALL *v.* KUNDAN LALL
(1905) 33 I.A. 55 = 28 A. 377 (382) = 3 A.L.J. 246 = 1 M.L.T. 93 = 8 Bom. L.R. 371 = 9 Sar. 42 = 16 M.L.J. 174.

———*Treatment long by widow of boy as adopted son—Value of.*

As to the further contention that, by the lady (a Hindu widow) having treated the appellant for a great many years as an adopted son, she is, as it is alleged, estopped from disputing that he is her adopted son, and that she had a valid power of adoption—whatever value it may have as regards the question whether she did adopt as a matter of fact, it is

HINDU LAW—(*Contd.*)

Adoption—Authority to adopt—(*Contd.*)

EVIDENCE OF—(*Contd.*)

no evidence at all to shew that she had been entrusted by her husband with a power of adoption—that depended upon evidence entirely outside the question of her acts. Otherwise, any widow could by a system of treating an alleged adopted son as such validate a transaction which she had no power of entering into (192-3). (*Lord Morris*) SUMBHU NATH SANTRA MAHAPATRA *v.* SRIMATI SURYAMONI DEI. **(1897) 24 I.A. 191 = 25 C. 187 = 1 C.W N. 649 = 7 Sar. 247.**

———*Held*, agreeing with the finding of the High Court that the authority to adopt which was alleged to have been to the widow by her deceased husband was proved (159-60) (*Sir John Edge*) PUTTU LAL *v.* PARBATE KUNWAR. **(1915) 42 I.A. 155 = 37 A. 359 (365) = 13 A.L.J. 721 = 19 C.W N. 841 = 22 C.L J. 190 = 17 Bom L.R. 549 = 18 M.L.T 61 = 2 L. W. 881 = (1915) M.W.N. 514 = 29 I.C. 617 = 29 M.L.J. 63.**

IMPLICATION OF.

———*Will by husband addressed to co-sharer—Direction to him in, to cause a fit boy to be adopted by wife if amounts by implication of power to wife.*

A will executed by a Hindu, and addressed to *C*, his co-sharer, contained a clause to the following effect :—" You shall, on my demise, cause a fit boy to be adopted from a good family or from out of my gnatis, by my wife *B*, and getting him recognised as heir, you shall manage the zemindari and all other properties till the minor attains his majority."

Held, that the direction to *C* to cause a fit boy to be adopted by the testator's wife would in itself, in the absence of an *anumati-patra*, amount by implication to a power to his wife to adopt a fit boy from a good family (168). (*Sir Barnes Peacock.*) KALI KISHORE DUTTA GUPTA MOZUMDAR *v.* BHUSHAN CHUNDER. **(1890) 17 I.A. 159 = 18 C. 201 (211) = 5 Sar. 607.**

ISSUE AS TO—DECISION OF—PROPRIETY.

———*No adoption in pursuance of authority alleged.*

The plaintiff-appellant was the widow and sole heir-at-law of a deceased Hindu, and claimed to recover all the property, moveable and immoveable, of the deceased in that right. The respondents were trustees under a will and codicil alleged by them to have been executed by the deceased bequeathing his properties, in the main, to certain charities. The appellant denied the genuineness and validity of both instruments. The appellant also alleged in her plaint that her husband had enjoined her, in the event of the child with which she was pregnant, at his death, not proving to be a male, to adopt a son to be chosen by herself, and that matter was also put in issue in the Courts below. But no adoption according to that power was ever suggested in the Courts in India to have been actually made.

Held that, in view of that circumstance, the question whether the power to adopt had really been given could not be decided upon the appeal (338). (*Mr. Pemberton Leigh*). NAGALUTCHMEE UMMAL *v.* GOPOO NADARAJA CHETTY. **(1856) 6 M I A. 309 = 1 Sar. 543.**

ORAL AUTHORITY.

———*Evidence of witnesses as to—Ground for discrediting—Written authority set up previously by widow if and when a.*

In a case in which the defendant set up the case that the widow of the deceased had a verbal authority to adopt given by the deceased and that she had adopted the defendant in pursuance of such authority, it was strongly argued that the witnesses for the defendant who deposed to the verbal authority ought not to be believed when in conflict with those for the plaintiff, who deposed against the same, because the widow of the deceased had in a prior litigation set up a written authority.

Held that in the circumstances of the case, the argument was not well founded (31).

It may well be that according to the course, unhappily too common, of Hindu litigation, when the widow found that her father-in-law, who was the principal witness, if the story now told is true, to the giving the verbal authority to adopt, had turned round upon her and was seeking to dispossess her by setting up a false case of an adoption by her husband, she may have been advised, and may have been foolish and wicked enough to adopt the advice, to set up a written authority to adopt which really never existed. Her inconsistent conduct would not affect the credit of those witnesses who now speak to the verbal authority to adopt, and to the alleged exercise of it by her. Therefore their Lordships think that this argument ought not to have much weight with them in determining the credit of the witnesses who have sworn to the adoption (31). (*Sir James W. Colvile.*) INDROMONI CHOWDHRANI *v.* BEHARI LAL MULLICK. **(1879) 7 I.A. 24 = 5 C. 770 = 6 C. L, R. 183 = 3 Suth. 719 = 4 Sar. 120.**

———*Proof of*—Concurrent findings as to—Privy Council's interference with. *See* PRIVY COUNCIL — PRACTICE—QUESTION OF FACT—CONCURRENT FINDINGS—INTERFERENCE WITH—CASES UNDER HEAD OF.

———*Proof of*—Quantum.

Held, affirming the Courts below, that the widow of the deceased had a verbal authority from him to make an adoption to him (31). (*Sir James W. Colvile.*) INDROMONI CHOWDHRANI *v.* BEHARI LAL MULLICK. **(1879) 7 I. A. 24 = 5 C. 770 = 6 C. L.R. 183 = 4 Sar. 120 = 3 Suth. 719.**

———*Hled*, on the evidence, that an alleged oral authority to adopt had not been proved. (*Lord Macnaghten,*) SRI AMMI DEVI GARU *v.* SRI VIKRAMA DEVI GARU. **(1880) 15 I. A. 176 = 11 M. 486 = 5 Sar. 190.**

———*Held*, affirming the judgment of the High Court and reversing that of the trial court, that an oral authority to adopt alleged to have been given to a widow by her deceased husband had been satisfactorily proved. (*Sir Andrew Scoble.*) MUTSADDI LAL *v.* KUNDAN LALL. **(1905) 33 I.A. 55 = 28 A. 377 = 3 A. L. J. 246 = 1 M. L. T. 93 = 9 Sar. 42 = 8 Bom. L. R. 371 = 16 M. L. J. 174.**

In a case in which the question was whether a deceased Hindu gave his widow authority to adopt, the answer depended on the reliance to be placed, on the testimony of certain witnesses. The trial judge, an Indian, before whom all the witnesses except one had been examined, believed the evidence in favour of the alleged authority to adopt, and rejected the evidence against it. The High Court, on appeal, on the other hand, disbelieved the evidence in support of the alleged authority and accepted the evidence against it.

The alleged authority was a verbal one and was said, to have been given nearly 13 years before the date on which the evidence was taken. 5 witnesses, all of good position, deposed to having been present at the time when the authority was said to have been given. There were some discrepancies of a minor kind in their stories, discrepancies which might well be accounted for by the fact that the conversation which they described took place some thirteen years previously, but none that were important. The probabilities were at least not adverse to their story. The High Court, in disbelieving their story, relied upon the minor discrepancies. They also thought that the fact that one of the witnesses spoke of the authority verbally given as one

HINDU LAW—(*Contd.*)

Adoption—Authority to adopt—(*Contd.*)

ORAL AUTHORITY—(*Contd.*)

for the adoption of the testator's nephew's son simply, while the others, though agreeing with him as to this, added that the testator said that, if his nephew should have no son, the widow might adopt a boy in the family, was a "great discrepancy." Their Lordships agreed with the trial judge and reversed the decision of the High Court, adding that they did not agree with them in thinking that the discrepancy characterised by them as a great one was really such. (*Viscount Haldane.*) ADWAITYA PRASAD *v.* BALDEO DAS.

(1916) 20 C.W.N. 650=(1916) 1 M.W.N. 377= 4 L. W. 587=33 I. C. 852= 30 M. L. J. 635.

———The two questions in the case were (1) was the adoption of the child effected by the 1st respondent? and (2) Had that respondent authority from her late husband to make such adoption?

The trial judge held both of these questions to be answered in the negative. The High Court reversed that.

Their Lordships affirmed the High Court on both the points. (*Lord Dunedin.*) RAMDATRIN SINGH *v.* MT. CHANDRAMA KUAR. **(1924) 22 L. W. 91= A. I. R 1925 P. C. 54=89 I.C. 565.**

———*Validity of.*

According to the Hindu Law a power to adopt may be given verbally (64). (*Lord Justice Turner.*) SOONDUR KOOMAREE DEBBEEA *v.* GUDADHUR PERSHAD TEWAREE. **(1858) 7 M. I. A. 54=4 W. R. 116=1 Sar. 604= 1 Suth. 294.**

———According to all the schools of Hindu law, a widow has the right to adopt a son to her husband with his assent, which may be given either orally or in writing. (*Sir Andrew Scoble.*) MUTSADDI LAL *v.* KUNDAN LALL.

(1905) 33 I. A. 55=28 A. 377 (380)=3 A. L. J. 246= 1 M. L. T. 93=8 Bom. L. R. 371=9 Sar. 42= 16 M. L. J. 174.

PLEA IN PLAINT OF—ADMISSION OF, BY NON-TRAVERSAL IN WRITTEN STATEMENT.

———*What amounts to.*

Suit No. 316 was brought on behalf of *B*, a minor, by his natural father as his next friend for a declaration that he was the validly adopted son of one *K*, having been adopted by the appellant. *K's* widow, under an authority to adopt executed by him in her favour, one of the defendants in the suit was a daughter-in-law of *K*, being the widow of a son who died childless after the death of *K*. The answer of the daughter-in-law denied generally the truth of the plaintiff's case. If it did not directly impugn the authority to adopt relied upon by the plaintiff, it did not in terms admit it. Her defence was no doubt mainly directed to the avoidance of the adoption of *B* by setting up an adoption made by the daughter-in-law herself; but it did not admit that if the latter adoption failed, *B's* adoption was necessarily valid.

Held, that the daughter-in-law's answer did not contain an admission which, even as between *B*, and her, would have dispensed with the necessity of proving the authority to adopt (301). (*Lord Kingsdown.*) MUSSUMAT ANUNDMOYEE CHOWDHOORAYAN *v.* SHEEB CHUNDER ROY.

(1862) 9 M. I. A. 287=2 W. R. P. C. 19=Marsh. 455= 1 Suth. 485=1 Sar. 854.

PRESUMPTION AGAINST.

———(*See also* HINDU LAW—ADOPTION—AUTHORITY TO ADOPT—DEED OF—EVIDENCE AGAINST.)

———*Delay of widow in making adoption if raises a.*

Where the question was whether a deceased Rajah gave to one of his widows authority to adopt a son to him, *held*, that the interval of four years which elapsed between the

HINDU LAW—(*Contd.*)

Adoption—Authority to adopt—(*Contd.*)

PRESUMPTION AGAINST—(*Contd.*)

Rajah's death and the adoption, raised a strong presumption that his authority was not given; "for if it had been, a direction so important in a religious point of view, would naturally have been carried into effect much sooner after his death." (*Mr. Justice Parke.*) RAJAH HAIMUN CHULL SINGH *v.* KOOMAR GUNSHEAM SING.

(1834) 5 W. R. 69=1 Suth. 4 (6)=2 Knapp. 203= 1 Sar. 37.

———*See also*, RAJAH CHUNDERNATH ROY *v.* KOER GOBINDNATH ROY. **(1872) 11 B. L. R. 86= 18 W. R. 221=2 Suth. 608.**

———Under the Hindu Law when power is given to the widow to adopt there is no obligation on her part to make the adoption at once. It is well known that it takes time and trouble to select a suitable boy. Horoscopes have to be consulted and the opinions of Laudets taken. There is nothing in this case to show that there was any undue delay in making the adoption, if delay can, under the law, be taken into consideration. (*Mr. Ameer Ali.*) SHEO BAHADUR SINGH *v.* BENI BAHADUR SINGH.

(1926) 3 O. W .N. 761=1926 A. I. R. (P. C.) 97 (99)= 29 O.C. 305=98 I. C. 567.

———*Non-adoption by deceased himself if raises a.*

Many circumstances may have induced *H* rather to trust the adoption to his widow, than to make it himself; and no instrument, giving a power to adopt, could be held valid, if the non-adoption by the party making the instrument, be held to prevail against it (66). (*Lord Justice Turner*). SOONDUR KOOMAREE DEBBEEA *v.* GUDADHUR PERSHAD TEWAREE. **(1858) 7 M. I. A. 54=4 W. R. 116= 1 Suth. 294=1 Sar. 604.**

———*Young man not stricken with illness with young wife recently married—Authority by.*

The deceased was a man of only thirty years of age, and, therefore, had he not been stricken with illness, unlikely, with a young wife, to whom he had only been married three years, to have given up all hopes of having a son himself (92). (*Lord Dunedin*). RAMDATRIN SINGH *v.* MT. CHANDRAMA KUER. **(1924) 22 L. W. 91= 89 I. C. 565=A. I. R. (1925) P. C. 54.**

PRESUMPTION IN FAVOUR OF.

———A Hindu dying without male issue would be most anxious before his death, by writing or by parol, to give a power of adoption to his widow, in order that the sacrifices which are required may be performed, and that his diparted spirit may be introduced to a state of happiness (243). (*Lord Campbell*). DHURM DAS PANDEY *v.* MUSST. SHAMA SOONDARI DEBIAH. **(1843) 3 M. I. A. 229= 6 W. R. 43 P. C.=1 Suth. 147=1 Sar. 271.**

———There is in this case a strong antecedent probability that the deceased did authorize an adoption. It does not rest upon the mere presumption that on his death-bed he would desire to perform that general duty of imperfect obligation which prompts a childless Hindu to supply the want of natural male issue by adoption (177). (*Sir James W. Colvile*). SRI RAGHUNADHA *v.* SRI BROZO KISHORO.

(1876) 3 I. A. 154=1 M. 69=25 W. R. 291= 3 Sar. 583=3 Suth. 263.

———*Force of, as against presumption arising from delay of widow in making adoption.*

In this case the widow did not adopt a son until six or seven years after the Rajah's death and an inference was sought to be drawn therefrom hostile to the adoption with reference to the obligation upon the widow to act upon the power given to her by her husband as speedily as possible, and its great importance as a religious duty. But the

HINDU LAW—(*Contd.*)

Adoption—Authority to adopt—(*Contd.*)

PRESUMPTION IN FAVOUR OF—(*Contd.*)

Privy Council considered that the presumption against the adoption arising from the neglect of duty by the widow was not so great as the presumption in favour of the Rajah having given the power to adopt, because the stronger the duty to adopt a son, the stronger was the presumption that the Rajah would not like to die without leaving power to his widow to make the adoption. RAJAH CHUNDERNATH ROY *v.* KOOER GOBINDNATH ROY.

(1872) 11 B. L. R. 86 = 18 W. R. 221 = 2 Suth. 608.

———*Old age—Person in—Authority by.*

The older a person is, the more probable is it that he will execute a document authorizing his widow to adopt a son to him (77). (*Sir James W. Colvile.*) JUMOONA DASSYA CHOWDHRANI *v.* BAMASOONDARI DASSYA CHOWDHRANI. **(1876) 3 I. A. 72 = 1 C. 289 (294) = 25 W. R. 235 = 3 Sar. 602 = 3 Suth. 222.**

———*Religious feeling of Hindu—Presumption from.*

Where the plaintiff, a Hindu widow, alleged in her plaint "that in the early part of the month of August, 1844, when she was eight months pregnant with a second child, her husband had a severe attack of fever and ague ; and in order that he might obtain happiness in the next world, he authorised her, in the presence of certain parties, to adopt a boy to be chosen by herself, in the event of her expected child being born a girl," their Lordships observed : "This religious feeling is so much in accordance with the tenets and prevailing sentiments of Hindus, that the statement in itself bears no mark of improbability" (342-3). (*Mr. Pemberton Leigh.*) NAGALUTCHMEE UMMAL *v.* GOPOO NADARAJA CHETTY. **(1856) 6 M.I.A. 309 = 1 Sar. 543.**

———*Reversioner's suit to set aside adoption—Laches in institution of—Factum of adoption admitted—Transactions of open life and conduct consistent only with recognition by plaintiff himself of validity of adoption.*

The suit was by the reversionary heir of a deceased Hindu to set aside an adoption made to him by his widow about 42 years before date of suit. The adoption itself was admitted by the plaintiff before the Privy Council and the only question therefore was whether the widow had the authority of her husband to make the adoption.

The adopted son was, from the moment of his adoption, transferred from his natural home to his adopted home and had lived there all his life as a member of that household. On the last male owner's death, the local authorities made the ordinary inquiries as to the necessary entries on the register consequent upon such death, and the widow, the adoptive mother, was entered as guardian of the minor and adopted son. There were litigations of various characters during the course of the long term of years which elapsed after the adoption, and the plaintiff acted along with the adopted son, acknowledging, in the course of the proceedings, his right. The plaintiff did not question the authority to adopt during the widow's life which exceeded for 30 years beyond that of her husband.

Held that, under the circumstances of the case, the burden resting altogether apart from the law of limitation, upon any litigant who challenged the authority of an admitted adoption, was indeed of the heaviest character. (*Lord Shaw.*) KANCHUMARTHI VENKATA SEETHARAMA CHANDRA ROW *v.* KANCHUMARTHI RAJU.

(1925) A. I. R. 1925 P.C. 201 = 53 M. L J. 858.

REVOCATION OF.

———Will—Authority conferred by—Revocation of, by later will. *See* HINDU LAW—ADOPTION—AUTHORITY TO ADOPT—WILL—AUTHORITY, ETC.

HINDU LAW—(*Contd.*)

Adoption—Authority to adopt—(*Contd.*)

SECOND OR SUCCESSIVE ADOPTIONS.

———*Power of—Authority conferring—Validity.*

The Hindu Law recognises the validity of an authority given to a Hindu widow by her deceased husband to make a second, or even a third or fourth, adoption on failure of the previous adoption to attain the object for which the power is given, namely, the perpetuation of the deceased's line to discharge the obligations that rest on a pious Hindu (160). (*Viscount Haldane.*) MADANA MOHANA *v.* PURUSHOTHAMA. **(1918) 45 I. A. 156 = 41 M. 855 (859) = 24 M.L.T. 231 = (1918) M.W.N. 621 = 20 Bom. L. R. 1041 = 23 C.W.N. 177 = 28 C.L.J. 403 = 8 L.W. 167 = 5 Pat. L. J. 179 = 16 A. L. J. 725 = 46 I.C. 481 = 35 M.L.J. 138.**

——— *Power of—Authority if extends to—Question as to—Main factor for consideration in case of.*

In all cases in which the question arises whether the authority to adopt is exhausted by one adoption or whether the widow can make a second or a successive adoption on the death of the boy or boys previously adopted, the main factor for consideration is the intention of the husband. Any special instructions which he may give for the guidance of his widow must be strictly followed. Where no such instructions have been given, but a general intention has been expressed to be represented by a son, effect should, if possible, be given to that intention. (*Sir Andrew Scoble.*) KANNEPALLI SURYANARAYANA *v.* PUCHA VENKATA RAMANNA. **(1906) 33 I. A. 145 = 29 M. 382 = 10 C. W. N. 921 = 4 C. L.J. 171 = 1 M.L.T. 260 = 8 Bom. L. R. 700 = 3 A.L.J. 702 = 16 M.L.J. 276.**

STRICT COMPLIANCE WITH—NECESSITY.

———An authority given by a Hindu to his widow to adopt a son to him must, of course, be strictly pursued (356). (*Sir James W. Colvile.*) CHOWDRY PUDUM SINGH *v.* KOER OODEY SINGH. **(1869) 12 M. I. A. 350 = 12 W. R. P. C. 1 = 2 B. L. R. P. C. 101 = 2 Suth. 219 = 2 Sar. 447.**

———An authority to adopt given to a Hindu widow by her husband must be followed strictly, so that where a Hindu by his will directs his two widows, each to adopt a son, *i.e.*, authorises the simultaneous adoption of two sons, it is impossible to exercise the power otherwise than in strict compliance with its terms, though the result of an attempted adoption in accordance with the power would be in contravention of the Hindu law and so without any effective result (121-2). (*Lord Hobhouse.*) SURENDRA KESHAV ROY *v.* DOORGASOONDARI DASSEE.

(1892) 19 I. A. 108 = 19 C. 513 (525-6) = 6 Sar. 150.

———An authority to adopt given by the husband must be strictly pursued. (*Sir Andrew Scoble.*) MUTSADDI LAL *v.* KUNDAN LALL. **(1905) 33 I. A. 55 = 28 A. 377 (380) = 3 A. L. J. 246 = 1 M. L. T. 93 = 8 Bom. L, R. 371 = 9 Sar. 42 = 16 M. L. J. 174.**

SUCCESSIVE ADOPTIONS.

———*Authority conferring—Restrictions on rights of adopted son—Authority imposing—Validity of—Dayabhaga law.*

Under the Dayabhaga law, a Hindu has not only the power of authorising his widow to adopt a son to him, and in case of the death of such adopted son to make other adoptions in order to ensure the performance of those religious rites on which depend his salvation in after-life, but he can attach to such authority a direction that her estate should not be interfered with or divested during her life, just as he can postpone the succession of his natural-born

HINDU LAW—(*Contd.*)

Adoption—Authority to adopt—(*Contd.*)

SUCCESSIVE ADOPTIONS—(*Contd.*)

son by interposing a life-estate (17). (*Mr. Ameer Ali.*) BHUPENDRA KRISHNA GHOSE *v.* AMARENDRA NATH DEY. **(1915) 43 I. A. 12 = 43 C. 432 = (1916) 1 M. W. N. 73 = 20 C. W. N. 169 = 14 A. L. J. 167 = 3 L. W. 252 = 19 M. L. T. 97 = 34 I. C. 892 = 23 C. L. J. 169 = 18 Bom. L. R. 347 = 30 M. L. J. 110.**

———Power of—Authority conferring — Validity. *See* HINDU LAW—ADOPTION—AUTHORITY TO ADOPT—SECOND OR SUCCESSIVE ADOPTIONS.

(1918) 45 I. A. 156 (160) = 41 M. 855 (859).

TRUSTEES WHOSE CONSENT IS REQUIRED BY.

———*Duty of—Advantages to widow of not adopting—Informing her of—No duty as to.*

In a case in which a Hindu testator had authorised his wife to adopt a son to him with the consent of trustees whom he had appointed under his will, and she had made an adoption with their consent, the trustees were charged with impropriety of conduct in that they failed in their duty of informing her as to her rights. It was contended that the trustees were under a duty to inform the widow that if she failed to adopt. she would herself come into the position of being heiress to her husband's estate. The widow was said to have been injured because she had not been informed that she could win for herself his temporal estate by violation of her husband's dying wishes, and at the price of sacrificing his soul's happiness.

Held, that it was no part of the duty of the trustees to suggest that infamous alternative to her mind (153-4).

Their duty was to give effect to the wishes of the deceased, and his wishes were in accord with the religious belief of Hindus in regard to adoption (154). (*Lord Shaw.*) BAL GANGADHAR TILAK *v.* SHRINIVAS PANDIT. **(1915) 42 I. A. 135 = 39 B. 441 (470) = 17 Bom. L. R. 527 = 19 C. W. N. 729 = 22 C. L. J. 1 = 13 A. L. J. 570 = 18 M. L. T. 1 = (1915) M. W. N. 554 = 2 L. W. 611 = 29 I. C. 639 = 29 M. L. J. 34.**

———*Majority of—Consent of—Sufficiency of—Trustees who declined to act—Consent of—Necessity.*

Where a Hindu testator authorised his widow to adopt a son to him with the consent of five trustees whom he had appointed under his will, *held*, that the consent of a trustee who declined to act was unnecessary to validate an adoption by the widow (154).

Quaere whether the consent of the majority of the trustees was not enough to validate the adoption (154). (*Lord Shaw.*) BAL GANGADHAR TILAK *v.* SHRINIVAS PANDIT. **(1915) 42 I. A. 135 = 39 B. 441 (470-1) = 17 Bom. L. R. 527 = 19 C. W. N. 729 = 22 C. L. J. 1 = 13 A. L. J. 570 = 18 M. L. T. 1 = (1915) M. W. N. 554 = 2 L. W. 611 = 29 I. C. 639 = 29 M. L. J. 34.**

VALIDITY OF.

———Adopted son—Rights of—Restrictions on—Authority imposing. *See* HINDU LAW—ADOPTION—AUTHORITY TO ADOPT—SUCCESSIVE ADOPTIONS.

(1915) 43 I. A. 12 (17) = 43 C. 432.

———Co-widows—Authority to. *See* HINDU LAW—ADOPTION—CO-WIDOWS.

———*Decision as to, between widow and adopted son—Effect of, as between reversioners and another boy adopted under same authority.*

A suit was instituted on behalf of *B*, a minor, for a declaration that he was the validly adopted son of one *K*, having been adopted by the appellant, *K's* widow, under an authority to adopt executed by him in her favour. The defendants in the suit were the appellant, a daughter-in-law of *K*, who set up an authority to adopt by her husband in her favour and the adoption of *G* in pursuance thereof, and other persons. Pending the suit, the daughter-in-law died, and *G* was brought on record in her place. The first Court found against the authority to adopt set up in the plaint decided against the title of *B*, and dismissed the suit. Against that decree *B* preferred an appeal and died pending the appeal; and the appellant was substituted on record for him on her own application. The appellate Court concurred in the findings of the lower Court and dismissed the appeal.

On appeal by the appellant from the decree in appeals their Lordships observed: The appellant is now entitled as a Hindu female heiress to the whole estate; if she makes any further adoption, the validity of that adoption will be probably tried between the party adopted and those who will be the heirs of her husband on her death. In any such suit it is difficult to see how the decree in this suit can be admitted as evidence for the purpose of showing the invalidity of the instrument of adoption (302). (*Lord Kingsdown.*) MUSSUMAT ANUNDMOYEE CHOWDHOORAYAN *v.* SHEEB CHUNDER ROY. **(1862) 9 M. I. A. 287 = 2 W. R. P. C. 19 = 1 Suth. 485 = Marsh 456 = 1 Sar. 854.**

———Deed containing disposition of property and conferring authority—Registration of, as a will and not as authority to adopt. *See* HINDU LAW—ADOPTION—AUTHORITY TO ADOPT—DEED OF — DISPOSITION OF PROPERTY, ETC. **(1925) 52 I. A. 305 (309) = 48 M. 614.**

———Second or successive adoptions—Power of—Authority conferring. *See* HINDU LAW—ADOPTION—AUTHORITY TO ADOPT—SECOND OR SUCCESSIVE ADOPTIONS.

(1918) 41 I. A. 156 (160) = 41 M. 855 (859).

———Successive adoptions—Authority for. *See* HINDU LAW—ADOPTION — AUTHORITY TO ADOPT— SUCCESSIVE ADOPTIONS.

———Widow and her co-executors — Authority to. *See* HINDU LAW—ADOPTION — AUTHORITY TO ADOPT—CONSTRUCTION OF—WIDOW AND HER CO-EXECUTORS.

(1900) 27 I. A. 128 (134) = 27 C. 996 (1002-3).

———Will disposing of property and giving authority to adopt—Invalidity of dispositions of property—Effect of, on validity of authority. *See* HINDU LAW—ADOPTION—AUTHORITY TO ADOPT—WILL GIVING.

(1907) 34 I. A. 107 (113) = 31 B. 373 (379-80).

WIDOW'S RIGHT TO SUE ON BEHALF OF ESTATE.

———*Effect of authority to adopt on.*

The mere fact that a Hindu widow has authority from her husband to make an adoption to him does not, before she exercises that authority and makes an adoption by virtue of it, destroy her right to sue in her individual character as widow to recover her husband's estate (206). (*Mr. Pemberton Leigh.*) BAMUNDOSS MOOKERJEA *v.* MUSSAMUT TARINEE. **(1858) 7 M. I. A 169 = 1 Sar. 616.**

WILL—AUTHORITY TO ADOPT GIVEN BY—REVOCATION OF, BY LATER WILL.

———*Later will making inconsistent dispositions of property disposed of by earlier will but not in any way affecting authority to adopt given by earlier will—Dispositions in later will invalid—Effect—Dependent relative revocation—Applicability of doctrine of.*

The sole surviving coparcener of a Hindu family made a will in 1889, which contained an appointment of his wife and his daughter to be executrixes, and consisted of two

HINDU LAW—(*Contd.*)

Adoption—Authority to adopt—(*Contd.*)

WILL—AUTHORITY TO ADOPT GIVEN BY—REVOCATION OF, BY LATER WILL—(*Contd.*)

parts, namely, (1) a disposal of ancestral property of the family, and (2) an authority to his widow in a certain event to take a son by adoption.

The testator had nominated as his son, *V*, a son of his daughter, but had not completed his adoption. By the will, the testator directed that, if he himself should die before completing the adoption of *V*, his wife should, after his death, complete the necessary ceremonies and take *V* in adoption. The will further directed that, if *V* should predecease the testator's wife, she might take in adoption one of *V's* brothers, and give his properties to that son.

The testator completed the adoption of *V*, and subsequently, in March, 1890, he made another will, which disclosed on its face that the property of which it purported to dispose was ancestral, and provided that, in case *V* should happen to die at any time, his issue should enjoy the property disposed of by the will of 1889, and that, if *V* died issueless, it should go to his brothers. That will of 1890, however, contained no words of revocation of the previous will, was wholly silent as to adoption, and did not refer in any way by revocation or otherwise to the clause in the will of 1889, which gave the widow a contingent power of adoption.

V died after the testator but during the lifetime of his widow. Subsequently the will of 1890 was, in a suit by the reversionary heirs of the testator, declared null and void and inoperative according to Hindu Law. In that state of things, the testator's widow adopted, in 1906, *P*, a brother of *V*.

Held, affirming the Court below, that the contingent power to adopt in the will of 1889 was unaffected by anything in the later will of 1890, and that, in 1906, the widow had the power of adoption which she exercised (25-6).

The will of 1889 consists of two parts, and assuming for the moment that the will of 1889 has been revoked as regards the part which effects a disposal of the property, it does not touch the other part, namely, that which gives a power to adopt (24). (*Lord Wrenbury.*) VENKATANARAYANA PILLAI *v.* SUBBAMMAL. **(1915) 43 I. A. 20 = 39 M. 107 = 18 Bom. L. R. 372 = 20 C. W. N. 234 = (1916) 1 M. W. N. 97 = 3 L. W. 177 = 19 M. L T. 147 = 12 A. L. J. 178 = 32 I. C. 373 = 23 C. L. J. 366 = 29 M. L. J. 851.**

WILL GIVING.

———*Dispositions of property made by—Validity of—Validity of authority if dependent upon.*

The surviving coparcener of a Mitakshara joint family by his will made certain dispositions of property and also gave his widow power to adopt a son. The dispositions became invalid by reason of the birth of a posthumous son to his pre-deceased brother, but they were within the competence of the surviving coparcener at the date of the will and at the date of his death, and were only liable to be defeated in one event (which in fact happened), namely, his brother's widow giving birth to a son. And the will expressly said that, supposing that event to occur, the adoption should still be made.

Held, that the power of the surviving coparcener's widow to adopt was not, upon the true construction of the will, dependent upon the dispositions of property made by the will taking effect (113). (*Sir Arthur Wilson.*) BACHOO HURKISONDAS *v.* MANKOREBAI. **(1907) 34 I. A. 107 = 31 B. 373 (379-80) = 2 M. L. T. 295 = 6 C. L. J. 1 = 11 C. W. N. 769 = 9 Bom. L. R. 646 = 17 M. L. J. 343.**

———Execution of—Capacity for—Proof of—Quantum. *See* HINDU LAW—WILL—EXECUTION — CAPACITY—

HINDU LAW—(*Contd.*)

Adoption—Authority to adopt—(*Contd.*)

WILL GIVING—(*Contd.*)

PROOF—QUANTUM—AUTHORITY TO ADOPT.

(1926) A. I. R. 1926 P. C. 97 (99).

———*Proof of—Quantum—Will making disposition of property-- Proof of—Quantum—Distinction.*

In a case in which the question was whether a Hindu on his death-bed, the day before his death, did execute a document authorising his widow to adopt, and there was some obscurity as to the preparation of the draft of the deed, and the actual giving of instructions for it by the deceased, their Lordships observed as follows :—" If this were a case in which a will was propounded, giving benefits to various parties and making a disposition of property, as to which it would be necessary to satisfy the court that the testator fully knew what he was about, the evidence would be extremely defective. But when the question is only as to the mode of carrying out a permission to adopt, to which the party had signified his assent, the defect in the evidence becomes less material" (79).(*Sir James W. Colvile.*) JUMOONA DASSYA CHOWDHRANI *v.* BAMASOONDARI DASSYA CHOWDHRANI. **(1876) 3 I. A. 72 = 1 C. 289 = 25 W. R. 235 = 3 Sar. 602 = 3 Suth. 222.**

WILL INOPERATIVE AS SUCH IF MAY BE A VALID.

———A document which purports to be a will but is inoperative as such may nevertheless constitute a valid authority to adopt (308-9). (*Lord Salvesen.*) KONDAPALLI VIJAYARATNAM *v.* MANDAPAKA SUDARSANA RAO.

(1925) 52 I. A. 305 = 48 M. 614 = 23 A. L. J. 799 = 42 C. L. J. 38 = (1925) M. W. N. 522 = 27 Bom. L. R. 1082 = 22 L. W. 435 = 6 L. R. P. C. 157 = 30 C. W. N. 193 = A. I. R. 1925 P. C. 196 = 89 I. C. 733 = 49 M. L. J. 247.

WILL OR—TEST—DEED—CONSTRUCTION.

——— A Hindu, who had a son then living, executed an instrument in the following terms in favour of his wife :—"This is an Onoomattee Puttro to the following purport—Prior to the birth of a male child from your womb, I executed in your favour an Onoomattee Puttro on the subject of your receiving an adopted son. Subsequently, by the will of God, you have given birth to a male child. Still, having regard to the future, I have again given you permission. If, which God forbid, the male child of your body be non-existent, then you will adopt a son from my race or from a different race, for the purpose of performing mine or your Sraddh and other rites, and for the Sheba of the Gods, and for the succession to the zemindary and other property, on which, if the adopted son be non-existent, which God forbid, then you shall, according to your pleasure, on failure of one, adopt other sons in succession, to avoid the extinction of the Pinda ; that dattaka son shall be entitled to perform your and my Sraddh, etc., and of our ancestors." On a construction of the instrument, the Sudder Dewanny held that it was of the nature of a testamentary disposition, and that it created a limitation on failure of male issue of the testator, in the lifetime of his wife, to the son to be adopted by her as a *persona designata*. *Held* by their Lordships, reversing the decision of the Court below, that the instrument was merely, what it purported to be, a deed of permission to adopt, and was not of a testamentary character.

The instrument was registered as a deed in the lifetime of the maker ; it contains no words of devise, nor was it the intention of the maker that it should contain any disposition of his estate, except so far as such disposition might result from the adoption of a son under it. He mentions the objects which induced him to make the deed—religious motives, the perpetuation of his family, and the succession to his property ; but it was by the adoption, and only by the

HINDU LAW—(*Contd.*)

Adoption—Authority to adopt—(*Contd.*)

WILL OR—TEST—DEED—CONSTRUCTION—(*Contd.*)

adoption, that those objects were to be secured, and only to the extent in which the adoption could secure them. (307-9). (*Lord Kingsdown.*) MUSSUMAT BHOOBUN MOYEE DEBIA *v.* RAM KISHORE ACHARJ CHOWDHRY.

(1865) 10 M. I. A 279 = 3 W. R. P. C. 15 = 1 Suth. 574 = 2 Sar. 111.

———A deed executed by a Hindu in favour of his wife was called a will, in the body of the deed. Its only operative contents were as follows: "I have been laid up with severe bodily illness for about the last seven months. Consequently having had serious misgivings, and not having until now been blessed with an heir-apparent for want of divine favour, I have consented to your adopting a son at your pleasure and conducting the management of the estate in the best manner. None of my heirs shall have cause to raise disputes touching this matter. This will has been executed with my consent."

Held that the document was not a will, but only a power to adopt and as such ought to have been registered as being an authority to adopt a son, not conferred by a will within the meaning of S. 17 of the Registration Act of 1877.

The references to property that occur in the deed are no more than consequences of the guardianship of the wife, and the character of being a will is not established independently of these. (*Viscount Haldane.*) JAGANNATH BHEEMA DEO *v.* KUNJA BEHARI DEO. **(1921) 48 I. A. 482 = 44 M. 733 = (1921) M. W. N. 713 = 24 Bom. L. R. 600 = 30 M. L. T. 124 = 26 C. W. N. 374 = 64 I. C. 458 = A.I.R. 1922 P. C. 162 = 41 M. L. J. 648.**

WRITING—REGISTRATION—OUDH ESTATES ACT OF 1869.

———Necessity under. *See* OUDH ESTATES ACT OF 1869—AUTHORITY TO ADOPT.

(1888) 16 I. A. 53 (57) = 16 C. 556 (562).

Adoption—Capacity to give in.

———*Father—Mother after death of father—Person to whom right delegated.*

Under the Hindu Law, it is essential to the validity of an adoption that the child should be "given" to the adopter by the father, or, if he be dead, by the mother. No other person has the right, nor can such right be delegated to anybody else (236). (*Mr. Ameer Ali.*) DHANRAJ JOHARMAL *v.* SONI BAI. **(1925) 52 I. A. 231 = 52 C. 482 = 23 A. L. J. 273 = 2 O. W. N. 335 = 21 N. L. R. 50 = 6 L. R. P. C. 97 = 27 Bom. L. R. 837 = (1925) M. W. N. 692 = A. I. R 1925 P. C. 118 = 87 I. C. 357 = 49 M. L. J. 173.**

Adoption—Capacity to be adopted.

———*Brother's son—Law as to—Text basis of—Applicability of rule to case of divided family.*

The whole of the law supposed to affirm the necessity of adopting a brother's son seems to have been deduced by the ancient commentators, with what logical consequence it is unnecessary to consider, from a text of Manu, which says:—"If one among brothers of the whole blood be possessed of male issue, Manu pronounces that they all are fathers of the same by means of that son." The direct consequence of this might well be that in an undivided family (the normal state of a Hindu family) the nephew, without further act of affiliation, would effectually perform the funeral obsequies of his uncle, whose share in the joint family property, in the absence of male issue, would pass to his coparceners by survivorship. But in the case of a separated Hindu, the right of performing his obsequies, with the consequent right of succession, is, in the absence of male issue, in his

HINDU LAW—(*Contd.*)

Adoption—Capacity to be adopted—(*Contd.*)

widow, or failing her, in his daughter and daughter's issue (50-1). (*Sir James Colvile.*) SRIMATI UMA DEVI *v.* GOKOOLANUND DAS. **(1878) 5 I. A. 40 = 3 C. 587 (598-9) = 2 C. L. R. 51 = 3 Sar. 786 = 3 Suth. 499.**

———*Brother's son—Texts relating to—Mandatory or recommendatory — Distant relation—Adoption of, when brother's son available—Validity.*

The question was as to the validity of the defendant's adoption. The adoption was made by a deceased person who was governed by the Benares School of law, and who was a divided Hindu. The objection to the adoption was that it was one of a very distant relation, not even within the class of the deceased's sapindas, made in violation of the preferential right of *D*, the only son of the deceased's brother by the whole blood, to be adopted.

Held, that the defendant's adoption was not invalid (54).

It may be conceded that the texts of the Hindu law do in terms prescribe that a Hindu wishing to adopt a son shall adopt the son of his whole brother, if such a person be in existence and capable of adoption, in preference to any other person; and qualify the otherwise fatal objection to the adoption of an only son of the natural father, by saying that, in the case of a brother's son, he should, nevertheless, be adopted in preference to any other person as a dvyamushyana, or son of two fathers (50).

The grave question, however, that arises is whether the injunctions just referred to are merely binding upon the consciences of pious Hindus as defining what they ought to do, or are so imperative as to have the force of laws, the violation whereof should be held in a court of justice to invalidate an adoption which has otherwise been regularly made (50).

The omission to adopt a brother's son is not an objection which at law invalidates an adoption otherwise regularly made, and so destroys the civil status of the person thus adopted (51). (*Sir James W. Colvile.*) SRIMATI UMA DEVI *v.* GOKOOLANUND DAS. **(1878) 5 I. A. 40 = 3 C. 597 (597-8) = 2 C. L. R. 51 = 3 Sar. 786 = 3 Suth. 499.**

———*Daughter's son.*

Their Lordships apprehend that a Hindu cannot, in the ordinary and proper sense of the term, adopt his daughter's son as a son (233). (*Sir James W. Colvile.*) MAHARAJAH PERTAB NARAIN SINGH *v.* MAHARANEE SUBHAO KOOER. **(1877) 4 I. A. 228 = 3 C. 626 (631) = 1 C. L. R. 113 = 3 Sar. 740 = 3 Suth. 458 = R. & J.'s No. 46.**

———*Daughter's son—General rule of Hindu law as to —Custom.*

The general rule of Hindu law, no doubt, is that a daughter's son cannot be adopted; but this rule may be varied by family custom, and often is so varied in the Punjab. (*Sir Arthur Wilson.*) RUP NARAIN *v.* GOPAL DEVI. **(1909) 36 I. A. 103 (110) = 36 C. 780 (795) = 10 C. L. J. 58 = 13 C. W. N. 920 = 5 M. L. T. 423 = 11 Bom. L. R. 833 = 6 A. L. J. 567 = 3 I. C. 382 = 93 P. R. 1909 = 146 P. W. R. 1909 = 68 P. L. R. 1910 = 19 M. L. J. 548.**

———*Daughter's son—Invalidity in law of adoption of—Plea of—Permissibility of, after close of evidence.*

In a case in which the plaintiffs' right of suit depended upon whether *W* was the adopted son of *S*, after all the evidence was closed, and when nothing but argument remained, the defendant for the first time sought to raise the point that even if the adoption took place in fact, it was invalid in law on the ground that under Hindu law a daughter's son could not be adopted. The trial Judge refused to entertain the question at that stage,

HINDU LAW—(*Contd.*)

Adoption—Capacity to be adopted—(*Contd.*)

Held, that he was right in doing so.

If the legal point had been duly raised in proper time by the pleadings or issues, it would have been examined with the aid of any evidence adduced on either side bearing upon the question. Not having been so raised, it was rightly disallowed. (*Sir Arthur Wilson.*) RUP NARAIN *v.* GOPAL DEVI. **(1909) 36 I. A. 103 (110-1) = 36 C. 780 (795) = 10 C. L. J. 58 = 13 C. W. N. 920 = 5 M. L. T. 423 = 11 Bom. L. R. 833 = 6 A. L. J. 567 = 3 I. C. 382 = 93 P. R. 1909 = 146 P. W. R. 1909 = 68 P. L. R. 1910 = 19 M. L. J. 548.**

———*Daughter's son—Sister's son—Maternal aunt's son.*

As regards capability to be adopted, the sons of sisters, sons of daughters, and sons of maternal aunts, stand on the same footing, and the authorities which apply to any of these classes apply to all. (*Lord Hobhouse.*) BHAGWAN SINGH *v.* BHAGWAN SINGH. **(1899) 26 I.A. 153 (160) = 21 A. 412 (418) = 3 C. W. N. 454 = 1 Bom L. R. 311 = 7 Sar. 474.**

———*Legal marriage being possible between adopter and mother of adoptee—Rule as to—Scope of.*

The rule of Hindu law that a legal marriage must have been possible between the adopter and the mother of the adopted boy refers to their relationship prior to marriage (162). (*Sir John Edge.*) PUTTU LAL *v.* PARBATI KUNWAR. **(1915) 42 I. A. 155 = 37 A. 359 (366-8) = 13 A. L. J. 721 = 19 C. W. N. 841 = 22 C. L. J. 190 = 17 Bom. L. R. 549 = 18 M. L. T. 61 = 2 L. W. 881 = (1915) M. W. N. 514 = 29 I. C. 617 = 29 M. L. J. 63.**

———*Married boy—Twice-born classes—General law—Mayukha—Custom.*

By the general Hindu law applicable to the twice-born classes a boy cannot be adopted after his marriage. To this rule there is an exception in the case of persons governed by the Mayukha. Other exceptions have been held to exist by custom. (*Sir Arthur Wilson.*) RUP CHAND *v.* JAMBU PARSHAD. **(1910) 37 I. A. 93 (103) = 7 A. L. J. 349 = 14 C. W. N. 545 = 12 Bom. L. R. 402 = 11 C. L. J. 454 = 6 I. C. 272.**

———Maternal aunt's son. *See also* HINDU LAW—ADOPTION—CAPACITY TO BE ADOPTED—DAUGHTER'S SON—SISTER'S SON.

———*Maternal aunt's son—Twice-born classes.*

Held, that the adoption by a Hindu of one of the twice-born classes of his mother's sister's natural son was invalid.

The precepts condemning such adoptions are not monitory only, but are positive prohibitions, and their effect is to make such adoptions wholly void. That has been settled in such a way and for such a length of time as to make it incompetent to a Court of Justice to treat the question now as an open one. (*Lord Hobhouse.*) BHAGWAN SINGH *v.* BHAGWAN SINGH. **(1899) 26 I. A. 153 (166) = 21 A. 412 (424) = 3 C. W. N. 454 = 1 Bom. L. R. 311 = 7 Sar. 474.**

———Only son. *See* HINDU LAW—ADOPTION—WIDOW—ADOPTION BY—VALIDITY OF—ONLY SON.

———*Held*, that an adoption of an only son having taken place in fact is not null and void under the Hindu law. (*Lord Hobhouse.*) SRI BALUSU GURULINGASWAMI *v.* SRI BALUSU RAMALAKSHMAMMA. **(1899) 26 I.A. 113 = 22 M. 398 = 21 A. 460 = 3 C. W. N. 427 = 1 Bom. L. R. 226 = 7 Sar. 330 = 9 M. L. J. 67.**

———*Orphan.*

A boy who has lost both his parents cannot be adopted (234). (*Mr. Ameer Ali.*) DHANRAJ JOHARMAL *v.* SONI BAI. **(1925) 52 I. A. 231 = 52 C. 482 = 23 A. L. J. 273 = 2 O. W. N. 335 = 21 N. L. R. 50 = 6 L. R. P. C. 97 = 27 Bom. L. R. 837 = (1925) M. W. N. 692 = A. I. R. 1925 P. C. 118 = 87 I. C. 357 = 49 M. L. J. 173.**

———According to the law of the Mitakshara, as recognised by the School of Benares, an orphan cannot be adopted (410). (*Sir John Edge.*) RAMKISHORE *v.* JAINARAYAN. **(1921) 48 I. A. 405 = 49 C. 120 (126) = 20 A. L. J. 857 = 15 L. W. 144 = (1922) M. W. N. 125 = 30 M. L. T. 144 = 26 C. W. N. 881 = A. I. R. 1922 P. C. 2 = 64 I. C. 782 = 42 M. L. J. 80.**

———Sister's son. *See also* HINDU LAW—ADOPTION—CAPACITY TO BE ADOPTED — DAUGHTER'S SON—SISTER'S SON.

———Though the objection was raised that the adoption of the respondent was illegal, on the ground that he was the adopter's sister's son, very little was said about it (511-2). (*Lord Chelmsford.*) RAMALINGA PILLAI *v.* SADASIVA PILLAI. **(1864) 9 M. I. A. 506 = 1 W. R. P. C. 25 = 1 Suth. 538 = 2 Sar. 57.**

———*Semble* a Hindu Brahmin cannot lawfully adopt his own sister's son (193). (*Lord Watson.*) MUSSAMMAT SUNDAR *v.* MUSSAMMAT PARBATI. **(1889) 16 I. A. 186 = 12 A. 51 (56) = 5 Sar. 448.**

———Under the general Hindu law applicable to the twice-born classes, the adoption of a sister's son is wholly void. (*Sir Andrew Scoble.*) MUSSUMMAT LALI *v.* MURLI DHAR. **(1906) 33 I. A. 97 (103-4) = 28 A. 488 (494) = 3 A.L.J. 415 = 10 C. W. N. 730 = 8 Bom. L. R. 402 = 3 C. L. J. 594 = 1 M. L. T. 171.**

———*Upanayanam—Boy whose upanayanam ceremony has been performed—Gotra same—Gotra different—Distinction.*

It may be added that in the treatment in the same volume (Strange's Hindu Law, p. 104) of the celebration of the Upanayana rite, or the investiture with the sacred thread, this is laid down: "With respect to the non-eligibility of a person for adoption on whom the Upanayana rites have been performed, it is much disputed. The more reasonable opinion would appear to be that he is eligible if of the same gotra (family); non-eligible if of a different gotra from the adopter; that if of the same gotra the datta homam, though proper, is not necessary (151). (*Lord Shaw.*) BAL GANGADHAR TILAK *v.* SHRINIVAS PANDIT. **(1915) 42 I. A. 135 = 39 B. 441 (466) = 17 Bom. L. R. 527 = 19 C. W. N. 729 = 22 C. L. J. 1 = 13 A. L. J. 570 = 18 M. L. T. 1 = (1915) M. W. N. 554 = 2 L. W. 611 = 29 I. C. 639 = 29 M. L. J. 34.**

———*Upanayanam—Boy whose upanayanam ceremony has been performed—Kashmere Brahmins settled in Amritsar—Custom among.*

R, a Kashmere Brahmin settled in Amritsar, adopted the 1st respondent, his brother's son. At the date of his adoption, the respondent was 17 years old, and had been invested with the sacred thread. There was no evidence as to what school of Hindu law Kashmiri Brahmins living in Kashmere were subject to, and there was no suggestion that the family of the parties to the suit was living in the Punjab subject to any school of Hindu law peculiar to Kashmere. The adoption had been recognised by the members and the friends of the family for a period of over 16 years; the respondent performed the funeral obsequies of *R* and his widow, and he incurred fairly considerable expense in giving his sister by adoption in marriage.

Held, that the adoption was valid under the custom governing the parties. (*Sir John Edge.*) DURGA DEVI *v.*

HINDU LAW—(*Contd.*)

Adoption—Capacity to be adopted—(*Contd.*)

SHAMBHU NATH. **(1924) 51 I. A. 182 (190-1) = 5 Lah. 200 = 22 A. L. J. 394 = 26 Bom. L. R. 557 = A. I. R 1924 P. C. 113 = 34 M. L. T. 93 = (1924) M. W. N. 434 = 20 L. W. 216 = 29 C.W.N. 106 = 80 I. C. 965 = 46 M. L. J. 661.**

Adoption—Capacity to take in.

———*Dead man—Adoption to—Widow—Other persons—Right of.*

No one can adopt a son to a dead man except his widow (134). (*Lord Hobhouse.*) AMRITO LAL DUTT *v.* SURNOMOYE DASI. **(1900) 27 I.A. 128 = 27 C. 996 (1002) = 4 C. W. N. 549 = 2 Bom. L. R. 446 = 7 Sar. 633.**

———*Dying man—Adoption by—Will by—Proof of capacity in cases of.*

A judge who decides in favour of a disputed adoption or will in a case of questioned capacity of a dying man, must apply his mind not simply to the act of adoption in fact, or to the execution in fact of a will, but he must be careful to see that the jealous requisitions of the law as to the proof of acts of persons done *in extremis* are fully complied with (436-7). (*Lord Chelmsford.*) TAYAMMAUL *v.* SESHACHALLA NAIKER. **(1865) 10 M. I. A. 429 = 2 Sar. 139.**

———In a case in which the validity of an adoption alleged to have been made, and of a will alleged to have been executed, by a deceased person depended upon the question whether the deceased was of sufficient capacity at the time to understand the nature and object of those acts, and voluntarily gave an intelligent consent to their performance, the evidence showed that the state of the deceased on the day in question was that of a dying man, almost continually insensible, though occasionally roused to consciousness by loud tones, or by pungent applications to his nostrils, but almost immediately afterwards relapsing into a state of insensibility, and when momentarily conscious, with his mind quite inert and instantly fatigued upon the slightest exertion.

Held, reversing the concurrent decision of the Courts below, that on the day in question the deceased was quite incompetent to perform the adoption, or any other act requiring the exercise of the powers of judgment and reflection (435).

How is it possible that a person in such a condition could be capable of any act requiring judgment and reflection, especially one to which no antecedent circumstances appear to have led, and for which the enfeebled and scarcely conscious mind was unprepared. In such a state as that described, even if the mind were passively awake to the suggestions made to it, it would naturally cling to repose, and yield, for the sake of it, to any external suggestion. Viewing the adoption and the will together, they present every appearance of a concerted family arrangement. If the law were to countenance acts of this description, performed at such a time and under such circumstances, without the clearest and most cogent evidence to establish their validity, relations and managers would be encouraged to advance their own private notions of what might be advisable to be done for the good of the family, and to ascribe acts to a dying man in which he would have been the merely passive instrument to prolong their own gain and authority.

The deceased was on the day in question quite incompetent to perform the adoption, or any other act requiring the exercise of the powers of judgment and reflection (434-5). (*Lord Chelmsford.*) TAYAMMAUL *v.* SESHACHALLA NAIKER. **(1865) 10 M. I. A. 429 = 2 Sar. 139.**

———Grandfather. *See* HINDU LAW — ADOPTION—CEREMONIES OF—GIVING AND TAKING.
(1925) 22 L. W. 355 (359).

HINDU LAW—(*Contd.*)

Adoption—Capacity to take in—(*Contd.*)

———*Hindu himself or his widow after his death.*

An adoption may be made either by a man in his lifetime, or by one of his wives, after his death, under a power conferred upon her for that purpose by her husband (426). (*Mr. Pemberton Leigh.*) HURADHUN MOOKURJIA *v.* MUTHORANATH MOOKURJIA. **(1849) 4 M. I. A. 414 = 7 W. R. P. C. 71 = 1 Suth. 213 = 1 Sar. 375.**

———Leper. *See* HINDU LAW — INHERITANCE—EXCLUSION FROM—GROUNDS—LEPROSY IF AND WHEN ONE. **(1924) 51 I. A. 177 = 48 B. 363.**

———*Minor of age of discretion.*

Semble where a minor is not under the Court of Wards, but has attained years of discretion according to the Hindu law, he is capable of executing a document authorising his widow to adopt a son (83-4). (*Sir James W. Colvile.*) JUMOONA DASSYA CHOWDHRANI *v.* BAMASOONDARI DASSYA CHOWDHRANI. **(1876) 3 I.A. 72 = 3 Sar. 602 = 1 C. 289 (295-6) = 25 W. R 235 = 3 Suth. 222.**

Adoption—Ceremonies of.

DATTA HOMAM.

What is—Legal or religious requisite—Test. *See* HINDU LAW—ADOPTION—CEREMONIES OF—LEGAL OR RELIGIOUS REQUISITES. **(1915) 42 I. A. 135 (148-9) = 39 B. 441 (463-4).**

———*Absence of—Presumption from, in doubtful cases—Sudras in Bengal.*

Amongst sudras in Bengal no ceremonies are necessary to render an adoption valid in addition to the giving and taking the child in adoption (35).

Their Lordships would have been sorry to come to a different conclusion, because, although it may be true that the use of the ceremony in question (Datta Homam) on the occasion of an adoption is so general amongst sudras, that the absence of it may fairly cast suspicion upon a doubtful case of adoption, yet to hold that where the giving and taking of a child in adoption are established, the omission of that ceremony invalidates that adoption, would mischievously strengthen the meshes of the purely ceremonial law, and to tend to encourage suits to impeach *bona fide* adoptions (37). (*Sir James Colvile.*) INDROMONI CHOWDHRANI *v.* BEHARI LAL MULLICK. **(1879) 7 I. A. 24 = 5 C. 770 (775) = 6 C. L. R. 183 = 4 Sar. 120 = 3 Suth. 719.**

———*Brahmins—Necessity among.*

The Madras High Court has recently decided that even in the case of an adoption by a Brahmini woman the ceremony of datta homam is not necessary. Their Lordships do not intend to consider to what extent the Madras decision is correct, and how far the ceremonies may be omitted in the case of adoption by a Brahmini woman (36). (*Sir James Colvile.*) INDROMONI CHOWDHRANI *v.* BEHARI LAL MULLICK. **(1879) 7 I. A. 24 = 5 C. 770 (775) = 6 C. L. R. 183 = 3 Suth. 719 = 4 Sar. 120.**

———*Performance of, subsequent to giving and taking—Sufficiency of, to supply defect in adoption.*

Assuming that the ceremony of datta homam is necessary to render an adoption valid, *Quære* as to the effect of the subsequent performance of such ceremony as a remedy of any defect which up to that time may have existed in the adoption (37).

Semble the defect may be supplied by the subsequent performance of the ceremony in cases in which it was from the first announced that the ceremonies usually incident to an adoption would take place at a subsequent time (37).

HINDU LAW—(*Contd.*)

Adoption—Ceremonies of—(*Contd.*)

DATTA HOMAM—(*Contd.*)

(*Sir James W. Colvile.*) INDROMONI CHOWDHRANI *v.* BEHARI LAL MULLICK. (1879) 7 I. A. 24 = 5 C. 770 (775-6) = 6 C. L. R. 183 = 4 Sar. 120 = 3 Suth. 719.

———*Sudras—Necessity among.*

The use of the datta homam is not necessary for adoption within the Sudra caste. The explanation is given in a sentence by Strange in his Hindu Law in which it is laid down that "ceremonial adoption cannot be necessary in the case of a Sudra, since by the datta homam the adopted son is offered from the stock (gotram) of the natural to that of his adopted father; and Sudras have no gotra" (151). (*Lord Shaw.*) BAL GANGADHAR TILAK *v.* SHRINIVAS PANDIT. (1915) 42 I. A. 135 = 39 B. 441 (466) = 17 Bom. L. R. 527 = 19 C .W. N. 729 = 22 C. L. J. 1 = 13 A. L. J. 570 = 18 M. L. T. 1 = (1915) M. W. N. 554 = 2 L. W. 611 = 29 I. C. 639 = 29 M L. J. 34.

———Twice-born classes—Necessity among. *See* under HINDU LAW—ADOPTION—CEREMONIES OF—GIVING AND TAKING—MODE OF. (1880) 7 I. A. 250 (256) = 6 C. 381 (388-9).

———*Twice-born classes—Necessity among—Adopted boy of same gotra—Adopted boy of different gotra—Distinction.*

Where the child to be adopted belongs to the same gotra as that of the adoptive father, the celebration of the ceremony of datta homam is not an essential to the legal validity of an adoption (150).

Quaere, whether the datta homam is a legal requisite in Bombay for adoption among the three twice born classes (149-150).

Quaere, whether the principle extends to India at large of the decision in I.L.R. 11 M. 5 (F. B.); or of 4 M. H. C. R. 165, both decisions affirming that the ceremony of datta homam is not essential to a valid adoption among Brahmins in Southern India (150). (*Lord Shaw.*) BAL GANGADHAR TILAK *v.* SHRINIVAS PANDIT.

(1915) 42 I. A. 135 = 39 B. 441 (465) = 17 Bom. L. R. 527 = 19 C. W. N. 729 = 22 C. L. J. 1 = 13 A. L. J. 570 = 18 M. L. T. 1 = (1915) M. W. N. 554 = 2 L. W. 611 = 29 I. C. 639 = 29 M. L. J. 34.

DECEASED—ADOPTION BY—CEREMONIES OF, DIRECTED BY HIM BY HIS WILL TO BE PERFORMED BY HIS WIDOWS—FAILURE OF WIDOWS TO PERFORM CEREMONIES.

———Validity of adoption—Effect on. *See* HINDU LAW—ADOPTION—DECEASED PERSON—ADOPTION BY. (1876) 3 I. A. 253 (258).

GIVING AND TAKING.

———*What amounts to—Grandfather adoptive if can take in adoption.*

The ordinary ceremony of adoption is the giving and taking, and in the case where the adoptive father is dead, this is evidenced by placing the child on the lap of the widow. This ceremony could not be performed after the death of the widow, and the adoptive grandfather—though he might concur with the widow—could not of himself make an adoption to his son (359). (*Lord Phillimore.*) HARIGIR KISANGIR GOSAVI *v.* BHARATHI VISHNU BHARATHI GOSAVI. (1925) 22 L. W. 355 = (1925) M. W. N. 414 = 21 N. L. R. 127 = 88 I.C. 343 = A. I. R. 1925 P. C. 127.

———What amounts to—Placing of boy on lap of adoptive father or mother—Necessity. *See* JAINS—SITAMBARI JAINS—ADOPTION—CEREMONY—GIVING AND TAKING—WHAT AMOUNTS TO. (1920) 25 C. W. N. 273 (276).

HINDU LAW—(*Contd.*)

Adoption—Ceremonies of—(*Contd.*)

GIVING AND TAKING—(*Contd.*)

———Absence of—Invalidity of adoption by reason of—Concurrent findings as to—Privy Council's interference with. (*Sir Richard Couch.*) BISESWAR MOOKERJI *v.* ARDHA CHUNDER ROY CHOWDHRY. (1892) 19 I. A. 101 (105-6) = 19 C. 452 (460-1) = 6 Sar. 171.

———*Mode of—Deed—Giving and taking by mere—Validity—Sudras—Twice-born classes.*

The mode of giving and taking a child in adoption continues to stand on Hindu law and Hindu usage. According to Hindu usage, which the Courts should accept as governing the law, the giving and taking in adoption ought to take place by the father handing over the child to the adoptive mother, and the adoptive mother declaring that she accepts the child in adoption (255-6).

While thinking it unnecessary positively to decide the question whether there can be, amongst Sudras, according to Hindu law and usage, an adoption simply by deed, and without that corporeal delivery and acceptance of the child which is almost universally treated as the essential part of an adoption in the Dattaka form, their Lordships desired to say that they were very far from wishing to give any countenance to the notion that there can be such a giving and a taking as is necessary to satisfy the law, even in a case of Sudras, by mere deed, without an actual delivery of the child by the father (255).

Amongst the twice-born classes there could be no such adoption by deed, because certain religious ceremonies, the datta homam in particular, are in their case requisite (256). (*Sir James W. Colvile.*) MAHASHOYA SHOSINATH GHOSE *v.* SRIMATI KRISHNA SOONDARI DASI. (1880) 7 I. A. 250 = 6 C. 381 (388 9) = 7 C. L. R. 313 = 4 Sar. 191 = 3 Suth. 812.

GIFT AND ACCEPTANCE—DEEDS OF—ADOPTION BY.

———*Intention of parties—Construction of deeds—Registration thereof—Effect on question of intention—Evidence as to formal adoption—Effect.*

In a case in which there were certain deeds of gift and acceptance of a child, the question was whether it was the intention of the parties, when they put their hands to those two instruments, that an adoption should be effected by the mere execution, without more, of those instruments, or, whether the execution of them was intended to be a mere step in the proceedings which were to result at one time or another in a complete and full adoption.

Held, on a construction of the deeds in question and on the other evidence in the case, that it never was the intention of the parties to treat the execution of the deeds, without more, as an adoption (255).

The words of the deeds point to an adoption in the customary and formal manner, and to something being done *ultra* the mere execution of those two instruments (254).

Although the circumstance of the immediate registration as well as that of the execution of the deeds, would, of course, be very cogent evidence upon the issue whether there had been a formal and regular adoption, and might, if the other evidence that was given upon that point had been nicely balanced, have been sufficient to turn the scale, it is of far less weight upon the question whether it was the intention of the parties, without more, to treat the execution of the deeds as an adoption (254-5). (*Sir James W. Colvile.*) MAHASHOYA SHOSINATH GHOSE *v.* SRIMATI KRISHNA SOONDARI DASI. (1880) 7 I. A. 250 = 6 C. 381 (387-8) = 7 C. L. R. 313 = 4 Sar. 191 = 3 Suth. 812.

HINDU LAW—(*Contd.*)

Adoption—Ceremonies of—(*Contd.*)

LEGAL OR RELIGIOUS REQUISITES — TEST—DISCRIMINATION BETWEEN.

———*Necessity.*

Datta homam is the service of the burning of clarified butter, which is offered as a sacrifice by fire by way of religious propriation or oblation (148).

The authorities, ancient and modern, are not in accord on the point as to whether the ceremonial of datta homam is a legal as well as a religious requisite. There is a danger, on the one hand, of not paying due respect to those religious rites which are observed and followed among large classes of Indian belief, while, on the other hand, the danger must also be avoided of carrying these, except when the law is clear, into the legal sphere, so as to affect or impair personal or patrimonial rights (148-9). (*Lord Shaw.*) BAL GANGADHAR TILAK *v.* SHRINIVAS PANDIT.

(1915) 42 I. A. 135 = 39 B. 441 (463-4) = 17 Bom. L. R. 527 = 19 C. W. N. 729 = 22 C. L. J. 1 = 13 A. L. J. 570 = 18 M.L. T. 1 = (1915) M. W. N. 554 = 2 L. W. 611 = 29 I. C. 639 = 29 M. L. J. 34.

NECESSITY—SUDRAS.

———In the case reported in Foulton's Reports, p. 75 it was held by the Supreme Court in Calcutta that amongst Sudras no religious ceremony except in the case of marriage is necessary (159). (*Sir Barnes Peacock.*) SREE NARAIN MITTER *v.* SREEMUTTY KISHEN SOONDORY DASSEE.

(1873) Sup. I. A. 149 = 11 B. L. R. 171 = 19 W. R. 133 = 3 Sar. 203 = 2 Suth. 774.

———Amongst Sudras no ceremonies are necessary in addition to the giving and taking of the child in adoption (255). (*Sir James W. Colvile.*) MAHASHOYA SHOSINATH GHOSE *v.* SRIMATI KRISHNA SOONDARI DASI.

(1880) 7 I. A. 250 = 6 C. 381 (388) = 7 C. L. R. 313 = 4 Sar. 191 = 3 Suth. 812.

Adoption—Co-widows.

———*Adoptions by, and contract between, conferring rights on adopted sons (minors) during their lives—Suit to enforce contract by one adopted son against other widow and her adopted son—Maintainability.*

The two widows of a deceased Hindu adopted each a boy in pursuance of a direction to that effect in their husband's will. After the adoption they executed an ikrar, by which each recognised the adoption made by the other and the rights of that adopted son as such. They also undertook to manage the properties, a portion of the profits of which was by their husband's will devoted to the upkeep of a family Thakoor, and to pay the various charges upon the said properties directed by the same will, during the minority of the said adopted sons. The surplus left out of the income of the said properties, after paying the said charges and meeting the expenses of the widows and the expenses of the maintenance and education of their respective adopted sons, the widows undertook to keep in their respective custody, and to make over the accumulations to their respective adopted sons on their attaining their majority.

The ikrar was not an isolated transaction, but was one of a series of transactions closely connected with the adoption. The use of the boys was a necessary part of the attempt on the part of the widows to accomplish their husband's wishes, and by the said transactions the position in life of the boys was substantially altered by taking them away from their natural families for an indefinite time.

In a suit brought, after the death of the elder widow, by the son adopted by her, in effect for the administration of the testator's estate, basing his claim, *inter alia*, on the ikrar, *held* that, in the circumstances of the case, the adopted sons could not be said to be such strangers in the matter

HINDU LAW—(*Contd.*)

Adoption—Co-widows—(*Contd.*)

that they could not insist on the performance of the contract contained in the ikrar by which each widow bound herself to the other to deal with the estate in their favour, and that the plaintiff was accordingly entitled, under the ikrar, to receive one moiety of the surplus income during the life of the younger widow, the son adopted by the latter being entitled to the other moiety during her lifetime (132-3). (*Lord Hobhouse.*) SURENDRAKESHAV ROY *v.* DOORGASUNDARI DASSEE.

(1892) 19 I. A. 108 = 19 C. 513 (534-6) = 6 Sar. 150.

———*Adoption invalid by each of—Agreement by, recognising adopted sons as heirs and conferring upon each right to his mother's share of income and accumulations—Effect and binding nature of.*

By his will a Hindu bequeathed all his property to a family Thakoor, and directed each of his two widows to adopt a son. The will provided that the two adopted sons should remain the shebaits of all the dedicated properties, that, up to the time that the said adopted sons attained their majority, the two widows should exercise the care and control of all the said properties, and that, when the two adopted sons attained their majority, the widows should make over to them as shebaits all the dedicated properties. The will also directed that out of the surplus income left after payment of the expenses of the debsheba, the two adopted sons were to receive a fixed allowance. The residue was left undisposed of by the will.

The widows made the double adoption contemplated by the will, and then executed an ikrar relating to the management and enjoyment of the estate. The ikrar stated that the two adopted sons became the heirs and representatives of the deceased, as if they had been born of his loins, that during their minority, the widows should, as their mothers and guardians, continue to take care of them and that neither the widows nor their heirs were competent to raise any objection to the rights of the said adopted sons. The ikrar provided that the two widows should in equal shares as shebaits continue in possession of and preserve the debutter property, paying in equal shares the various charges upon it. It provided for a division between the widows in equal shares of the surplus left after meeting the said expenditure and for the appropriation by them of the amount necessary for their own expenses and the expenses of the maintenance and education of the adopted sons. The balance left after all these expenses, the ikrar provided, should be kept in the custody of each widow, and should be handed over by each to her adopted son on his attaining his majority.

The elder widow died, and, after her death, the plaintiff, the boy adopted by her, sued the younger widow and the boy adopted by her, in effect for the administration of the testator's estate, basing his claim, *inter alia*, upon the ikrar.

Held that, upon the true construction of the ikrar, and in the events that had happened, the plaintiff became entitled to receive the accumulations of one moiety of the surplus income of the testator's property, after answering the various charges and outgoings mentioned in the ikrar, during the life of the younger widow, and that the boy adopted by the younger widow was entitled to the other moiety of such surplus income during the life of his adoptive mother, and to the accumulations thereof (133).

The plaintiff's claim rested not upon any estoppel against the younger widow or upon any trust undertaken by her, but upon a contract binding the younger widow to the elder and to the son adopted by her (plaintiff) to give the plaintiff the same benefit out of the property of the last male owner as if he had been one of his two validly adopted sons and heirs

HINDU LAW—(*Contd.*)

Adoption—Co-widows—(*Contd.*)

(128-9, 132). (*Lord Hobhouse.*) SUNDRAKESHAV ROY *v.* DOORGASUNDARI DASSEE. **(1892) 19 I. A. 108 = 19 C. 513 (534 6) = 6 Sar. 150.**

———*Choice and adoption by widows acting jointly—Authority to adopt giving power of—What amounts to—Adoption by one after death of other—Validity in case of.*

The words of the will of a Hindu authorizing his two widows to adopt a son to him were as follows:—" You should adopt a boy who is our *Sannihita* (one closely related) whenever it strikes you that our *Samastanam* (family) should continue."

The testator died in 1864; the junior widow died in 1881. It was not until the year 1885 that any steps were taken with regard to the adoption of a boy. In that year the surviving widow purported to adopt one *V*. That so-called adoption of *V* was declared by the Court to be invalid, and thereupon in the year 1890 the surviving widow purported to adopt *N*.

Held that at the death of the junior widow the power to adopt given by the testator to his widows came to an end, and that therefore the alleged adoption of *N* was of no validity.

The words of the will when properly construed relate to choice and adoption by the two widows acting jointly. Hence those words relate only to the period of time when both widows are living. The will is silent as to the period after the death of one of the widows, and if their Lordships were to hold that the surviving widow could adopt a son after the death of her co-widow they would be providing for a period of time which the testator left unprovided for and unnoticed in his will, *i.e.*, they would be making an addition to his testamentary dispositions which is a thing that no Court is entitled to do. (*Lord Moulton.*) VENKATA NARASIMHA APPA ROW *v.* PARTHASARATHY APPA ROW. **(1913) 41 I.A. 51 = 37 M. 199 (225-6) = 18 C. W. N. 554 = (1914) M.W.N. 299 = 16 Bom. L. R. 328 = 19 C.L J. 369 = 15 M.L.T. 285 = 12 A.L.J. 315 = 23 I.C. 166 = 26 M.L.J. 411.**

———*Joint power of adoption to—Validity of—Choice of boy by both—Adoption by one only—If a valid exercise of power.*

Where the words of the will of a Hindu giving his two widows' authority to adopt were as follows:—" You should adopt a boy who is our *Sannihita* (one closely related) whenever it strikes you that our *Samastanam* (family) should continue," *Quære*, whether such a joint power of adoption given to the two widows was, if properly interpreted, a valid power, and whether if they had agreed to a person to be chosen for such adoption they could have validly executed the power. (*Lord Moulton.*) VENKATA NARASIMHA APPA ROW *v.* PARTHASARATHY APPA ROW. **(1913) 41 I.A. 51 = 37 M. 199 (220-1) = 18 C.W.N. 554 = (1914) M.W.N. 299 = 16 Bom. L. R. 328 = 19 C.L J. 369 = 15 M.L.T. 285 = 12 A.L.J. 315 = 23 I.C. 166 = 26 M.L.J. 4I1.**

———*Joint power of adoption to—Validity of—Custom of—Applicability of, to cases of single heirship.*

It was argued that a joint power of adoption is in accordance with Hindu notions, that in some parts of India, when adoption has not been forbidden by a husband, the power falls to his widows jointly, and that the law provides for the case of a disagreement. That is true in Western India, but there is no evidence that such a custom is known in Oudh. It is hardly applicable to the case of a family where the custom is single heirship and not joint possession

HINDU LAW—(*Contd.*)

Adoption—Co-widows—(*Contd.*)

(144-5). (*Lord Macnaghten.*) MAHARANI INDAR KUNWAR *v.* MAHARANI JAIPAL KUNWAR. **(1888) 15 I.A. 127 = 15 C. 725 (746-7) = 5 Sar. 150 = R. & J.'s No. 102.**

———*Joint power of adoption to—Validity of—Interpretation of, in some parts of India as giving preferential right of adoption to first wife.*

A power given to more than one wife to adopt is not necessarily an invalid power. In some parts of India such a power might perhaps be interpreted as giving a preferential right of adoption to the first wife. (*Lord Moulton.*) VENKATA NARASIMHA APPA ROW *v.* PARTHASARATHY APPA ROW. **(1913) 41 I A. 51 = 37 M. 199 (220) = 18 C.W.N. 554 = (1914) M.W.N. 299 = 16 Bom. L.R. 328 = 19 C.L.J. 369 = 15 M.L.T. 285 = 12 A.L.J. 315 = 23 I C. 166 = 26 M L.J. 411.**

———*Junior widow—Adoption by, during lifetime of son adopted by senior widow—Validity—Authority of husband—Adoption under.*

Held that the second widow of a deceased Hindu could not validly adopt a son to him during the lifetime of another son previously adopted to him by his first widow (132-3.)

It is settled law that a man cannot, while he has an adopted son living, adopt another son. It follows on principle that a man cannot delegate to others, to be exercised after his death, any greater power than he himself possessed in his lifetime. His second widow could not, therefore, by virtue of any authority delegated from him, adopt a son while another son adopted by his first widow was still living (133). (*Sir Robert P. Collier.*) GOPEE LALL *v.* MUSSAMAT SREE CHUNDRAOLLEE BUHOOJEE. **(1872) Sup. I. A. 131 = 11 B.L.R. 391 = 19 W.R. 12 = 3 Sar. 217 = 2 Suth. 752.**

———*Simultaneous adoption by—Authority for—Invalidity of—Exercise of power in any other way recognised by law—Impossibility of.*

An authority to adopt given to a Hindu widow by her husband must be followed strictly, so that where a Hindu by his will directs his two widows, each to adopt a son, *i.e.*, authorises the simultaneous adoption of two sons, it is impossible to exercise the power otherwise than in strict compliance with its terms, though the result of an attempted adoption in accordance with the power would be in contravention of the Hindu law and so without any effective result. If the widows are to procure sons for their husband at all, it must be by the simultaneous adoption of two. It is impossible even to try the question whether their husband's wishes could be fulfilled, unless two boys were found whose parents were willing to give them in adoption one for each widow (121-2). (*Lord Hobhouse.*) SURENDRA KESHAV ROY *v.* DOORGASUNDARI DASSEE. **(1892) 19 I.A. 108 = 19 C. 513 (525-6) = 6 Sar. 150.**

———*Simultaneous adoptions—Power of—Authority if covers—Validating construction of authority—Necessity.*

The question was whether a power to adopt given by a Hindu to his two widows authorised simultaneous adoptions by them.

Held that, if it appeared that the law on the subject of simultaneous adoptions at the time when that authority was given was in such a state that it was extremely doubtful whether simultaneous adoptions could be made, or that from the state of the law it was not likely that there was a practice of that kind, that would be a reason for construing that document as not intended to give a power of simultaneous adoption (202).

In construing the document their Lordships would consider that the person giving the authority intended his widows

HINDU LAW—(*Contd.*)

Adoption—Co-widows—(*Contd.*)

to do that which the law allowed, and not to do something which was, if not absolutely illegal, very unusual and not practised amongst Hindus (202). (*Sir Richard Couch.*) AKHOY CHUNDER BAGCHI *v.* KALAPAHAR HAJI.

(1885) 12 I.A. 198 = 12 C. 406 (411) = 4 Sar. 678.

———*Simultaneous adoption by—Power of—Will conferring—What amounts to.*

The material portion of the will of a Hindu was in these terms :—" I have no sons or daughters of my loins. I have two wives living. Each of the two Ranees will adopt one son. God forbid it, but if the son adopted by either Ranee should die, or be unfit for duty by reason of illness of any kind, then in such a case she will be competent to take in adoption a second son, and so on to a third.'

Held that the will did not authorise any other course than the simultaneous adoption of two sons, one by each widow (121-2). (*Lord Hobhouse.*) SURENDRAKESHAV ROY *v.* DOORGASUNDARI DASSEE.

(1892) 19 I. A. 108 = 19 C. 513 (525-6) = 6 Sar. 150.

———*Simultaneous adoptions by both—Successive adoptions by each of—Power of—Authority conferring—Test.*

An authority to adopt given by a Hindu to his two widows was as follows :—

"You, *S*, the elder widow, may adopt three sons successively, and you, *B*, the younger widow, may adopt three sons successively, and that (or those) adopted son (or sons) will be entitled to offer *pind*."

Held that the authority might be reasonably construed as giving to the two widows, not a power to adopt simultaneously, but first to the elder widow power to adopt three sons successively, and then a similar power to the younger widow (201).

The words are capable possibly of another construction, but certainly rather the mere natural construction would be that it was a power to adopt successively. It may be observed that if it gave to the younger widow a power to make an adoption simultaneously with an adoption by the elder widow, the elder widow would not be able to adopt three sons successively, because there would be interposed an adoption of a son by the younger widow. That seems to be a reason for not putting such a construction upon the words (201-2). (*Sir Richard Couch.*) AKHOY CHUNDER BAGCHI *v.* KALAPAHAR HAJI. **(1885) 12 I. A. 198 = 12 C. 406 (411-2) = 4 Sar. 678.**

———*Simultaneous adoption by, pursuant to husband's authority—Validity of.*

The Hindu Law does not allow simultaneous adoptions (204).

Held, therefore, that simultaneous adoptions made by the two widows of a deceased Hindu in pursuance of an authority to that effect given to them by him were invalid (204). (*Sir Richard Couch.*) AKHOY CHUNDER BAGCHI *v*, KALAPAHAR HAJI. **(1885) 12 I. A. 198 = 12 C. 406 (411) = 4 Sar. 678.**

Adoption—Custom against.

———Onus of proof of—Aboriginal Bhuiyas. *See* HINDU LAW—CUSTOM—APPLICABILITY — ABORIGINAL BHUIYAS. **(1922) 50 I.A. 58 (62-4) = 2 P. 230.**

———*Onus of proof of—Caste governed by ordinary Hindu law unless excluded by special custom.*

The onus of proving that adoption is forbidden by the custom of a caste which is admitted to be governed by the ordinary Hindu law unless excluded by special custom is upon the party who sets up such a custom (236-7). (*Lord Lindley.*) VEERABHAI AJUBHAI *v.* BAI HIRABA.

(1903) 30 I. A. 234 = 27 B. 492 = 7 C. W. N. 716 = 5 Bom. L. R. 534 = 8 Sar. 508.

HINDU LAW—(*Contd.*)

Adoption—Custom against—(*Contd.*)

———*Validity of—Family generally governed by Hindu Law.*

Quœre, whether, even in a Hindu family, there might be a custom which barred inheritance by adoption (83). (*Sir Richard Couch.*) FANINDRA DEB RAIKAT *v.* RAJESWAR DASS. **(1885) 12 I. A. 72 = 11 C. 463 (478) = 4 Sar. 610.**

Adoption - Custom of.

———*Gyawal Brahmins of Gya—Custom among—Adopted son under—Rights of, in natural and adopted family.*

The evidence showed that amongst the Gyawals, a set of Brahmins residing in the district of Gya, to which the parties to the present suit and their families belong, there exist peculiar and loose customs in regard to adoption ; and in particular that, although adoption of a son may be made so as to give him rights of succession to his adopting father, this will not necessarily sever his connection with his own natural father or his family (55). (*Lord Shand.*) LUCHMAN LAL CHOWDHRY *v.* KANHYA LAL MOWAR.

(1894) 22 I. A. 51 = 22 C. 609 (615-6) = 6 Sar. 558.

———*Onus of proof of—Family not governed by Hindu law—Family so governed—Distinction.*

The Baikunthpore branch of the Kuch Behar family affected to be Hindoos, but they were not generally governed by Hindu law and had retained and were governed by family customs which, as regards some matters, were at variance with Hindu law. The question was whether a member of such a family was competent to adopt and to alter the line of succession thereby.

Held, reversing the courts below on this point, that the onus of proving that the adoption was lawful was upon the defendant, who relied upon it to defeat the plaintiff's title (81).

Looking at the origin and history of the family, it appears that the question is not whether the general Hindu law is modified by a family custom forbidding adoption, but whether with respect to inheritance the family is governed by Hindu law, or by customs which do not allow an adopted son to inherit. If the family was generally governed by Hindu law, the defendant might rely upon that, and then the onus of proving a family custom would be on the plaintiff (81). (*Sir Richard Couch.*) FANINDRA DEB RAIKAT *v.* RAJESWAR DASS.

(1885) 12 I. A. 72 = 11 C. 463 (476) = 4 Sar 610.

———*Proof of—Family not governed by Hindu law—Family so governed—Distinction.*

The question was a member of the Baikunthpore Branch of the Kuch Behar family was competent to adopt and to alter the line of succession thereby.

The family affected to be Hindus, but they were not generally governed by Hindu law and had retained and were governed by family customs which, as regards some matters, were at variance with Hindu law. The question, therefore, was whether, by the usage by which the family was governed, it was lawful for a member thereof to adopt a son and to alter the time of succession thereby.

Held, without regarding any burden of proof, that it was not lawful for a member to adopt a son who would succeed to his estate (83).

Their Lordships find that through sixteen devolutions of the estate there has been no instance of a succession by adoption, though in three instances the circumstances were such as usually move Hindus to make an adoption ; that there has been one instance of an attempt at adoption, and that, whatever its exact issue may have been, it failed to carry away the succession from the collateral heir ; that there is a considerable amount of family tradition against the practice ; and that of counter-evidence there is absolutely none. Whether, if the Baikunthpur family were shown to

HINDU LAW—(*Contd.*)

Adoption—Custom of—(*Contd.*)

have become Hindus out and out saving only special customs, such evidence would be sufficient to prove a special custom, need not be discussed here. The family is in a totally different position. And their Lordships have no hesitation in holding that whatever Hindu customs may have been introduced into it, the custom of succession by adoption had not been introduced (86-7). (*Sir Richard Couch.*) FANINDRA DEB RAIKAT *v.* RAJESWAR DASS

(1885) 12 I. A. 72 = 11 C. 463 (481-2) = 4 Sar. 610.

Adoption—Deceased person.

———*Adoption by—Ceremonies of—Direction to his widows by his will to perform—Failure of widows to perform ceremonies—Validity of adoption—Effect on.*

The material passages of the will of a childless Hindu were in these terms : "And as I am desirous of adopting a son I declare that I have adopted *K*, third son of my eldest brother *S*. My wives shall perform the ceremonies according to the shastras, and bring him up, and until that adopted son comes of age, those executors shall look after and superintend all the property, moveable and immoveable, in my own name or benami, left by me, also that adopted son. When he comes to maturity the executors shall make over everything to him to his satisfaction . . . . . God forbid, but should this adopted son die, and my younger brother *N* have more than one son, then my wives shall adopt a son of his. If at that time, *N* has not a son eligible to adoption, they shall adopt another son of *S* and the wives and executors shall perform all the aforementioned acts."

Held that, on the true construction of the will, the widows had not the power of cancelling the adoption of *K*, and ousting him from the benefit he was to take under the will, by declining to perform the ceremonies, and that, whether they performed the ceremonies or not, so long as *K* lived, no other adoption could take place (258). (*Sir Robert P. Collier.*) NIDHOOMONI DEBYA *v.* SARODA PERSHAD MOOKERJEE. **(1876) 3 I. A. 253 = 26 W. R. (P. C.) 91 = 3 Sar. 652 = 3 Suth. 338 = Bald. 78.**

———Adoption to—Who can make. *See* HINDU LAW—ADOPTION—CAPACITY TO TAKE IN.

Adoption—Decision as to.

———*See* HINDU LAW—ADOPTION—VALIDITY OF—DECISION AS TO.

Adoption—Deeds—Adoption by—Intention of parties.

———Construction of deeds—Evidence. *See* HINDU LAW—ADOPTION—CEREMONIES OF—GIFT AND ACCEPTANCE—DEEDS OF. **(1880) 7 I. A. 250 (254-5) = 6 C. 381 (388).**

Adoption—Deeds relating to.

AGREEMENTS TO GIVE AND TAKE IN ADOPTION—DEEDS OF GIFT AND ADOPTION—TEST.

———*Construction of deeds.*

The question was whether two deeds, the one, a deed by which the defendant agreed to give his minor son to the plaintiff, a Hindu widow, for adoption in the Dattaka form, and the other, a deed by which she agreed to take the said child into adoption, were mere agreements to give and take in adoption, or were deeds of gift and adoption.

The deed of gift addressed to the plaintiff commenced :—"This is a deed whereby the child is given in adoption." Then, after reciting that the plaintiff's deceased husband, in consequence of his having no issue, had during his life given permission to the plaintiff to adopt a male child, and that the plaintiff had asked the defendant for a child to compensate for the said defect and to perform the funeral

HINDU LAW—(*Contd.*)

Adoption—Deeds relating to—(*Contd.*)

AGREEMENTS TO GIVE AND TAKE IN ADOPTION—DEEDS OF GIFT AND ADOPTION—TEST—(*Contd.*)

rites of the plaintiff and her husband, etc., proceeded in the operative part of the deed as follows :—

"I have willingly given in adoption my second son. The said male child with whom henceforth I have no right at all according to shastras, and who has thus become divested of gotra appertaining to my family, and being equal to the son of your body, has thus become vested with family rights and gotra (lineage) appertaining to your husband's family, will discharge or perform all the secular as well as the religious duties of your husband's family, and will be the owner himself and his heirs for ever of all your husband's property. For this effect, I have executed the deed whereby the child is given in adoption, that it will prove efficacious in future."

The deed executed by the plaintiff addressed to the defendant commenced :—

"This is a deed of adoption . . . . My husband, in consideration of his having no issue in his lifetime, gave me permission to adopt a son. At present, in obedience to the aforesaid injunction . . . . *I do, with the prescribed rites and ceremonies, adopt as my son your second son.* The said child has thus become divested of all the rights and gotra (lineage) appertaining to your family, and has become vested for ever with the rights and gotra of my husband's family. By virtue of which he having become equal to the son of my body is become the owner himself and his heirs of all my husband's property. He will henceforth perform the funeral rites, etc., of myself and my husband and of his (my husband's) paternal and maternal ancestors, and shall also perform the religious and family rites and other duties for ever. During his minority, I, his mother, shall take care of all his property."

Held, that the instruments were deeds of gift and adoption, and not mere agreements to give and take in adoption (151, 161). (*Sir Barnes Peacock.*) SREE NARAIN MITTER *v.* SREEMUTTY KISHEN SOONDORY DASSEE.

(1873) Sup. I. A. 149 = 11 B. L. R. 171 = 19 W. R. 133 = 3 Sar. 203 = 2 Suth. 774.

GIFT AND ACCEPTANCE.

———*Agreements for—Cancellation of—Suit by widow against natural father for—Maintainability—Breach by natural father of agreement to give—Suit based on.*

The plaintiff, a Hindu widow, brought a suit against the defendant for himself and as guardian of his minor son to set aside two deeds, relating to the adoption of the said minor. One of the deeds was a deed by which the defendant agreed to give the said minor to the plaintiff for adoption in the Dattaka form ; the other was a deed by which she agreed to take the said boy in adoption. The case for the plaintiff was that, notwithstanding the deeds, the defendant refused to give the child, and that therefore the form of adoption had not been complied with.

Held that, if the instruments operated merely as agreements to give and accept the child in adoption, as contended by the plaintiff, the breach by the defendant of his agreement to give would not render the deeds null and void (160).

The breach of an agreement by one of the parties thereto is a good ground for an action for damages, or for a specific performance, but it does not render the contract void or constitute any ground for setting it aside, or for declaring it to be null and void (160). (*Sir Barnes Peacock.*) SREE NARAIN MITTER *v.* SREEMUTTY KISHEN SOONDORY DASSEE. **(1873) Sup. I. A. 149 = 11 B. L. R. 171 = 19 W. R. 133 = 3 Sar. 203 = 2 Suth. 774.**

———*Deeds of—Cancellation of—Suit by widow against natural father for, on ground of no completed adoption—Question for decision in.*

HINDU LAW—(*Contd.*)

Adoption—Deeds relating to—(*Contd.*)

GIFT AND ACCEPTANCE—(*Contd.*)

In a suit by a Hindu widow against the natural father of a minor boy to set aside two deeds, by one of which the defendant agreed to give the said minor to the plaintiff for adoption by her in the Dattaka form, and by the other of which the widow agreed to take the said child in adoption, the plaintiff's case was that, notwithstanding the deeds, the defendant refused to give the child, and that therefore the form of adoption had not been complied with. The cause of action for the suit was stated to be the defendant's refusal to execute an ikrarnamah cancelling the said deeds.

Held, that the question for decision in such a suit was not one as to the validity of the adoption, but as to whether sufficient ground existed for setting aside the deeds or declaring them to be null and void (157).

The real question for decision in such a case is whether, if there was no adoption, it was owing to the fault of the defendant, or to the fault of the plaintiff herself (158). (*Sir Barnes Peacock.*) SREE NARAIN MITTER *v.* SREEMUTTY KISHEN SOONDORY DASSEE.
(1873) **Sup. I. A. 149 = 11 B. L. R. 171 = 19 W.R. 133 = 3 Sar. 203 = 2 Suth. 774.**

———*Deeds of—Declaration of invalidity and cancellation of—Suit by widow against natural father for—Maintainability—Discretion of Court—Minor adopted son not party to suit.*

A Hindu widow sued the defendant for himself and as guardian of his minor son to set aside two deeds, by one of which the defendant agreed to give the said minor to her for adoption in the Dattaka form, and by the other of which she agreed to take the said child into adoption. The plaintiff's case was that, notwithstanding the deeds, the defendant refused to give the child, and that, therefore, the form of adoption had not been complied with. The minor was not made a party to the suit.

Held, reversing the Courts below, that it would not be exercising a sound discretion, even if it could be done, to order the deeds to be cancelled or to set them aside, or to declare them void (163).

The minor not being a party to the suit, any declaration made in it with regard to the validity or invalidity of the deeds will not be binding upon him. The defendant takes no interest under the deed of adoption, and a declaration binding upon him only and not upon the child would be worse than useless (162-3).

Whether the child was adopted or not the defendant was not bound to execute a deed in cancellation of the former instruments, and his refusal to execute such a deed could not give the plaintiff a cause of action as alleged in the plaint (163). (*Sir Barnes Peacock.*) SREE NARAIN MITTER *v.* SREEMUTTY KISHEN SOONDORY DASSEE.
(1873) **Sup. I. A. 149 = 11 B. L. R. 171 = 19 W.R. 133 = 3 Sar. 203 = 2 Suth. 774.**

GIFT AND ADOPTION—DEEDS OF—INTERCHANGE OF.

———*Absence of—Validity of adoption—Effect on.*

In a case in which there were deeds of gift and adoption, *held* that the fact that, while the deed of gift was given by the natural father to the adopting widow, the deed of adoption was retained by her and not given to the natural father would rather tend to show that at that time it was considered that the child had been adopted (154).

If the child was adopted, the widow became his mother and guardian, and would naturally keep the deeds of gift and adoption on behalf of the child as evidence of the adoption, and as part of the muniments of her child's title to his adoptive father's estates (154). (*Sir Barnes Peacock.*)

HINDU LAW—(*Contd.*)

Adoption—Deeds relating to—(*Contd.*)

GIFT AND ADOPTION—DEEDS OF INTERCHANGE OF—(*Contd.*)

SREE NARAIN MITTER *v.* SREEMUTTY KISHEN SOONDORY DASSEE. (1873) **Sup. I.A. 149 = 11 B. L. R. 171 = 19 W. R. 133 = 3 Sar. 203 = 2 Suth. 774.**

———*Necessity—Agreements to give and adopt—Distinction.*

An interchange of deeds of gift and adoption is not necessary to the validity of an adoption (153 4).

Quære, as to mere agreements to give and adopt (153-4). (*Sir Barnes Peacock.*) SREE NARAIN MITTER *v.* SREEMUTTY KISHEN SOONDORY DASSEE.
(1873) **Sup I.A. 149 = 11 B. L. R. 171 = 19 W. R. 133 = 3 Sar. 203 = 2 Suth. 774.**

Adoption—De facto, but invalid, adoption.

———Effect of, on personal and legal status of adopted son. *See* HINDU LAW—ADOPTION—ADOPTED SON—*De facto*, BUT INVALID, ADOPTION.
(1892) **19 I.A. 108 (129) = 19 C. 513 (532-3).**

Adoption—Disqualified proprietor—Adoption without sanction by—Prohibition of.

———Authority to adopt—Giving of—If applies also to. *See* BENGAL REGULATIONS—COURT OF WARDS REGULATION X OF 1793—DISQUALIFIED PROPRIETOR.
(1876) **3 I. A. 72 (83) = 1 C. 289 (295).**

Adoption—Dhusars of District of Gurgaon.

———Orphan—Adoption of—Custom of—Validity of—Proof of. *See* DHUSARS OF DISTRICT OF GURGAON—ADOPTION.
(1921) **48 I. A. 405 (413-4) = 49 C. 120 (130-1).**

Adoption—Dvyamushyayana form.

———*Adoption in—What constitutes—Rights of adopted son and his children—Distinction from Dattaka form.*

To constitute a dvyamushyayana there must be a special agreement between the two fathers to that effect; or the relation must result from some of the other circumstances indicated by Sir William Macnaghten at p. 71 of his Principles and Precedents (50 1). The consequences of a dvyamushyayana adoption are different from those of an ordinary adoption inasmuch as the children of the adopted sons would revert to their natural family. Hence the adoptive father fails by such an adoption to perpetuate his own line of male succession (51). (*Sir James W. Colvile.*) SRIMATI UMA DEVI *v.* GOKOOLANUND DAS.
(1878) **5 I. A. 40 = 3 C. 587 (598-9) = 2 C. L. R. 51 = 3 Sar. 786 = 3 Suth. 499.**

———*Adoption in—Effect of, on status of boy in natural family.*

Adoption in the Dvyamushyayana form will not sever the connection of the child with his natural family. (*Sir James W. Colvile.*) NILMADHUB DOSS *v.* BISHUMBER DOSS. (1869) **13 M.I.A. 85 (101) = 12 W.R. (P.C.) 29 = 3 B. L. R. (P. C.) 27 = 2 Suth. 257 = 2 Sar. 489.**

Adoption—Effect of.

———*See* HINDU LAW—ADOPTION—ADOPTED SON—POSITION OF, IN NATURAL AND ADOPTIVE FAMILIES.

Adoption—Evidence of.

———*Admission of no adoption by father and senior member of family—Evidentiary value of, against son.*

The question was whether, as alleged by the respondents, *R* had been adopted by his paternal uncle. It appeared that long before the question arose the respondents' father had made statements to the effect that the alleged adoption did

HINDU LAW—(*Contd.*)

Adoption—Evidence of—(*Contd.*)

not take place, and that *R* continued to be the son of his natural father.

Held that, though the respondents were not bound by the statements of their father, as they did not claim title through him, yet those statements by the senior member of the family were not altogether without weight (102). (*Sir James W. Colvile.*) NILMADHUB DOSS *v.* BISHUMBER DOSS. **(1869) 13 M. I. A. 85 = 12 W. R. (P. C.) 29 = 3 B. L R. (P. C.) 27 = 2 Suth. 257 = 2 Sar. 489.**

——— *Adopted son—Declarations of, as to his having been adopted—Value of.*

The question was whether the 1st defendant, the natural son of *U*, had, prior to *U*'s death, been adopted by his uncle, *G*, *U*'s brother, so as to disentitle him to succeed to the estate of *U*, and the proof of the adoption rested on the reiterated declarations by the 1st defendant himself, extending over a number of years, that he was the adopted son of *G*. *Held*, affirming the High Court, that the adoption had been proved. (*Lord Blanesburgh.*) CHANDRA SHEKHAR BAKSH SINGH *v.* MUSSUMAT RAJ KUNWAR.

(1926) 24 L. W. 320 (323) = (1926) M. W. N. 596 = 96 I. C. 836 = A. I. R. 1926 P. C. 91.

——— *Adopted son—Examination as witness of—Necessity—Failure to examine him—Inference adverse from—When justified.*

In a case in which the defendant claimed to have been adopted by a deceased Hindu subject to the condition that the widow of the deceased should enjoy his property for life, and that his daughters should take his self-acquired property after her death, the arrangement by which the condition was imposed being alleged to be oral, their Lordships observed: "Looking to the inconsistent statements made by the defendant from time to time, the conflict in the evidence of the witnesses, the improbability of such a conditional adoption as that set up without any writing in support of it, their Lordships are of opinion that the defendant ought to have been called as a witness and offered himself for cross-examination, and that in his absence the Sub-Judge had good reasons for believing the evidence on the part of the plaintiffs instead of the witnesses examined on the part of the defendant. The defendant himself was about 18 years of age at the time when the alleged adoption took place, and must therefore have had a recollection of the facts connected with the adoption if it had taken place." (*Sir Barnes Peacock.*) MUSSUMAT IMRIT KONWAR *v.* ROOP NARAIN SINGH. **(1879) 3 Suth. 612 (616-7) = 6 C. L. R. 76 = Bald. 227 = 3 I. J. 328.**

———*Collector of District—Evidence of, as to treatment of boy as adopted son by alleged adoptive father and as to introduction of boy by him to authorities that he might be recognised as adopoted son—Weight due to.*

The question was whether *L* had been adopted by *J* in 1819.

Mr. Roberts, the Collector of the District at the time, deposed that, in the course of the years 1824 and 1825, a boy of an age corresponding with that of *L*, and who, by other evidence, was shown to have been *L*, was brought by *J* upon several occasions on which he paid a visit at the Collector's office, and that the boy was treated by *J*, and considered by him, the Collector, as his adopted son. He said that the boy accompanied *J* upon every visit except the first; that he had frequent communication with *J* upon the subject; that he considered the boy to be brought in order that he might be recognised as an adopted son; and that so satisfied was he, Mr. Roberts, of the facts, that on *J*'s death, in the absence of evidence to the contrary, he should have considered him his heir.

HINDU LAW—(*Contd.*)

Adoption—Evidence of—(*Contd.*)

Held, that the evidence of Mr. Roberts was most important, and that the Courts below erred in assuming that he lay under a misconception of what had passed in a conversation in a language which was not vernacular to either party (105, 111-2),

The assumption of the Courts below is a purely gratuitous assumption. It would have been a strong assumption if Mr. Robert's opinion had been formed from a single conversation; but he states that he had frequent communications with *J* upon the subject, that the boy was brought to him by *J* four or five times, was treated by *J* as his son, and was brought, as he considered, in order that his title as such might be known and recognised. His opinion is founded not merely on what he heard but what he saw, not on one but on several occasions (112). (*Mr. Pemberton Leigh.*) RUNGAMMA *v.* ATCHAMMA. **(1846) 4 M. I. A. 1 = 7 W. R. (P. C.) 57 = 1 Suth. 197 = 1 Sar. 313.**

———*Deeds of gift and acceptance.*

Though deeds of gift and acceptance are not actually necessary for the validity of an adoption, they are still evidence in support of the child's title as an adopted son, and of his rights consequent upon the adoption (161 2). (*Sir Barnes Peacock.*) SREE NARAIN MITTER *v.* SREEMUTTY KISHEN SOONDORY DASSEE. **(1873) Sup. I. A. 149 = 11 B. L. R. 171 = 19 W. R. 133 = 3 Sar. 203 = 2 Suth. 774.**

———*Documents executed on foot of adoption—Executant questioning fact of adoption—Documents if conclusive.*

In a case in which the question was whether the husband of the respondent had been legally adopted by *P*, the deceased husband of the appellant, the trial Judge decided against the respondent on a consideration of the oral and documentary evidence in the case. His decision was reversed by the High Court, their judgment being based chiefly on the documents, which, although they were undoubtedly such as to throw on the appellant the burden of disproving the adoption, were by no means conclusive of the statements in them.

On appeal, the Privy Council reversed the judgment of the High Court, and restored that of the trial Judge. (*Viscount Haldane.*) GANNABHATTULA VENKAMMA *v.* GANNABHATTULA VENKATARATNAMMA. **(1919) 10 L.W. 599 = 23 C. W. N. 961 = (1919) M. W. N. 544 = 27 M. L. T 107.**

———*Gazette extract describing alleged adopted son as of family of adoptive father and as having him as father or guardian—Extract prepared by school master not cited—Admissibility—Weight due to.*

In a case in which the question was whether the respondent's husband had been legally adopted by *P*, the deceased husband of the appellant, the respondent produced in support of her case an extract from the Fort Saint George Gazette containing a list of candidates who had obtained certificates of qualification for the public service by reason of their having passed the primary examination. In the list occurred the name of the respondent's husband, described as having the surname of Gannabhattula (that of *P*'s family), and as having *P* as his father or guardian. The entry was prepared by a school-master, who was cited as a witness for the respondent, and was actually in Court during the trial, but was not called.

Held that, even if the document was admissible in evidence, little weight was to be attached to it (601). (*Viscount Haldane.*) GANNABHATTULA VENKAMMA *v.* GANNABHATTULA VENKATARATNAMMA.

(1919) 10 L. W. 599 = 23 C. W. N. 961 = (1919) M. W. N. 544 = 27 M. L. T. 107.

HINDU LAW—(*Contd.*)

Adoption—Evidence of—(*Contd.*)

———*Income-tax on property of deceased—Payment by widows in possession thereof—Value of—Adoption alleged by deceased.*

Where the question was whether the plaintiff had been adopted by the husband of the defendant, *held*, that the fact that the defendant and her co-widow then alive remained in possession of the estate of their husband after his death and that they paid income-tax on that property inclined the preponderance, if the scales were at all evenly balanced, in favour of the defendant's contention that the plaintiff had not been so adopted (754).

This payment of income-tax on the part of the widows is inconsistent with the case of the plaintiff, who alleges that he had been adopted, and that they, consequently, had merely a title to maintenance ; and, if his case were true, he, and not they, would have been entitled to the possession of the estate, and liable to the payment, amongst other things, of this tax (754). (*Sir Robert P. Collier.*) MUSSAMAT BASMATI KOWARI *v.* BABOO KIRUT NARAIN SINGH.

(1880) **3 Suth 753 = Bald. 362 = 4 I. J. 342.**

———*Oral evidence unsatisfactory and contradictory—Conduct of parties—Documentary evidence—Safe guide in case of.*

Where on a question as to the proof of the factum of an adoption by a Hindu widow, the witnesses for the two sides contradict each other, the only safe guide to follow is that afforded by the action and conduct of the principal parties concerned and the contents of the documents produced. (*Lord Atkinson.*) KISHORI LAL *v.* CHUNNI LAL.

(1908) 36 I.A. 9 (18) = 31 A. 116 (127) = 5 M L.T. 58 = 9 C.L J. 172 = 13 C. W. N. 370 = 11 Bom. L.R. 196 = 1 I. C. 128 = 19 M.L.J. 186.

———*Widows of adopter becoming* Suttees—*Declaration by, that they have neither son nor daughter—Effect—Son in declaration means natural-born son.*

The question was whether the appellant had been adopted by one *G*. To disprove the alleged adoption the respondents relied upon a report made by the police of the examination of the two widows of *G*, on the occasion of their becoming *Suttees*.

The report contained the examination of the Police Officers of the widows, previous to their being burned with the corpse of their husband, and they were there stated to have declared, that they had no son nor daughter, which it was said would not be true. if the appellant had been the adopted son of their husband.

On referring to the Regulation, however under which that official examination took place, as well as to the nature of the examination itself, it appeared that the question applied to natural-born children. That the widows understood it in that sense appeared from the words of their answers, the words being " We have no son nor daughter, we are barren."

Held, that the report could not therefore be relied upon as in any way militating against the appellant's case of adoption (429). (*Mr. Pemberton Leigh.*) HURADHUN MOOKURJIA *v.* MUTHORANATH MOOKURJIA.

(1849) 4 M. I. A. 414 = 7 W. R. (P.C.) 71 = 1 Suth. 213 = 1 Sar. 375.

Adoption—Fabricated adoption.

———*Securities against—Necessity—Absence of, under Hindu Law—Evils flowing from.*

According to the Hindu Law, neither registration of the act of adoption, nor any written evidence of that act, having been completed, is essential to its validity. It is to be lamented that an irrevocable act, which defeats the just expectations of the relations of deceased persons, may, at any distance of time, after it is supposed to have been done,

HINDU LAW—(*Contd.*)

Adoption—Fabricated adoption—(*Contd.*)

be proved by verbal testimony. It would contribute much to the security of property and the happiness of Hindu families, if, in a country where the religious obligiation of an oath is unfortunately so little felt, and documents so readily fabricated, adoptions and all other important acts were required to be performed in the presence of some Magistrate, and to be recorded in some court. (*Lord Wynford.*) SUTROOGUN SUTHPUTTY *v.* SABITRA DYE.

(1835) 5 W. R. (P.C.) 109 = 1 Suth. 36 (36-7) = 2 Knapp. 287.

Adoption—Factum and validity of.

———Acquiescence by widow of person adopting it—What amounts to. *See* ACQUIESCENCE—HINDU FEMALE—ADOPTION AND WILL OF DECEASED HUSBAND.

(1865) 10 M.I.A. 429 (433-4).

———*Question as to—Fact or Law—Capacity of adoptive father—Question depending upon—Will—Factum and validity in same circumstances—Nature of.*

This case is something different from a mere question of fact. The matters questioned, an adoption and a will, involve both the *factum* of each and the capacity of the alleged adopting father and testator. Each of these acts interferes with and displaces previously existing rights, inchoate or presumptive (436). (*Lord Chelmsford.*) TAYAMMAUL *v.* SASHACHALA NAYAKER. **(1865) 10 M.I.A. 429 = 2 Sar. 139.**

Adoption—Factum valet.

———*Doctrine of—Applicability of, in different schools.*

That the maxim " *Quod fieri non debuit factum valet* " is not recognised by the schools of Hindu Law other than the Bengal School in the same degree as in the Bengal school is undoubtedly true. But that it receives no application except in Lower Bengal is a proposition which is contradicted not only by passages in Sir William Macknaghten's work, but by decided cases. The High Courts of Madras and Bombay have acted upon it (53-4). (*Sir James W. Colvile.*) SRIMATI UMA DEVI *v.* GOKOOLANUND DAS. **(1878) 5 I. A. 40 = 3 C. 587 (601) = 2 C. L. R. 51 = 3 Sar. 786 = 3 Suth. 499.**

Adoption—Forms of.

———*Dattaka — Dvyamushyayana — Foster-son—Test—Deed—Construction.*

Where a Hibbahnamah stated:—"But as I had no son or daughter, I took you as my Pulluck-pootro with the Uncomutty (permission) of your parents, for the purpose of securing funeral oblations of water and funeral cake, and having brought you up like a son, performed the ceremonies of your Sungskar etc., and have constituted you my representative ; "—*held*, thal the deed did not necessarily affirm the boy taken as Pulluck-pootro to be " a son given and received."

Quaere, whether the boy was the mere foster-son of the executant, or was so filiated by him as to become Dvyamushyayana. (*Sir James W. Colvile.*) NILMADHUB DOSS *v.* BISHUMBER DOSS. **(1869) 13 M.I.A. 85 (100-2) = 12 W.R. (P.C.) 29 = 3 B.L.R. (P.C.) 27 = 2 Suth. 257 = 2 Sar. 489.**

———*See also* HINDU LAW—ADOPTION (1) DVYAMUSHYAYANA ; (2) ILLATOM SON-IN-LAW ; AND (3) KRITRIMA.

Adoption—Gharbari Gosavis.

———*See* GHARBARI GOSAVIS.

Adoption—Girls.

———*Custom of adoption of—Onus of—Proof of.*

Adoption of girls is not known to the general law of Hindus, A local, tribal or family custom of adoption of

HINDU LAW—(*Contd.*)

Adoption—Girls—(*Contd.*)

girls must be proved by those who allege it (199). (*Lord Hobhouse*) GHASITI AND NANHI JAN *v.* UMRAO JAN. **(1893) 20 I.A. 193 = 21 C. 149 = 6 Sar. 370 = 52 P. R. 1893.**

———*Validity of adoption of.*

Adoption of girls is not known to the general law of Hindus (199). (*Lord Hobhouse.*) GHASITI AND NANHI JAN *v.* UMRAO JAN. **(1893) 20 I.A. 193 = 21 C. 149 = 6 Sar 370 = 52 P. R. 1893.**

Adoption—Illatom son-in-law.

———*Adoption of by person having son—Validity—Custom—Kamma caste.*

Decision of the High Court that a member of the Kamma caste, a Sudra sub-caste, although a member of a joint family and having a natural-born son, can adopt an illatom son-in-law, affirmed upon evidence of custom among the Kammas given in the present case and in a previous unreported case appealed to the High Court. (*Sir John Edge.*) NALLURI KRISTNAMMA *v.* KAMEPALLI VENKATASUBBAYYA. **(1919) 46 I.A. 168 = 42 M. 805 = 21 Bom. L. R. 906 = (1919) M.W.N. 551 = 30 C.L.J. 145 = 10 L.W. 193 = 23 C.W N. 1010 = 17 A.L.J. 662 = 26 M.L.T. 56 = 51 I.C. 1 = 37 M L.J. 1.**

Adoption—Institution of—Spiritual or temporal.

———The law of adoption owes its origin to the timorous superstition of the inhabitants of India. These people, vainly imagining that, by leaving male children in this world, they secure themselves against the torments of the next, seem to have been very anxious to obtain natural or adopted sons. (*Lord Wynford*) SUTROOGUN SUTPUTTY *v.* SABITRA DYE. **(1835) 5 W.R. (P.C.) 109 = 1 Suth. 36 (36) = 2 Knapp 287.**

———Every childless Hindu is under a religious duty to adopt a son. But childless Hindus do die daily without having fulfilled this obligation, or made provision for its fulfilment after their death (100). (*Sir James W. Colvile,*) NILMADHUB DOSS *v.* BISHUMBER DOSS. **(1869) 13 M.I.A. 85 = 12 W.R. (P.C.) 29 = 3 B.L.R. 27 = 2 Suth. 257 = 2 Sar. 489.**

———It may be the duty of a Court of Justice administering the Hindu law to consider the religious duty of adopting a son as the essential foundation of the law of adoption; and the effect of an adoption upon the devolution of property as a mere legal consequence (193). (*Sir James W Colvile.*) SRI RAGHUNADHA *v.* SRI BROZO KISHORO. **(1876) 3 I. A. 154 = 1 M. 69 (83) = 25 W. R. 291 = 3 Sar. 583 = 3 Suth. 263.**

———Among Hindus the ceremony of adoption is held to be necessary not only for the continuation of the line of the childless father, but as part of the religious means whereby a son can be provided who will make those oblations and religious sacrifices which would permit of the soul of the deceased passing from Hades into Paradise (154). (*Lord Shaw.*) BAL GANGADAR TILAK *v.* SHRINIVAS PANDIT. **(1915) 42 I. A. 135 = 39 B. 441 (470) = 17 Bom. L. R. 527 = 19 C. W. N. 729 = 22 C. L. J. 1 = 13 A. L. J. 570 = 18 M. L. T. 1 = (1915) M. W. N. 554 = 2 L. W. 611 = 29 I. C. 639 = 29 M. L. J. 34.**

———The due performance of the shradhs, or religious ceremonies for the dead, is at the base of the religious theory of adoption (275). (*Sir John Edge.*) SHEOKUARBAI *v.* JEORAJ. **(1920) 25 C. W. N. 273 = 16 N. L. R. 170 = 2 U. P. L. R. (P. C.) 161 = 61 I. C. 481 = (1920) M. W. N. 627.**

HINDU LAW—(*Contd.*)

Adoption—Institution of—Spiritual or temporal—(*Contd.*)

———For all other cases relating to this point, *see* HINDU LAW—ADOPTION (1) ANXIETY OF HINDOO FOR AND (2) WIDOW—ADOPTION BY—ASSENT OF SAPINDAS—ADOPTION WITH—PROPERTY—RIGHTS TO.

Adoption—Jains.

———Adoption among. *See* JAINS.

Adoption—Kritrima form

———*Adoption in—Effect of.*

The son adopted in the Kritrima form retains his rights of inheritance in his original and natural family (52). (*Sir James W. Colvile.*) SRIMATI UMA DEVI *v.* GOKOOLANUND DAS. **(1878) 5 I. A. 40 = 3 C. 587 (599-600) = 2 C. L. R. 51 = 3 Sar. 786 = 3 Suth. 499.**

———*Adoption in—Proof of.*

Held, reversing the judgment of the High Court, and restoring the judgment of the first Court, that the adoption had not been satisfactorily proved. (*Sir Robert P. Collier.*) MUSSAMAT BASMATI KOWARI *v.* BABOO KIRUT NARAIN SINGH. **(1880) 3 Suth. 753 = Bald. 362 = 4 I. J. 342**

Adoption—Law of.

AUTHORITIES ON.

———Dattaka Chandrika—Examination—If and to what extent open to. *See* HINDU LAW — AUTHORITIES—DATTAKA CHANDRIKA.

(1869) 26 I. A. 113 (131-2) = 22 M. 398 (411-2).

———*Dattaka Chandrika — Madras Presidency—Novel rule in work not based on identifiable ancient texts—Binding force of.*

The Dattaka Chandrika has been for long and still is accepted in the Presidency of Madras as a treatise on adoption of the highest authority. It, however, does not necessarily follow from the fact that the Dattaka Chandrika has been long accepted in Southern India as a high authority on the law of adoption that comments and propositions, apparently then novel, contained in it, if not based on ancient texts which can with some certainty be identified, have been accepted by the Hindus of Southern India as part of the Hindu law (292). (*Sir John Edge.*) PERRAZU *v.* SUBBARAYUDU. **(1921) 48 I. A. 280 = 44 M. 656 (667 8) = (1921) M. W. N. 541 = 34 C. L J. 56 = 23 Bom. L. R. 920 = 14 L. W. 270 = 3 U. P. L. R. (P. C.) 46 = 26 C. W. N. 1 = 19 A. L. J. 621 = 61 I. C. 690 = 41 M. L. J. 33.**

———*Dattaka Chandrika and Dattaka Mimamsa.*

The Dattaka Chandrika and the Dattaka Mimamsa are written upon the particular subject of adoption; they enjoy the highest reputation throughout India (97). (*Mr. Pemberton Leigh.*) RUNGAMMA *v.* ATCHAMMA. **(1846) 4 M. I. A 1 = 7 W. R. (P. C.) 57 = 1 Suth. 197 = 1 Sar. 313.**

———*Dattaka Chandrika and Dattaka Mimamsa—Authoritativeness of, in different schools—Distinction.*

The Dattaka Mimamsa of Nanda Pandita, and the Dattaka Chandrika of Davanda Bhatta, two treatises on the particular subject of adoption, are respected all over India, but when they differ, the doctrine of the latter is adhered to in Bengal and by the southern jurists, while the former is held to be the infallible guide in the Provinces of Mithila and Benares. The Dattaka Mimamsa, by the author of the Madhavyam, is also recognised as of high authority in the South of India. (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SETHUPATHY. **(1868) 12 M. I. A. 397 (437) = 10 W. R. (P.C.) 17 = 1 B. L. R. P. C. 1 = 2 Suth. 135 = 2 Sar. 361.**

HINDU LAW—(*Contd.*)

Adoption—Law of—(*Contd.*)

———*Dattaka Chandrika and Dattaka Mimamsa—Benares school—Which more authoritative in.*

Of the Dattaka Mimamsa and the Dattaka Chandrika, the former is considered by the Benares school to be the more authoritative treatise on the subject of adoption (49). (*Sir James W. Colvile.*) SRIMATI UMA DEVI *v.* GOKOOLANUND DAS. (1878) 5 I. A. 40 = 3 C. 587 (597) = 2 C. L. R. 51 = 3 Suth. 499 = 3 Sar. 786.

———*Dattaka Chandrika and Dattaka Mimamsa—Bengal school.*

The Dattaka Chandrika and Dattaka Mimamsa are the authorities that govern the decision of questions of adoption arising in the Bengal school (246). (*Sir Richard Couch.*) PUDMA COOMARI DEBI *v.* COURT OF WARDS. (1881) 8 I. A. 229 = 8 C. 302 (311) = 4 Sar. 285.

———*Dattaka Mimamsa—Glosses in—Caution in accepting, when they deviate from Smritis—Necessity.*

The Dattaka Mimamsa is undoubtedly a high authority on the law of Hindu adoption and is treated with respect. It is a work which has had a high place in the estimation of Hindu lawyers in all parts of India and has become embedded in Hindu law, but caution is required in accepting the glosses of Nanda Pandita, its author, where they deviate from or add to the Smritis (161). (*Sir John Edge.*) PUTTU LAL *v.* PARBATI KUNWAR. (1915) 42 I. A. 155 = 37 A. 359 (367) = 13 A. L. J. 721 = 19 C. W. N. 841 = 22 C. L. J. 190 = 17 Bom. L. R. 549 = 18 M. L. T. 61 = 2 L. W. 881 = (1915) M. W. N. 514 = 29 I. C. 617 = 29 M. L. J. 63.

———*European authorities—Sutherland.*

Mr. Sutherland, author of the synopsis of the Hindu Law of Adoption, is a very high authority (99). (*Mr. Pemberton Leigh.*) RUNGAMMA *v.* ATCHAMA. (1846) 4 M. I. A. 1 = 7 W. R. (P.C.) 57 = 1 Suth. 197 = 1 Sar. 313.

FOUNDATION OF.

———*Religious duty—Devolution of property—Court of Justice—Duty of.*

It may be the duty of a Court of Justice administering the Hindu law to consider the religious duty of adopting a son as the essential foundation of the law of adoption; and the effect of an adoption upon the devolution of property as a mere legal consequence (193). (*Sir James W. Colvile.*) SRI RAGHUNADHA *v.* SRI BROZO KISHORO. (1876) 3 I. A. 154 = 1 M. 69 (83) = 25 W.R. 291 = 3 Sar. 583 = 3 Suth. 263.

ORIGIN OF.

———The law of adoption owes its origin to the timorous superstition of the inhabitants of India. These people, vainly imagining that, by leaving male children in this world, they secure themselves against the torments of the next, seem to have been so anxious to obtain natural or adopted sons, that they have established but imperfect securities against fabricated adoptions. (*Lord Wynford.*) SUTROOGUN SUTPUTTY *v.* SABITRA DYE. (1835) 5 W. R. (P.C.) 109 = 1 Suth. 36 (36) = 2 Knapp. 287.

Adoption—Onus of proof of.

———*Admission in deeds not* inter partes—*Effect—Shifting of onus—Estoppel.*

In a suit by the plaintiff claiming to be entitled to the suit property as the son and heir of *P*, the defendant pleaded that, though the natural son of *P*, the plaintiff had been given away in adoption to *P*'s brother, *K*. In support of her plea the defendant tendered in evidence and relied upon deeds under the hand and seal of the plaintiff himself stating that he was the adopted son of *K*. No attempt was, however, made on the part of the plaintiff to prove satisfactorily that the admissions contained in the deeds to which he was a party were untrue in fact.

Held, that the admissions in the said deeds shifted the burden of proof on to the plaintiff; that though, as the defendant was not a party to those deeds, there was no estoppel and it was open to the plaintiff to rebut the presumption arising from the admissions in those deeds, he not having satisfactorily done so, the fact admitted must be taken to be established (35-6). (*Lord Atkinson.*) CHANDRA KUNWAR *v.* NARPAT SINGH. (1906) 34 I. A 27 = 29 A 184 (194-5) = 2 M. L T. 109 = 5 C. L. J. 115 = 11 C. W. N. 321 = 9 Bom. L R. 267 = 4 A. L. J. 102 = 17 M. L. J. 103.

———*Adopted son alleged—Suit by.*

The question for decision was whether the plaintiff had been adopted by *B*, a deceased Hindu. These were the broad facts of the case. At the hearing several depositions made in previous suits by witnesses examined in the present suit were admitted in evidence without the necessary foundation for their admission having been laid. The most vital points were not elucidated. The most suspicious circumstances were not proved. The most important and decisive documents were not produced. Due weight had not been given in the Courts in India to the conduct of the plaintiff; the improbability and inconsistency of the story told on his behalf; his absence from the witness-chair; and the non-production of all books or documents. The conduct of the trial was, on the whole, eminently unsatisfactory.

The Sub-Judge decided, as a fact, on the evidence before him that the plaintiff had not been adopted. The High Court, on the same evidence, decided that he had been adopted.

On appeal the Privy Council held that the sounder view was between those two extremes and that the plaintiff had not discharged the onus which rested upon him of proving the adoption. (*Lord Atkinson.*) LAL KUNWAR *v.* CHIRANJI LAL. (1909) 37 I. A. (10-1) = 32 A. 104 (114-5) = 7 M. L. T. 57 = 11 C. L. J. 172 = 14 C. W. N. 285 = 12 Bom. L. R 244 = 5 I. C. 249 = 20 M. L. J. 182.

———*Defendant's plea that plaintiff had been adopted into another family—Plaintiff denying adoption.*

Where in a suit by the plaintiff claiming to be entitled to the suit property as the son and heir of his father, *P*, the defendant pleads that the plaintiff was given away in adoption to *P*'s brother *K*, the onus of proving that the adoption relied upon took place rests undoubtedly on the defendant. (*Lord Atkinson.*) CHANDRA KUNWAR *v.* NARPAT SINGH. (1906) 34 I. A. 27 (35) = 29 A. 184 (194) = 2 M. L. T. 109 = 5 C. L. J. 115 = 11 C. W.N. 321 = 9 Bom. L. R. 267 = 4 A. L. J. 102 = 17 M. L. J. 103

———*Heir-at-law—Suit by—Defendant's claim to have been adopted by deceased—Onus on defendant in case of.*

Where, in a suit by the heirs-at-law of a deceased Hindu, the defendant set up that he had been adopted by the deceased and was, therefore, entitled to his property as such adopted son, *held*, that the defendant ought to adduce clear proof of his alleged adoption.

The heirs-at-law ought not to be disinherited except upon clear proof of the adoption. (*Sir Barnes Peacock.*) MUSSUMAT IMRIT KONWAR *v.* ROOP NARAIN SINGH. (1879) 3 Suth. 612 (613) = 6 C. L. R. 76 = Bald. 227 = 3 I. J. 328.

HINDU LAW—(*Contd.*)

Adoption—Onus of proof of—(*Contd.*)

———*Widow—Adoption by—Suit by alleged adopted son for declaration of its validity against widow and presumptive reversioner.*

The suit was instituted by the respondent against Mussamat *L*, a purdanashin lady, for a declaration that he was the validly adopted son of *L's* deceased husband, having been adopted by her with the permission or by the direction of the deceased, given shortly before his death, as his son. To the suit the appellant, the presumptive reversioner was made a party defendant.

Held that the burden of proving the adoption rested upon the respondent (12). (*Lord Atkinson.*) KISHORI LAL *v.* CHUNNI LAL. **(1908) 36 I. A. 9 = 31 A. 116 (121-2) = 5 M. L. T. 58 = 9 C. L. J. 172 = 13 C. W. N. 370 = 11 Bom. L. R. 196 = 1 I. C. 128 = 19 M. L. J. 186.**

Adoption—Presumption against—Circumstances giving rise to.

———*Accounts of natural or adoptive father—Reference in, to expenditure on ceremony of adoption—Absence of.*

The question was whether the appellant had been adopted by *M*, deceased, as his son and heir.

Held, that the case for the respondents, who impugned the adoption, was strongly corroborated by the absence of any reference to expenditure on the ceremony of adoption, either in the accounts of *M*, or of the natural father of the appellant (208).

The importance of the evidence afforded by accounts has been recognised by this Board (I. L. R. 32 All. 104):—

" Having regard to the well-known and often proved habits of the Indian people with regard to the keeping of accounts, recording their most minute transactions, the non-production of any book in which anything connected with the ceremony was entered, covers the plaintiff's case with suspicion" (208). (*Lord Parmoor.*) DIWAKAR *v.* CHANDANLAL RAO **(1916) 44 C. 201 = 18 Bom. L R 992 = 25 C. L. J. 17 = 21 M. L. T. 6 = 5 L. W. 103 = (1917) M. W N. 50 = 21 C. W. N. 314 = 12 N. L. R. 164 = 39 I. C. 6 = 32 M. L. J. 636.**

———*Account books containing entry as to ceremony—Non-production of.*

In a case in which the question was whether the plaintiff had been adopted by a deceased person, *held*, that the non-production of any book in which anything connected with the ceremony of adoption was entered covered the plaintiff's case with suspicion. (*Lord Atkinson.*) LAL KUNWAR *v.* CHIRANJI LAL. **(1909) 37 I. A. 1 (7-8) = 32 A. 104 (112) = 7 M. L. T. 57 = 11 C. L. J. 172 = 14 C. W. N. 285 = 12 Bom. L. R. 244 = 5 I. C. 249 = 20 M. L. J. 182.**

———*Adoption deed—Non-registration of.*

It is said also that the deed of adoption was not registered. If it had been registered it would have been more clear, but it appears to be such a common thing not to register deeds that their Lordships think that the mere circumstance of the deed of adoption not being registered is no ground why the adoption should not be believed. KALICHANDRA CHOWDHRY *v.* SHIB CHUNDRA. **(1870) 6 B. L. R. 501 (507-8) = 15 W. R. 12 = 2 Sar. 621 = 2 Suth. 383.**

———*Deed of adoption or other formal written record of it at the time—Absence of.*

The question was whether the appellant had been adopted by *M*, deceased, as his son and heir. There was no deed of adoption or any other formal written record of the event at the time.

Their Lordships observed: Although a deed of adoption, or a formal written record of the fact of adoption, may

HINDU LAW—(*Contd.*)

Adoption—Presumption against—Circumstances giving rise to—(*Contd.*)

have to be carefully scrutinised if forgery is alleged, it is certainly remarkable that in such a case as the present no deed or other formal written record can be produced which gives any support to the claim made on behalf of the appellant. This Board in 2 Knapp. 287 said :—

" Although neither written acknowledgments, nor the performance of any religious ceremonial, are essential to the validity of adoptions, such acknowledgments are usually given, and such ceremonies observed, and notices given of the times when adoptions are to take place, in all families of distinction, as those of zemindars or opulent Brahmins, that wherever these have been omitted, it behoves this Court to regard with extreme suspicion the proof offered in support of an adoption. I would say that in no case should the rights of wives and daughters be transferred to strangers, or more remote relatives, unless the proof of adoption, by which that transfer is effected, be proved by evidence free from all suspicion of fraud, and so consistent and probable as to give no occasion for doubt of its truth." (209-10). (*Lord Parmoor.*) DIWAKAR *v.* CHANDANLAL RAO. **(1916) 44 C. 201 = 18 Bom. L R. 992 = 25 C. L J. 17 = 21 M. L. T. 6 = 5 L W. 103 = (1917) M. W. N. 50 = 21 C. W. N. 314 = 12 N. L. R. 164 = 39 I. C. 6 = 32 M. L. J. 636.**

———*Deed by alleged adoptive father leaving 10-16ths of his estate to third parties.*

It is not likely that a person who had regularly adopted another, so as to make him in law his own son, and to deprive him of a right to participate in the inheritance of his natural father, would leave away from him ten-sixteenths of the estate (99-100.) (*Sir James W. Colvile.*) NILMADHUB DOSS *v.* BISHUMBER DOSS. **(1869) 13 M. I. A. 85 = 12 W. R. (P. C.) 29 = 3 B. L. R. 27 = 2 Suth. 257 = 2 Sar. 489.**

———*Eldest or only son—Giving of, in Dattaka form.*

There is a presumption that a Hindu would not break the law by giving in adoption an eldest or only son, or allowing him to be adopted otherwise than as a Dyamushyayana (100-1). (*Sir James W. Colvile.*) NILMADHUB DOSS *v.* BISHUMBER DOSS. **(1869) 13 M. I. A. 85 = 12 W. R. (P. C.) 29 = 3 B. L. R. 27 = 2 Suth. 257 = 2 Sar. 489.**

———*Notification to Government of fact of adoption—Absence of, in case of a great family.*

With respect to the absence of any formal notification to the Government of the act of adoption, it is admitted on all hands not to be necessary. At the same time it affords so easy a mode of preserving unquestionable evidence of a most important fact that, in the case of a great family like this, some written communication would most probably be made, either on the occasion of the adoption itself, or on some subsequent occasion (108). (*Mr. Pemberton Leigh.*) RUNGAMMA *v.* ATCHAMMA. **(1846) 4 M. I. A. 1 = 7 W. R. (P.C.) 57 = 1 Suth. 197 = 1 Sar. 313.**

———*Notification to Government of fact of adoption—Absence of, in a great family—Adverse presumption from—Circumstances diminishing.*

The question was whether *L*, had been adopted by *J*. One of the two circumstances which were much against the adoption was the absence of proof of any formal notification to the Government, and of that degree of notoriety which might be expected of a fact of so such importance in such a family. It appeared that the adoptive father of *J* had himself made communications to the Government with respect to the adoption of *J*, and of another boy, and that he endeavoured to have their titles recognised.

Held, that the absence of any such communications in the case of *L* was important, but that there were circum-

HINDU LAW—(*Contd.*)

Adoption—Presumption against—Circumstances giving rise to—(*Contd.*)

stances in evidence by which the weight of the objection was very considerably diminished (108).

At the time of the alleged adoption of *L*, *J* was at law with the Collector of the District, who refused to deliver up possession of some portions of the property of the adoptive father of *J*, claimed by *J*. It is not, perhaps, very unnatural to suppose that, under such circumstances, *J* would not willingly have any communications with the Collector not absolutely necessary. But there were other disputes at this time between *J* and the Government authorities. *A*, one of the wives of *J*, or her brother on her behalf, had complained to the Civil Magistrate of the conduct of *J* towards her and he had been fined There were also other differences subsisting between them. That at a subsequent time there was some written communication to the Collector of Masulipatam, in which district a portion of the estate of *J* was situated, there is much reason to believe (108-9). (*Mr. Pemberton Leigh.*) RUNGAMMA *v* ATCHAMMA.

(1848) 4 M. I. A. 1 = 7 W. R. (P. C.) 57 = 1 Suth. 197 = 1 Sar. 331.

———*Oral evidence—Case depending upon — Denial of adoption by alleged adoptive father—Suit for declaration of its validity not commenced till after his death.*

The only question in the appeal was whether the late *M* adopted the appellant as his son, and heir to the Hetta Zemindari. on the 10th November, 1898.

The appellant was born on the 26th October, 1898, and was the second son of Indrajit *M* was a relation on the agnatic side. At the time of the alleged adoption *M* had two young wives. There was no reason why he might not have issue by them ; two children were in fact born to him at a later date. Both Indrajit and *M* were Zemindars of considerable position.

There was no deed of adoption and the case for the appellant depended almost entirely on oral testimony. The District Judge found in favour of the appellant. His judgment was reversed by the Judicial Commissioner.

The evidence showed that *M* had from the outset consistently denied that he had adopted the appellant. Still, though it was open to Indrajit to commence a suit claiming to have the adoption of the appellant declared valid, no such suit was commenced until 2½ months after *M's* death. There was no reference to expenditure on the ceremony of adoption, either in the accounts of Indrajit or *M*. There was no deed of adoption or any other formal written record of the event at the time. No feast was proved to have taken place on the occasion of the adoption ; the ceremonies, said to have been performed, were of the briefest possible description ; no form or notification, was made to the authorities ; the child's name was not changed, and he was never taken to live with his new family, or recognised by them in any way.

Held, affirming the Court below, that all the surrounding circumstances and conditions made it highly improbable that *M* did adopt the appellant at the alleged date, and that, having regard to those conditions and circumstances, the oral evidence was quite insufficient to support the case of the appellant (210). (*Lord Parmoor.*) DIWAKAR *v.* CHANDANLAL RAO. **(1916) 44 C. 201 = 18 Bom. L. R. 992 = 25 C. L. J. 17 = 21 M. L. T. 6 = 5 L. W. 103 = (1917) M. W N. 50 = 21 C. W. N. 314 = 12 N. L. R. 164 = 39 I. C. 6 = 32 M. L. J. 636.**

———*Reasonable hopes of begetting issue—Person having—Presumption against adoption by—Force of, in case of proof satisfactory of adoption.*

In a case in which the question was whether the fact of the defendant's adoption had been established, and it appeared that the defendant had adduced satisfactory oral and documentary evidence to establish that fact, *held* that, as against a case so proved, the *prima facie* improbability of the adoption having been made by reason of the fact that at the date thereof the deceased might reasonably have hoped to beget issue could not weigh very heavily (49). (*Sir James W. Colvile.*) SRIMATI UMA DEVI *v.* GOKOOLANUND DAS. **(1878) 5 I. A. 40 = 3 C. 587 (596-7) = 2 C L. R. 51 = 3 Suth. 499 = 3 Sar. 786.**

———*Witnesses material—Omission to examine or to account for non-examination of.*

To get over the improbability of so young a man adopting a son, we are told a story of his having his nativity cast by a Brahmin from the north, who assured him that no male child of his would live. One should have expected that that Brahmin should have been produced as a witness, or some reason given by evidence for not having him before the Court. (*Lord Wynford.*) SUTROOGUN SUTPUTTY *v.* SABITRA DYE. **(1835) 5 W. R. (P. C.) 109 = 1 Suth. 36 (37) = 2 Knapp. 287.**

———*Written acknowledgments—Notices to ruling power, to neighbours and to public generally—Absence of.*

Although, according to the Hindu Law, neither written acknowledgments, nor the performance of any religious ceremonies, are essential to the validity of adoption, such acknowledgments are usually given, such ceremonies observed, and notices given of the time when adoptions are to take place, in all families of distinction, such as those of zemindars or opulent Brahmins. It is usual, when persons in the situation of life of the deceased adopt sons, to acknowledge such adoptions in writing, to give notice to the ruling power, and to invite the neighbouring Zemindars and others to be present at such adoptions. Wherever the above formalities have been omitted, it behoves the Court to regard with extreme suspicion the proof offered in support of an adoption. In no case, the rights of wives and daughters should be transferred to strangers or to more remote relations, unless the act of adoption, by which this transfer is effected, be proved by evidence free from all suspicion of fraud, and so consistent and probable as to give no occasion for doubt of its truth. (*Lord Wynford.*) SUTROOGUN SUTPUTTY *v.* SABITRA DYE. **(1835) 5 W.R. (P.C.) 109 = 1 Suth. 36 (37-38) = 2 Knapp. 287.**

———*Young man having borne issue—Disinheritance of daughter by adoption.*

The question was whether the appellant had been adopted by *D. D* was, according to one account, 22, and according to another, 36 years old, when he was alleged to have adopted the appellant ; *D's* wife was 18. She had given promise of having children, for she had borne a daughter and another child that had died.

Held, that the above-mentioned circumstances rendered the alleged adoption strikingly improbable.

Superstition was not likely to frighten a person so circumstanced into the doing an act by which his daughter would be disinherited, and the inheritance of any son or sons that he might have be divided with a stranger. (*Lord Wynford.*) SUTROOGUN SUTPUTTY *v.* SABITRA DYE.

(1835) 5 W. R. (P. C.) 109 = 1 Suth. 36 (37) = 2 Knapp. 287.

Adoption—Presumption in favour of—Circumstances giving rise to.

———*Diseased person without hope of issue by wife with whom he lived—Inimical relations between him and his other wife and between him and those who would take his property in default of adoption.*

HINDU LAW—(*Contd.*)

Adoption—Presumption in favour of—Circumstances giving rise to—(*Contd.*)

The question was whether *L* had been adopted by *J*.

In the year 1819 when the adoption was alleged to have been made the situation of *J* was as follows :— He had married two wives, but had never had any issue by either of them. He was stated by some of the witnesses to have been from bodily infirmity very unlikely to have issue. That was so far confirmed by undisputed facts, that he lived for six years afterwards with *R*, one of his wives, and never had any issue. He might therefore reasonably presume, or perhaps knew, that he should have no natural-born son, or at all events no such son by *R*. With *A*, his other wife, he had quarrelled in April 1819 ; and previously to the alleged adoption, she had quitted his house, to which she never returned till after his death.

Held that, under those circumstances it could not but be held probable that he should choose to adopt a son (104).

Held further, that that probability was much confirmed when regard was had to the relation in which he stood towards them, who, if he left no issue, natural or adopted, would succeed to his joint possession, for either *A*, with whom he had quarrelled, would take alone or jointly with *R*, or Ramanadha, another adopted son of his adoptive father, with whom he was at law, and whose character of a brother he denied, would succeed (104).

Nothing is more natural than that *J* should desire to disappoint these parties (104-5). (*Mr. Pemberton Leigh.*) RUNGAMMA *v* ATCHAMA. **(1846) 4 M. I. A. 1 = 7 W. R (P. C.) 57 = 1 Suth. 197 = 1 Sar. 313.**

———*Dying man—Alleged adoption by—Acquiescence by his widow in—Presumption from—Effect of, in case of clear proof of incapacity of deceased to perform act.*

In a case in which the validity of an adoption was disputed both on the ground that it never took place, and on the ground that the alleged adoptive father was on the date of the alleged adoption utterly incompetent to perform the act imputed to him, it was strongly urged against the widow of the deceased (one of the defendants chiefly contesting the adoption) in support of the validity of the adoption, that the widow was a consenting party to it, performing her part in the ceremony, and afterwards showing by unequivocal acts her entire acquiescence in what had taken place. Those acts were allowing the boy to perform the funeral rites as an adopted son, and the day after the adoption putting her mark to an arzee addressed to the collector, stating the adoption and the performance of the funeral rites by the adopted son, and praying for the transfer into his name of her late husband's property.

Held that, assuming the acts to be satisfactorily established, all that would not sustain the validity of the adoption, unless it clearly appeared that the act itself was performed under such circumstances as would render it perfectly legal (433).

The concurrence of the widow, and the various acts of acquiescence attributed to her, would be important if they were brought to bear upon a question which depended upon the preponderance of evidence ; but if the facts are once ascertained, presumptions arising from conduct cannot establish a right which the facts themselves disprove (433). (*Lord Chelmsford.*) TAVAMMAL *v.* SESHACHELLA NAICKER. **(1865) 10 M. I. A. 429 = 2 Sar. 139.**

———Gift and acceptance of by—Deeds of—Execution and registration of. *See* HINDU LAW—ADOPTION—CEREMONIES—GIFT AND ACCEPTANCE—DEEDS OF.

(1880) 7 I. A. 250 (254-5) = 6 C. 381 (387-8).

———*Lapse of time—Question raised after long—Recognition of status of adopted son by all members of family.*

HINDU LAW—(*Contd.*)

Adoption—Presumption in favour of—Circumstances giving rise to—(*Contd.*)

The case of a Hindu claiming by adoption is perhaps as strong as any case of the kind that can be put ; because when, under a document which is supposed and admitted by the whole family to be genuine, he is adopted, he loses the rights—he may lose them altogether—which he would have in his own family; and it would be most unjust after long lapse of time to deprive him of the status which he has acquired in the family into which he has been introduced, except upon the strongest proof of the alleged defect in his title (77). (*Sir James W. Colvile.*) RAJENDRO NATH HOLDAR *v*, JOGENDRO NATH BANERJEE.

(1871) 14 M. I. A. 67 = 15 W R. (P. C.) 41 = 7 B. L. R. 216 = 2 Suth. 422 = 2 Sar. 666.

———*Lapse of time—Recognition of adoption.*

The parties belonged to the sect of Gharbari Gosavis. One *Z*, a member of that sect, had two sons, *R* and *J*. *J* died in the lifetime of *Z*, leaving no son. The plaintiff asserted that after *J's* death his widow—with the concurrence of *Z*, adopted *V*, the plaintiff's father, as a son to *J*. That adoption was disputed by the appellants, and the question in the case was as to the factum and validity of the said adoption.

The suit in which the question arose was instituted in August, 1910. The alleged adoption was in about 1864. *Z* died in 1869 or 1870 ; *R* died in 1885 ; *S*, his widow, survived him for 20 years, dying in 1904.

The plaintiff's witnesses deposed to the fact that *V* was shaved, that he was adopted by being placed in the lap of the widow of *J*, and that the ceremony of *Bija Hom* was afterwards performed. Witnesses for the defendants, while admitting the ceremony of shaving, denied that there had been the further ceremony of *Bija Hom*, and said that the widow of *J* was not living and could not therefore have taken part in the ceremony of adoption. It was, however, agreed that from the date of the ceremony of shaving, *V* lived in his new family and bore a name showing that he belonged to it and had nothing to do with his former family. It was also proved that before the date of *V's* initiation, *R* had separated in estate from his father *Z*.

Held, affirming the courts below, that the proper presumption was that *V*, who had been styled on occasions both by *R* and by *S* as the son of *J*, and who had lived as if he were such a son all his life must be deemed to have been validly adopted (360). (*Lord Phillimore.*) HARIGIR KISANGIR GOSAVI *v*. BHARATHI VISHNU BHARATHI GOSAVI.

(1925) 22 L. W. 355 = (1925) M. W. N. 414 = 21 N. L R. 127 = 88 I.C, 343 = A. I. R. 1925 P. C. 127.

———*Old man without hope of issue natural-born—Prior adoption by—Alleged adoption soon after death of that adopted boy.*

The question was whether appellant had been adopted by his deceased uncle, *G*.

At the time of the alleged adoption, it was clear, that *G* was advanced in years, about 67 years old, that he had two wives to whom he had long been married, by neither of whom he had ever had issue, and both of whom were of such an age, as to make it in the highest degree improbable that he should ever have by them a son of his body. He seemed long before the period to have despaired of having such issue, for eighteen years before he had adopted a boy, who, however, died without issue, shortly before the alleged adoption of the appellant. It was also clear from the evidence produced on both sides that *G* shared the average Hindu's anxiety to leave a son who would save him from "Put", and that it was out of this anxiety that he had adopted a boy eighteen years before.

Held, that under the circumstances the probability in favour of an adoption of some child was very strong (425-6).

HINDU LAW--*(Contd.)*

Adoption—Presumption in favour of—Circumstances giving rise to—*(Contd.)*

(*Mr. Pemberton Leigh.*) HURADHUN MOOKERJEA *v.* MUTHORANATH MOOKERJEA, **(1849) 4 M. I. A. 414 = 7 W. R. (P. C.) 71 = 1 Suth. 213 = 1 Sar. 375.**

———*Possession long by alleged adopted son as such—Factum of adoption admitted.*

Where the question was whether the adoption of the plaintiff, the factum of which was undisputed, was valid in point of law, or not, *held* that, on proof by the plaintiff of undisputed possession for a long space of time in his character of adopted son, every presumption of fact should be made in favour of the validity of the act by virtue of which it took place, and the onus of proving those circumstances which rendered it invalid in point of law, if the nature of the case required such proof, ought to lie on the other side. (*Mr. Justice Parke.*) RAJAH HAINUM CHULL SINGH *v.* KOOMER GUNSHEAM SING. **(1834) 5 W. R. 69 = 1 Suth. 4 (5) = 2 Knapp. 203 = 1 Sar. 37.**

———*Religious duty of Hindu to adopt.*

Much has been said of the old presumption which arises from the religious duty which is upon every childless Hindu to adopt a son. Their Lordships do not deny the force of that presumption, but they cannot shut their eyes to the fact that childless Hindus die daily without having fulfilled this obligation, or made provision for its fulfilment after their death (100). (*Sir James W. Colvile.*) NILMADHUB DOSS *v.* BISHUMBER DOSS. **(1869) 13 M I. A. 85 = 12 W. R. (P. C.) 29 = 3 B. L. R. 27 = 2 Suth. 257 = 2 Sar. 489.**

Adoption—Proof of.

———The question was whether *L* had been adopted by *J*. Their Lordships, reversing the courts below, affirmed the fact of adoption, observing as follows :--" Upon this state of the evidence, the probability of the adoption, certainly of a child being brought up in the family, and introduced to the European authorities, with the same state and pomp as if he were an adopted son, with documents and witnesses in great numbers confirming the account, which documents and witnesses are open to no other suspicion than attaches to all Hindu evidence, we should have no hesitation in affirming the fact of adoption." (110-1). (*Mr. Pemberton Leigh.*) RUNGAMMA *v.* ATCHAMA. **(1846) 4 M. I. A. 1 = 7 W. R. (P. C.) 57 = 1 Suth. 197 = 1 Sar. 313.**

———*Held*, affirming the High Court, which had reversed the court below, that the fact of the defendant's adoption had been established (49). (*Sir James W. Colvile.*) SRIMATI UMA DEVI *v.* GOKOOLANUND DAS. **(1878) 5 I. A. 40 = 3 C. 587 (596-7) = 2 C. L. R. 51 = 3 Suth 499 = 3 Sar 786.**

———*Held*, affirming the High Court, that the plaintiff had proved that he had been adopted by the deceased, the succession to whose estate was in question (56). (*Sir Montague Smith.*) SREEMUTY NITTOKISSOREE DOSSEE *v.* JOGENDRO NATH MULLICK. **(1878) 5 I. A. 55 = 3 Sar. 792 = Bald. 159 = 3 Suth. 505.**

———*Held*, affirming the High Court which had reversed the finding of the court below, that the fact of the defendant's adoption had been satisfactorily proved (35). (*Sir James W. Colvile.*) INDROMONI CHOWDHRANI *v.* BEHARI LAL MULLICK. **(1879) 7 I. A. 24 = 5 C. 770 (773) = 6 C. L. R. 183 = 3 Suth. 719 = 4 Sar. 120.**

———*Held*, concurring in the findings of the courts below, that the plaintiff had failed to prove the formal adoption of himself set up by him (253). (*Sir James W. Colvile.*)

HINDU LAW—*(Contd.)*

Adoption—Proof of—*(Contd.)*

MAHA SHOYA SOSHINATH GHOSE *v.* SRIMATI KRISHNA SOONDARI DASI. **(1880) 7 I. A. 250 = 6 C. 381 (386) = 7 C. L. R. 313 = 3 Suth. 812 = 4 Sar. 191.**

———The only question for decision was whether the respondent was adopted by one Bijai Singh.

Held, on the oral evidence which was not only consistent with but received confirmation from the probabilities of the case and the conduct of the parties, including those who impugned the adoption, that the High Court rightly held the adoption proved. (*Lord FitzGerald.*) ZALIM SINGH *v.* BAL KISHAN. **(1887) Bald. 499.**

———In a suit brought by the respondent against a purdanashin lady and the presumptive reversionary heir to the estate of her deceased husband, the question was whether the respondent was adopted by the lady with the permission or by the direction of her deceased husband, given shortly before his death, as his son.

Held, reversing the High Court, that the respondent had failed to prove that he was adopted by the lady as alleged by him.

Having regard to all these facts—the contradictions between the principal witnesses examined on the respective sides on almost every important point ; the improbabilities of the respondent's story ; its inconsistency with the conduct and action of the principal parties concerned, as well as with the mode in which the business of the lady's firm was conducted and carried on ; the suppression of documents ; the non-appearance of the respondent as a witness at the trial to explain if he could, the many circumstances which called for explanation from him ; and, above and beyond all, the non-production of any account of the expenditure at the ceremony of adoption—their Lordships think that the most rational and just conclusion is this, that the respondent has failed to discharge the burden of proof of the adoption which undoubtedly lay upon him, that is, that his case is not proven. (*Lord Atkinson.*) KISHORE LAL *v.* CHUNNI LAL. **(1908) 36 I. A. 9 (26-7) = 31 A. 116 (135) = 5 M. L. T. 58 = 9 C. L. J. 172 = 13 C. W. N. 370 = 11 Bom. L. R. 196 = 1 I. C. 128 = 19 M. L. J. 186.**

———The question was whether *W* was the adopted son of *S*. The first Court thought the adoption proved. The appellate Court took a different view.

The adoption, if it took place, was about 50 years before suit, so that direct evidence of much value could hardly be looked for. Before the death of *S*, *W* was described as his adopted son. On the death of *S*, *W* succeeded to the estate of *S* without controversy, which he could only have done as adopted son, and enjoyed it and disposed of it as his own without controversy down to his death about nine years after. Almost every document, both during the life of *W* and since his death, was framed entirely upon the basis of the adoption.

Held, that the adoption was established. (*Sir Arthur Wilson.*) RUP NARAIN *v.* GOPAL DEVI. **(1909) 36 I. A. 103 (110) = 36 C. 780 (795) = 10 C. L. J. 58 = 13 C. W. N. 920 = 5 M. L. T. 423 = 11 Bom. L. R. 833 = 6 A. L. J. 567 = 3 I. C. 382 = 93 P. R. 1909 = 146 P. W. R. 1909 = 68 P. L. R. 1910 = 19 M. L. J. 548.**

———In a case in which the question before their Lordships was a question of fact, namely, whether the defendant in the suit was the adopted son of the deceased owner of the suit property, the District Judge found against the defendant. But the Court of the Judicial Commissioner, on appeal, reversed his decree and found the adoption proved.

Held, on the evidence, that the judgment of the Court below was substantially correct. Judgment of the Court

HINDU LAW—(*Contd.*)

Adoption—Proof of—(*Contd.*)

below was, therefore, affirmed. (*Lord Shaw.*) JUDAWAN PRASAD *v.* SHATRUHAN PRASAD.

(1924) 26 Bom. L. R. 568 = A.I.R. 1924 P. C. 208 = 46 M. L. J. 625.

———It is very strong confirmation of the truth of the adoption that, with one exception, all the witnesses who were called against the adoption, and professed to say there was no adoption, admit that the alleged adopted son was, some years before the death of the alleged adoptive father, brought to his house, and there lived with him, and was brought up in fact as his son, with a view to adoption. Now, no doubt, that does not of itself make an adopted son, or make him the heir, but when you find a larger body of witnesses who appear to have had quite as much or better knowledge of the facts, come and say that the ceremonies of adoption were actually performed, and that they were present at them, then the fact that these witnesses who deny the adoption are obliged to admit that the boy was being brought up in the house during the adoptive father's lifetime, very strongly confirms their evidence (507).

It is important also to consider on which side the possession went, because if the adoption was recognised soon or immediately after the adoptive father's death, and between his death and the death of the adopted son, the adopted son was the party in possession, and not the alleged heir, that is very much in favour of the adoption (508). KALICHANDRA CHOWDHRY *v.* SHIB CHUNDRA.

(1870) 6 B. L R. 501 = 15 W. R. 12 = 2 Sar. 621 = 2 Suth. 383.

———Concurrent findings as to—Privy Council's interference with. *See* PRIVY COUNCIL—PRACTICE—QUESTION OF FACT—CONCURRENT FINDINGS—INTERFERENCE WITH—CASES UNDER—HINDU LAW—ADOPTION.

Adoption—Religious feeling of Hindus as to.

———*See* HINDU LAW—ADOPTION—ANXIETY OF, ETC.

Adoption—Religious theory as to.

———*See* HINDU LAW—ADOPTION OF—INSTITUTION OF.

Adoption—Retrospective operation of.

———*See* HINDU LAW—ADOPTION—ADOPTED SON (1) ADOPTIVE FATHER—WILL BY, AND (2) POSITION AND RIGHTS OF.

Adoption—Revocation of.

———*Power of.*

Once a person makes an adoption, he has no power subsequently to revoke the adoption (205). (*Lord Parmoor.*) DEWAKAR *v.* CHANDANLAL RAO. **(1916) 44 C. 201 = 18 Bom. L. R. 992 = 25 C. L. J. 17 = 21 M. L. T. 6 = 5 L. W. 103 = (1917) M. W. N. 50 = 21 C. W. N. 314 = 12 N. L. R. 164 = 39 I. C. 6 = 32 M. L. J. 636.**

Adoption—Second adoption—Validity of.

———*Admission by first adopted son of—Effect—Assumption by him of validity of his own adoption.*

Where *A* makes a statement asserting that he was validly adopted to a deceased person and admitting that *B*, who was subsequently adopted to the deceased by his second widow, was also an adopted son of the deceased, *held* that *B* could not rely upon the statement as constituting an estoppel in favour of the validity of his adoption (133-4).

If *A* was validly adopted it follows that *B* wus invalidly adopted. Therefore no reliance can be placed upon the statement in support of the plea of estoppel (134). (*Sir Robert P. Collier.*) GOPEE LALL *v.* MUSSAMUT SREE CHUNDRAOLEE BUHOOJEE. **(1872) Sup. I. A. 131 = 11 B. L. R. 391 = 19 W. R. 12 = 3 Sar. 217 = 2 Suth. 752.**

HINDU LAW—(*Contd.*)

Adoption—Second adoption—Validity of—(*Contd.*)

———*First adopted son alive.*

The first question is as to the validity of a second adoption of the first adopted son still existing, and remaining in possession of his character of a son. The second adoption is in such a case invalid (102). (*Mr. Pemberton Leigh.*) RUNGAMMA *v.* ATCHAMMA. **(1846) 4 M. I. A. 1 = 7 W. R. (P. C.) 57 = 1 Suth. 197 = 1 Sar. 313**

———According to the Hindu Law of adoption and succession a valid second adoption cannot be made when a son under a previous adoption is alive. (*Lord Shand.*) MOHESH NARAIN MOONSHI *v.* TARUCK NATH MOITRA. **(1892) 20 I. A. 30 (33) = 20 C. 487 (493) = 6 Sar. 261.**

Adoption—Setting aside of.

———*See* (1) HINDU LAW—REVERSIONER AND (2) SPECIFIC RELIEF ACT, S. 42—CASES UNDER—HINDU LAW—ADOPTION.

Adoption—Sumultaneous adoption.

———*Validity of.*

Under the Hindu law, a simultaneous adoption is invalid (126) (*Lord Hobhouse.*) SURENDRAKESHAV ROY *v.* DOORGASUNDARI DASSEE. **(1892) 19 I. A. 108 = 19 C. 513 (530) = 6 Sar. 150.**

Adoption—Spiritual benefit from—Exhaustion of.

———*Age to which son ought to live for.*

In this case the son of the deceased had lived to an age which enabled him to perform and it is to be presumed that he had performed all the religious services which a son could perform to a father (310). (*Lord Kingsdown.*) MUSSUMAT BHOOBUN MOYEE DEBIA *v.* RAMKISHORE ACHARJ CHOWDHRY. **(1865) 10 M. I. A. 279 = 3 W. R. (P. C.) 15 = 1 Suth. 574 = 2 Sar. 111.**

———*Age of sufficient maturity—Adopted son attaining, and performing religious ceremonies—Exhaustion by.*

Their Lordships quoted with approval the following passage in the judgment of Mitter, J. in 22 W.R. 121 : An adopted son attaining an age of sufficient maturity and by performing the religious ceremonies enjoined by the shasters cannot exhaust the whole of the spiritual benefit which a son is capable of conferring on the soul of his deceased father ; because these services are enjoined to be repeated at certain stated intervals, and the performance of them on each successive occasion secures fresh spiritual benefit to the soul of the deceased. (*Sir Andrew Scoble.*) KAMEEPALLI SURYANARAYANA *v.* PUCHA VENKATA RAMANNA. **(1906) 33 I. A. 145 (154-5) = 29 M. 382 (389) = 10 C. W. N. 921 = 4 C. L. J. 171 = 1 M. L. T. 260 = 8 Bom. L. R. 700 = 3 A. L. J. 702 = 16 M. L. J. 276.**

———*Lapse of several successive heirs if amounts to.*

After the lapse of several successive heirs, all the spiritual services of a son would, according to the largest construction of them, be satisfied. (*Lord Kingsdown.*) MUSSUMAT BHOOBUN MOYEE DEBIA *v.* RAM KISHORE ACHARJ CHOWDHURY. **(1865) 10 M. I. A. 279 (310) = 3 W. R. (P.C.) 15 = 1 Suth. 574 = 2 Sar. 111.**

———Son natural-born or adopted—Ceremonial competence—Age of—Attainment of—What amounts to—Effect. *See* HINDU LAW—SON—CEREMONIAL COMPETENCE. **(1903) 30 I. A. 234 = 27 B. 492.**

———Son natural-born or adopted—Legal capacity to continue the line—What amounts to—Effect of. *See* HINDU LAW—ADOPTION—ADOPTED SON—LEGAL CAPACITY, ETC. **(1918) 45 I. A. 156 (161-2) = 41 M. 855 (859-60).**

HINDU LAW—(*Contd.*)

Adoption—Spiritual or temporal institution.

———*See* HINDU LAW—ADOPTION—INSTITUTION OF.

Adoption—Status of.

———*See* HINDU LAW—ADOPTION—ADOPTED SON—STATUS.

Adoption—Sudras.

———*System of adoption among—Borrowed from twice-born classes.*

The system of adoption seems to have been borrowed by the sudras from the twice-born classes ; whom in practice, as appears by several of the cases, they imitate as much as they can ; adopting those purely ceremonial and religious services which it is now decided are not essential for them in addition to the giving and taking in adoption (256). (*Sir James W. Colvile.*) MAHASHOYA SHOSINATH GHOSE *v.* SRIMATI KRISHNA SOONDARI DASI.

(1880) 7 I. A. 250 = 6 C. 381 (389) = 7 C. L. R. 313 = 4 Sar. 191 = 3 Suth 812.

Adoption—Validity of.

DECEASED—ADOPTION BY—CEREMONIES OF, DIRECTED BY HIS WILL TO BE PERFORMED BY HIS WIDOWS—FAILURE OF WIDOWS TO PERFORM CEREMONIES—VALIDITY OF ADOPTION.

———Effect on—Adoption of different boy by them—Validity of. *See* HINDU LAW—ADOPTION—DECEASED—ADOPTION BY. **(1876) 3 I. A. 253 (258).**

DECISION AS TO.

———*Effect of, in subsequent suit—Court disposing of first suit not competent to try subsequent suit.*

It would not be proper that the decision of a munsif upon (for instance) the validity of a will or of an adoption in a suit for a small portion of the property affected by it should be conclusive in a suit before a District Judge or in the High Court for property of a large amount, the title to which might depend upon the will or the adoption (203). (*Sir Richard Couch.*) MISIR RAGHOBARDIAL *v.* RAJAH SHEO BAKSH SINGH. **(1882) 9 I. A. 197 = 9 C. 439 (444) = 12 C. L. R. 520 = 4 Sar. 395 = R. & J's No 70.**

———Reversioner intervening in suit—Effect on. *See* C. P. CODE OF 1908, S. 11—CASES UNDER—INTERVENOR IN SUIT. **(1875) 2 I. A. 283 (285) = I. C. 144.**

———*Widow and adopted son—Reversioner's suit against—Decision in—Effect of, as between widow and adopted son* inter se.

The suit was instituted by the respondents, the collateral heirs of *L*, to set aside the adoption in the Dattaka form of *B*, her brother's son, as invalid, because no permission to adopt was given to the widow by her late husband, *L*. The defendant, the widow, asserted her husband's permission to the adoption, and that the adoption was valid.

Both the Courts below decided in favour of the respondents. The decree of the Sub-Judge was as follows :—"That this case be decreed with costs ; that the defendant's taking *B* as a *dattakaputter* and executing a deed of *kurta putri* be set aside and considered null and void ; and that the defendant, as an heir and widow of *L* deceased, do continue to hold possession and occupation of the properties of the deceased during her lifetime."

Their Lordships, while affirming the decrees below, observed that the decree could only be binding as between the plaintiffs and the defendants in the suit, and that it could not affect the interests of the defendants as between themselves, and that it could not affect the right of *B* as against the mother, the defendant, or the right of the heir of the mother as regards the peculiar property of the mother. The decree, their Lordships observed, should be read as if the words " as against the reversionary heirs of the husband" had been inserted after the word "void." (*Sir Barnes Peacock.*) MUSSAMUT ADIT KOER *v.* GUNGA PERSHAD SINGH. **(1879) 3 Suth. 600 = Bald. 207 = 3 I. J. 290.**

HINDU LAW—(*Contd.*)

Adoption—Validity of—(*Contd.*)

DECISION AS TO—(*Contd.*)

———*Widow and adopted son—Suit between—Decision in—Effect of, against widow's heirs.*

S brought a suit to recover possession of an Oudh taluqa from the widow of *B*, the last male owner of the taluqa, alleging, *inter alia*, that he had been adopted by the widow as the son of *B* with his express permission. The widow denied that her husband had ever given her permission to adopt, and also that she had ever adopted *S* within the meaning of the Hindu law. The suit was dismissed, the Court holding that *S* had not been adopted as the son of *B* and that *B* had not authorised any adoption by his widow.

In a suit brought after the death of *B's* widow by a person claiming to be her heir and to be entitled to the taluqa, of which the widow was taluqdar in her own right, as against *S*, *S* again set up the adoption. *Held* that, in view of the language of S. 13 of C. P. Code of 1882, which deals with issues as well as suits, the finding in the prior suit on the issue as to adoption must be treated as *res judicata*. (*Lord Macnaghten.*) THAKUR TRIBHUWAN BAHADUR SINGH *v.* RAJA RAMESHAR BAKHSH SINGH. **(1906) 33 I. A. 156 (164) = 28 A. 727 (740) = 10 C. W. N. 1065 = 8 Bom. L. R. 722 = 3 A. L. J. 695 = 4 C. L. J. 405 = 1 M. L. T. 265 = 9 O. C. 377 = 16 M. L. J. 440.**

DEED—ADOPTION BY MERE.

———Sudras—Twice-born classes. *See* HINDU LAW—ADOPTION—CEREMONIES OF—GIVING AND TAKING—MODE OF. **(1880) 7 I. A. 250 (255 6) = 6 C. 381 (388 9).**

ISSUE AS TO—SCOPE OF.

———*Shasters—Adoption if according to—Issue as to—Consent of particular person—Invalidity of adoption for want of—Plea of, if included.*

The issue " whether the defendant had been, according to the Shastras, adopted by the widow of the last male owner " raises only the question, whether all the ceremonies, and whatever other requisites the Hindu law has made essential to an adoption, had been complied with. It does not cover the contention that the adoption, which was made by the widow in pursuance of an authority conferred upon her by her husband's will, was invalid because it was not made with the consent of the testator's mother as required by the will (70-1). (*Sir James Colvile.*) RAJENDRO NATH HOLDER *v.* JOGENDRO NATH BANERJEE. **(1871) 14 M. I. A. 67 = 15 W. R. (P.C.) 41 = 7 B. L. R. 216 = 2 Suth. 422 = 2 Sar. 666.**

———Presumption of, where factum admitted. *See* HINDU LAW—ADOPTION—PRESUMPTION IN FAVOUR OF. **(1834) 5 W. R. 69.**

———Simultaneous adoption. *See* HINDU LAW—ADOPTION—SIMULTANEOUS ADOPTION.

———Right to dispute—Estoppel. *See* HINDU LAW—ADOPTION—ADOPTED SON—STATUS OF.

———Second adoption. *See* HINDU LAW—ADOPTION—SECOND ADOPTION.

Adoption—Widow—Adoption by.

ADOPTED SON UNDER.

ANTE-ADOPTION AGREEMENT BETWEEN WIDOW AND NATURAL FATHER.

ASSENT OF SAPINDAS—ADOPTION WITH.

AUTHORITY TO ADOPT.

BOMBAY PRESIDENCY AND GUZERAT—WIDOW IN WHOM PROPERTY OF HUSBAND NOT VESTED AS HIS HEIR—ADOPTION BY.

HINDU LAW—(*Contd.*)

Adoption—Widow—Adoption by—(*Contd.*)

CUSTOM PROHIBITING.
DECLARATION OF VALIDITY OF—SUIT BY WIDOW FOR—MAINTAINABILITY.
DIVESTING OF ESTATE BY.
EFFECT OF.
ESSENCE OF.
ESTATE DIVESTED BY.
EVIDENCE AS TO.
HUSBAND—ADOPTION BY—CEREMONIES OF—DIRECTION TO WIDOW TO PERFORM—NON-COMPLIANCE WITH—VALIDITY OF ADOPTION—EFFECT ON.
HUSBAND—ADOPTION NOT TO, BUT TO WIDOW ALONE.
MEANING ORDINARY OF, IN HINDU LAW.
NANDA PANDITA'S EXTENSION TO, OF RULE OF LEGAL MARRIAGE BEING POSSIBLE BETWEEN ADOPTER AND MOTHER OF ADOPTEE.
POWER OF.
RETROSPECTIVE OPERATION OF.
SETTING ASIDE OF.
VALIDITY OF.

ADOPTED SON UNDER

———Alienation of property to which, entitled as such—Restraint on—Covenant with widow imposing—Validity. *See* UNDER THIS SUB-HEAD — COVENANT WITH WIDOW. **(1879) 6 I. A. 196 (210) = 2 M. 91 (103).**

———*Alienation prior to adoption by manager of estate for adoptive mother—Suit to recover property subject of—Limitation—Starting point.*

K was the original owner of certain properties. Shortly after his death his widow *H*, under a power given to her by *K*, adopted *G*, who was in possession of the estate until his death in February, 1834. *G* also died childless, and his widow *B* succeeded him as his heiress.

By an *anumati patra* executed by *G* shortly before his death, he empowered his widow with the consent of his mother, *H*, to adopt a son. That document contained expressions of confidence in *H*, in whose name the properties were registered, and directed that her name should continue to stand registered and she should have control as long as she lived. In 1846, *B*, under the power given to her by her late husband, adopted *L*, who thereupon became the heir and successor in title of his adoptive father *G*. *H* died in 1848.

On 8th August, 1837, *H* purported to grant to the predecessor in interest of the respondents certain mouzahs, appertaining to the estate of *G* on a permanent putni tenure.

L attained his majority in or about 1856. In 1880 *L* died, and was succeeded in title by his adopted son and heir, the appellant.

In a suit brought by the appellant on September 13, 1897, to recover from the putnidars the mouzahs granted on putni by *H*, *held*, affirming the High Court, that the suit was barred (84-5).

H had no estate in the property in question. On the most favourable view for the appellant she granted the putni as manager of the estate for *B*, the then legal owner. If the putni was void, the period of limitation ran from the date on which it was granted under Reg. II of 1803, as amended by Reg. II of 1805, which was then in force. But if it was voidable only by *B's* successor, the right of action arose on the adoption of *L*, and time would begin to run against him from the date when he attained his majority in 1856. Under either Reg. II of 1803 or Act XIV of 1859 time ran from the date when the cause of action arose (85). (*Lord Davey.*) RAI BANOMALI ROY BAHADUR *v.* JAGAT

HINDU LAW—(*Contd.*)

Adoption—Widow—Adoption by—(*Contd.*)

ADOPTED SON UNDER—(*Contd.*)

CHUNDRA BHOWMICK. **(1905) 32 I. A. 80 = 32 C. 669 (678-9) = 8 Sar. 784 = 1 C. L. J. 319 = 9 C. W. N. 673 = 2 A. L. J. 794 = 15 M. L. J. 267.**

———*Alienation unauthorised by widow prior to adoption—Effect against adopted son of.*

The rights of an adopted son are not prejudiced by any unauthorized alienation by the widow which precedes the adoption which she makes. (*Sir James Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SATHUPATHY. **(1868) 12 M. I. A. 397 (443) = 2 Sar. 361 = 10 W. R. (P.C.) 17 = 1 B. L. R. (P.C.) 1 = 2 Suth. 135.**

———*Covenant with widow not to alienate property to which he (adopted son) is entitled as such—Legal effect of.*

A Hindu widow, who had succeeded to the property of her husband as heir to her deceased adopted son, alienated two-thirds of the said property, and then adopted the plaintiff, under authority from her husband, having entered into an agreement with the natural father of the plaintiff that he would inherit only the remaining one-third of his adoptive father's property. On coming of age, the plaintiff executed an agreement in favour of his adoptive mother the main object of which was to ratify the said alienations. By that agreement the plaintiff also covenanted not to alienate or encumber the one-third which he got without the written consent of his adoptive mother.

Quære as to the legal effect of the plaintiff's covenant against alienation (210). (*Sir Robert P. Collier.*) RAMASWAMI AIYAN *v.* VENKATARAMAIYAN.

(1879) 6 I. A. 196 = 2 M. 91 (103) = 5 C. L. R. 347 = 4 Sar. 42 = 3 Suth. 663.

———Gift by widow to—Handing over by her of possession of husband's estate to adopted son not a. *See* HINDU LAW—GIFT—WIDOW—GIFT BY—ADOPTED SON.

(1925) 52 I. A. 322 (329) = 48 M. 883.

———Guardianship of—Adoptive mother's right to—Agreement by her giving up right to natural father in consideration of his giving in adoption—Effect of. *See* HINDU LAW — ADOPTION — ANTI-ADOPTION AGREEMENT — WIDOW AND NATURAL FATHER—AGREEMENT BETWEEN. **(1880) 7 I.A. 173 (179 80) = 2 M. 276 (281).**

———Litigation conducted by widow after adoption. *See* under this sub head WIDOW'S SUIT ETC.

———*Litigation conducted by widow after adoption—Decision in—Effect on adopted son of.*

During the pendency of an appeal in the High Court against a decree made against a Hindu widow as representing the estate of her deceased husband, she adopted a minor boy to him Even after the adoption, she continued to prosecute the appeal in her own name taking no notice of the adoption in that court, and preferred an appeal to the Privy Council against the decree of the High Court, and prosecuted it, also in her own name only. The Privy Council affirmed the decree of the High Court. On an application for execution of the decree presented against the widow for self and as guardian of her minor adopted son, it appeared that the appeals in the High Court and before the Privy Council were prosecuted by the widow *bona fide* and in the best interests of the minor. *Held* that, after the adoption, the appeals must in law be considered to have been prosecuted by the widow in her name for the minor's benefit, that execution was rightfully sought against him through his guardian and it was no answer that his name was not on the record (203).

In a suit for mesne profits brought pursuant to the above decree relating to title against the widow for self and as guardian of her minor adopted son, *held further* that the suit was substantially brought against the minor and that

HINDU LAW—(*Contd.*)

Adoption—Widow—**Adoption by**—(*Contd.*)

ADOPTED SON UNDER—(*Contd.*)

the High Court was in error in decreeing that the suit should be dismissed as against him, and declaring that he was not a party to it and was not bound by the result of the proceedings therein (206-7). (*Sir Richard Couch.*) HARI SARAN MOITRA *v.* BHUBANESWARI DEBI.

(1888) **15 I. A. 195 = 16 C. 40 = 5 Sar. 198.**

———*Maintenance of widow for her life—Land assigned by adopted son for—Acquisition of, under Land Acquisition Act—Compensation money paid on—Adopted son's right to—Relinquishment of—Agreement amounting to.*

A Hindu widow, who had succeeded to the property of her husband as the heir of her deceased adopted son alienated two-thirds of her husband's estate. She then adopted the plaintiff under authority from her husband, having entered into an agreement with the natural father of the plaintiff whereby the natural father agreed that the plaintiff should inherit only the remaining one-third of the estate of his adoptive father. On coming of age, the plaintiff executed an agreement, dated 19th August, 1871, in favour of his adoptive mother the main object of which was to ratify the disposition which had been made of the two-thirds of the estate. By that agreement the plaintiff assigned to his adoptive mother a specific portion of the remaining land in lieu of maintenance. The agreement provided that the adoptive mother was to enjoy the land so assigned for her life, that she should not alienate or encumber the same, and that the same was to revert to the plaintiff upon her death.

It appeared that compensation money was paid to the adoptive mother by the railway department for a portion of the land so assigned to her, and the question arose whether the plaintiff was entitled to a portion of the said compensation money.

Held, that the plaintiff could not, by the agreement of 1871, be taken to have relinquished his claim to the said money, though it would be open to the widow to prove that the money received had been properly expended on the land (210). (*Sir Robert P. Collier.*) RAMASWAMI AIYAN *v.* VENKATARAMAIYAN. (1879) **6 I. A. 196 = 2 M. 91 (103) = 5 C. L. R. 347 = 4 Sar. 42 = 3 Suth. 663.**

———Maintenance grant to adoptive father made descendible to his male descendants—Right to take under—Custom excluding him — Proof of—Onus—Quantum. *See* HINDU LAW—IMPARTIBLE ESTATE—JUNIOR MEMBERS—MAINTENANCE OF—GRANT FOR (1) MALE DESCENDANTS OF GRANTEE, ETC., AND (2) MALE LINE OF GRANTEE. (1918) **46 I. A. 97 = 43 B. 778.**

———Rights of—Relation back of. *See* HINDU LAW—ADOPTION—ADOPTED SON—POSITION AND RIGHTS OF.

———Rights of—Relation back of—Theory of—Limits to—Will by adoptive father—Validity against adopted son of. *See* HINDU LAW — ADOPTION — ADOPTED SON—ADOPTIVE FATHER—WILL BY.

(1927) **54 I. A. 248 (262) = 50 M. 508.**

———Status of—Widow's right to dispute, on ground of absence of authority to adopt—Estoppel. *See* HINDU LAW—ADOPTION—ADOPTED SON—STATUS OF—RIGHT TO DISPUTE—ESTOPPEL—ADOPTIVE MOTHER.

(1897) **24 I. A. 191 = 25 C. 187** and (1912) **39 I.A. 142 (148-9) = 34 A. 398 (404).**

———Suit for possession of adoptive father's property against his undivided brother placed in possession by Government on his death—Mesne profits—Period for which adopted son entitled to—No demand of possession prior to suit. *See* HINDU LAW—ADOPTION—ADOPTED SON—ADOPTIVE FATHER—PROPERTY OF.

(1876) **3 I. A. 154 (193) = 1 M. 69 (83-4).**

HINDU LAW—(*Contd.*)

Adoption—Widow—Adoption by—(*Contd.*)

ADOPTED SON UNDER—(*Contd.*)

———Widow alone—Adoption to, and not to husband—Rights in case of. *See* HINDU LAW—ADOPTION—WIDOW—ADOPTION BY—HUSBAND.

(1869) **12 M. I. A. 350 (356).**

———*Widow's suit for partition in respect of husband's share—Adoption pending—Decree in favour of widow in case of—Form proper of—Suit prosecuted in her own name even after adoption.*

Pending a suit brought by a Hindu widow for partition and the allotment to her of her husband's share in the joint undivided property she adopted a son to her husband pursuant to an authority to adopt given to her by him. Notwithstanding the adoption, she prosecuted the suit in her own name, and, without objection raised by the other side, a decree for possession was passed in her favour, and the same was affirmed on appeal. In the appeal to the Privy Council objection was for the first time taken that, as the result of the adoption was to divest the whole property from the widow and to vest it in the adopted son, the suit commenced in the widow's own name and for her own benefit ought to have been dismissed, and that the decree awarding possession to her in her own right was not maintainable.

Held that, after the adoption, the widow must as a matter of law be deemed to have prosecuted the suit as guardian of her adopted son, that the decree must be considered to be for his benefit, and that she must be deemed to have been put in possession as trustee for him (243-4).

No alteration in the decree was necessary, and the adopted son would be entitled to call upon the widow to account for the profits of the property of which she was put in possession (243-4). (*Lord Campbell.*) DHURM DAS PANDEY *v.* MUSSUMAT SHAMA SOONDRI DIBIAH.

(1843) **3 M. I. A. 229 = 6 W. R. (P. C.) 43 = 1 Suth. 147 = 1 Sar. 271.**

———Widow's suit to be maintained in possession of her husband's estate—Adopted son added as co-plaintiff in—Decree in favour of widow in case of—Declaration of her right as proprietor or as guardian of adopted son—Propriety. *See* DECREE—HINDU LAW—WIDOW—ADOPTED SON (MINOR). (1878) **5 I. A. 87 (115) = 1 A. 688 (708-9).**

———Will by adoptive father—Validity against adopted son of. *See* HINDU LAW—ADOPTION—ADOPTED SON—ADOPTIVE FATHER—WILL OF.

(1927) **54 I. A. 248 (262) = 50 M. 508.**

ANTE-ADOPTION AGREEMENT BETWEEN WIDOW AND NATURAL FATHER.

———*See* HINDU LAW—ADOPTION—ANTE-ADOPTION AGREEMENT — WIDOW AND NATURAL FATHER — AGREEMENT BETWEEN.

ASSENT OF SAPINDAS—ADOPTION WITH.

———What Sapinda's assent is requisite—Determination of question of—Property—Rights to—Consideration of—Necessity. *See* under this sub-head PROPERTY—RIGHT TO.

———"*Any boy at any time*"—*Adoption of—Assent to—Validity of.*

Quœre, whether an authority given by Sapindas to adopt "any boy at any time" is valid (*see* 26 M. 681). (*Viscount Cave.*) ADUSUMILLI KRISTNAYYA *v.* ADUSUMILLI LAKSHMIPATHI. (1920) **47 I. A. 99 (107) = 43 M. 650 (659) = 28 M.L. T. 70 = 18 A.L. J. 601 = (1920) M. W. N. 385 = 24 C. W. N. 905 = 12 L. W. 625 = 56 I. C. 391 = 39 M. L. J. 70.**

HINDU LAW—(*Contd.*)

Adoption—Widow—Adoption by—(*Contd.*)

ASSENT OF SAPINDAS—ADOPTION WITH—(*Contd.*)

———Assent purchased and not *bona fide* obtained—What amounts to—Effect of, on validity of adoption. *See* under this sub-head GIFTS IMPROPERLY MADE.

(1868) 12 M. I. A. 397 (443).

———*See* under this sub-head PROOF OF ASSENT OF SAPINDAS. **(1876) 4 I. A. 1 (13-4) = 1 M. 174 (190-1).**

———*See* under this sub-head IMPROPER CONSIDERATIONS. **(1880) 7 I. A. 173 (179-80) = 2 M. 270 (280-1).**

———*Divided family—Father-in-law alive—Father-in-law dead—Assent sufficient in cases of—Distinction.*

Where, however, the widow has taken by inheritance the separate estate of her husband, there is greater difficulty in laying down a rule. The power to adopt, when not actually given by the husband, can only be exercised when a foundation for it is laid in the otherwise neglected observance of religious duty, as understood by Hindus. Their Lordships do not think there is any ground for saying that the consent of every kinsman, however remote, is essential. The assent of kinsmen seems to be required by reason of the presumed incapacity of women for independence, rather than the necessity of procuring the consent of all those whose possible and reversionary interest in the estate would be defeated by the adoption. In such a case, therefore, the consent of the father-in-law, to whom the law points as the natural guardian and " venerable protector " of the widow, would be sufficient. It is not easy to lay down an inflexible rule for the case in which no father-in-law is in existence. Every such case must depend upon the circumstances of the family. All that can be said is, that there should be such evidence of the assent of kinsmen as suffices to show that the act is done by the widow in the proper and *bona fide* performance of her religious duty, and neither capriciously nor from a corrupt motive (442). (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SATHUPATHY. **(1868) 12 M. I. A. 397 = 10 W. R. (P.C.) 17 = 1 B. L. R. (P.C.) 1 = 2 Suth. 135 = 2 Sar. 361.**

———*Gifts improperly made—Assent secured by—Validity of adoption in case of.*

Though gifts improperly made to procure the assent of Sapindas to an adoption made by a Hindu widow might be powerful evidence to show no adoption needed, they do not in themselves go to the root of the legality of an adoption (443). (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SATHUPATHY.

(1868) 12 M. I. A. 397 = 10 W. R. (P. C.) 17 = 1 B. L. R. (P. C.) 1 = 2 Suth. 135 = 2 Sar. 361.

———*Husband's authority non-existent in fact—Representation of existence of—Assent given on faith of—Sufficiency of.*

To authorise an act implies the exercise of some discretion whether the act ought or ought not to be done (192).

Where all that was known was that a Hindu widow, representing herself as having the written permission of her husband to adopt, asked a kinsman of his to give her a son in adoption and succeeded in getting one, and there was nothing to show that the kinsman ever supposed that he was giving the authority to adopt which a widow not having her husband's permission would require, *held*, that there was no trace of the exercise of any discretion by him whether the act ought or ought not to be done, and that the assent so given was not sufficient (192-3). (*Sir James W. Colvile.*) SRI RAGHUNADHA *v.* SRI BROZO KISHORO.

(1876) 3 I. A. 154 = 1 M. 69 (82-3) = 25 W.R. 291 = 3 Sar. 583 = 3 Suth. 263.

HINDU LAW—(*Contd.*)

Adoption—Widow—Adoption by—(*Contd.*)

ASSENT OF SAPINDAS—ADOPTION WITH—(*Contd.*)

———Where the question was as to the validity of an adoption made by a Hindu widow with the assent of a sapinda, and it appeared that the widow did not apply to the sapinda to give his assent to an adoption to be made by her without the authority of her husband, but that she applied to him to give his son to be adopted by her under an authority which she alleged she had, but did not in fact have, from her husband, and that the sapinda gave the assent in the belief that she had authority from her husband, *held*, that the assent was not one which rendered the adoption valid and binding as against the brothers of the assenting sapinda (177-8, 180). (*Sir Barnes Peacock.*) KARUNABDI GANESA RATNAMAIYAR *v.* GOPALA RATNAMAIYAR.

(1880) 7 I. A. 173 = 2 M. 270 (279-80) = 4 Sar. 149 = 3 Suth. 740.

———A divided Hindu died issueless, leaving a widow. He had two cousins, who were the nearest reversionary heirs to his estate, and who were his nearest kinsmen. The widow of the deceased, who succeeded to his property, adopted a son. And the question was as to the validity of the said adoption.

One of the two cousins of the deceased, before the alleged adoption, executed a deed purporting to authorise it, and certain remoter kinsmen also signed that deed. At the time of the adoption, the widow asserted that her husband had before his death given her, orally, permission to take a boy in adoption. But that oral permission was found to be not true, and it appeared that it was only as a second and corroborative authority that the widow obtained the deed of consent mentioned above.

Held, that the adoption was invalid.

The failure to prove the husband's authority enters deeply into the question about the kinsmen's consent, for it cannot be disputed that the widow, in obtaining such consents as she did, represented herself to have received her husband's authority. The consents actually obtained were given, not in the exercise of an independent judgment on the expediency of the proposed adoption, but rather as the ratification of what must now be taken to be the non-existent authority of the deceased husband (25-6).

In truth, the facts of the case show that the mind of the kinsmen was not what the widow was in search of. The consent which she asked and obtained was ratification of the authority already given by the husband.

It is impossible now to set up this as an independent ground of the validity of the adoption. There is absent from this adoption the independent approval of the natural advisers of the widow (26). (*Lord Robertson.*) VENKAMMA *v.* SUBRAHMANIAM. **(1906) 34 I. A. 22 = 30 M. 50 = 5 C. L. J. 140 = 11 C. W. N. 345 = 2 M. L. T. 91 = 9 Bom. L. R. 89 = 4 A. L. J. 150 = 17 M. L. J. 114.**

———*Improper considerations — Assent influenced by—What amounts to—Validity of adoption in case of.*

A Hindu widow adopted a son to her deceased husband with the assent of one of four sapindas, who were the surviving members of the joint family of which the deceased was during his lifetime also a member. The boy adopted was the son of the assenting sapinda. But for the adoption, the assenting sapinda and his three brothers would have been entitled to equal fourth shares of the joint family property. In the event of the adoption being valid, the adopted son would be entitled to a moiety of the family property, while the assenting sapinda and his brothers would be entitled to the other moiety, each of them being entitled to one-eighth of the whole. The assent to the adoption was given in pursuance of an arrangement with the widow by which the as-

HINDU LAW—(*Contd.*)

Adoption—Widow—Adoption by—(*Contd.*)

ASSENT OF SAPINDAS—ADOPTION WITH—(*Contd.*)

senting sapinda was to become the guardian of the adopted child, and, as such guardian, was to look after all the real and personal estate to which the adopted boy would be entitled, and to deliver the same to him on his attaining proper age. It was also stipulated in the deed of arrangement that the adopted boy was to take no interest in a village which was a portion of the joint family property.

Held that, in giving his assent, the assenting sapinda was influenced by undue considerations, and that the assent was not one which rendered the adoption valid and binding against his brothers (180).

By the adoption *S* (the assenting sapinda) himself would no doubt lose a portion of the share, which would pass to the adopted son ; but then he stipulated that he should remain guardian of the adopted son, so that until he should attain his full age no partition between himself and the adopted son could have been enforced, because he was the guardian; the widow could not have asked for a partition in the name of her son, because he had stipulated that *S* should be his guardian. The consequence was that by the arrangement made with the widow he really got during the minority the management of, and the interest in, as a member of the joint family (which, if a partition with his brothers should take place, would consist of himself and the adopted son), five-eighths of the estate. The brothers might have separated, but still the infant who was adopted could not have separated from *S* without bringing a suit against the latter for a partition ; and to such a suit the guardianship for which *S* had stipulated as part of the consideration for giving his consent to the adoption would have presented exceptional obstacles (179-80). (*Sir Barnes Peacock.*) KARUNABDI GANESA RATNAMAIYAR *v.* GOPALA RATNAMAIYAR. **(1880) 7 I. A. 173 = 2 M. 270 (280-1) = 4 Sar. 149 = 3 Suth. 740.**

———*Joint family—Assent required in case of—Separated and remote Kinsman—Assent of—Sufficiency of.*

The requisite authority is, in the case of an undivided family, to be sought within that family. It is in the members of that family that the widow must presumably find such counsellors and protectors as the law makes requisite for her. She cannot, for such a purpose, at her will travel out of that undivided family and obtain the authorization required from a separated and remote kinsman of her husband (191). (*Sir James W. Colvile.*) SRI RAGHUNADHA *v.* SRI BROZO KISHORO. **(1876) 3 I.A. 154 = 1 M. 69 (81-2) = 25 W. R. 291 = 3 Suth. 263 = 3 Sar. 583.**

———*Joint family—Brother undivided alive—Separated and distant sapinda who is father of son adopted — Assent of—Sufficiency of.*

Quœre, whether the assent of one separated and distant sapinda (and that the natural father of the child taken in adoption) is an authority sufficient to validate an adoption made by a Hindu widow without the permission of her husband (192). (*Sir James W. Colvile.*) SRI RAGHUNADHA *v.* SRI BROZO KISHORO **(1876) 3 I. A. 154 = 1 M. 69 (82) = 25 W. R. 291 = 3 Sar. 583 = 3 Suth. 263.**

———*Joint family—Deceased member of—Adoption to—Assent required in case of—Particular property separate property of deceased,*

Quœre, whether the rule that, in the case of an undivided family, the widow must obtain the assent of a member of that family and cannot travel out of that undivided family is inapplicable to a case in which, although the family is undivided, the particular property is to be held in severalty and not in co-parcenary (191-2),

HINDU LAW—(*Contd.*)

Adoption—Widow—Adoption by—(*Contd.*)

ASSENT OF SAPINDAS—ADOPTION WITH—(*Contd.*)

A distinction which is founded on the nature of property seems to belong to the law of property, and to militate against the principle that the validity of an adoption is to be determined by spiritual rather than temporal considerations; that the substitution of a son of the deceased for spiritual reasons is the essence of the thing and the consequent devolution of property is a mere accessory to it (191-2). (*Sir James W, Colvile.*) SRI RAGHUNADHA *v.* SRI BROZO KISHORO. **(1876) 3 I. A. 154 = 1 M. 69 (81 2) = 25 W. R. 291 = 3 Suth. 263 = 3 Sar. 583.**

———*Joint family—Father-in-law alive—Father-in-law dead—Assent required in cases of.*

Where the husband's family is in the normal condition of a Hindu family—*i.e.*, undivided—the question who are the kinsmen whose assent will supply the want of positive authority from the deceased husband is of comparatively easy solution. In such a case the widow, under the law of all the schools which admit this disputed power of adoption takes no interest in her husband's share of the joint estate, except a right to maintenance. And though the father of the husband, if alive, might, as the head of the family and the natural guardian of the widow, be competent by his sole assent to authorise an adoption by her, yet, if there be no father, the consent of all the brothers, who, in default of adoption would take the husband's share, would probably be required, since it would be unjust to allow the widow to defeat their interest by introducing a new coparcener against their will (441-2.) (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SATHUPATHY. **(1868) 12 M.I.A. 397 = 10 W.R. (P. C.) 17 = 1 B. L. R. (P.C.) 1 = 2 Suth. 135 = 2 Sar. 361.**

———*Joint family—Surviving members of equal degree in—Eldest of—Assent of—Sufficiency of.*

One Subbaraya and *V*, his first cousin, were down to the death of the former members of a joint Hindu family. *V* left behind him Swami, his eldest son by one wife, and the respondents, his sons by another wife. As Subbaraya died without male issue, *V* succeeded at his death to the entire joint family estate by right of survivorship. After the death of *V*, Swami and the respondents became entitled to the joint family estate.

Quœre, whether in the above-mentioned condition of the family an adoption made by the widow of Subbaraya with the assent of Swami only would be valid (177). (*Sir Barnes Peacock.*) KARUNABDI GANESA RATNAMAIYAR *v.* GOPALA RATNAMAIYAR. **(1880) 7 I. A. 173 = 2 M. 270 (279) = 4 Sar. 149 = 3 Suth. 740.**

———*Joint and divided families — Assent required in cases of—Distinction.*

On the question, who are the kinsmen whose assent will supply the want of a positive permission from the husband, there exists a broad distinction between cases in which the deceased husband was a member of a joint and undivided Hindu family, and those in which, he being separated, the widow has taken his estate by right of inheritance; but, even in the latter case, the assent of some person who stands to her in the relation of protector may be requisite (188-9). (*Sir James W. Colvile*) SRI RAGHUNADHA *v.* BROZO KISHORO. **(1876) 3 I. A. 154 = 3 Sar. 583 = 1 M. 69 (78-9) = 25 W. R. 291 = 3 Suth. 263.**

———*Joint and divided families — Assent required in cases of—Distinction—L. R. 4 I. A. 1—Effect of.*

The decision of *Vellanki* v. *Venkata Rama* (4 I.A. 1), which followed and explained the decision in the Ramnad case, established the following propositions :—That the

HINDU LAW—(*Contd.*)

Adoption—Widow—Adoption by—(*Contd.*)

ASSENT OF SAPINDAS—ADOPTION WITH—(*Contd.*)

requisite authority in the case of an undivided family is to be sought by the widow within that family; that it is in the members of that family that she must presumably find such counsellors and protectors as the law makes requisite for her; and that she cannot at her will travel out of that undivided family and obtain the authorisation required from separated and remote kinsmen of her husband. This being the position of a widow in an undivided family, what are the conditions imposed on her if her husband happens to die in a state of separation from his kindred? Division does not affect her personal dependence or give her an independent status to alter by her own authority the succession to the estate which she takes as the widow of her husband. She is still dependent for counsel and protection upon the nearest sapindas of her husband, who are the most closely united to him by ties of blood, or, to use the language of Hindu lawyers, by "community of corporal particles." The father of the deceased, if still alive, continues to be her "natural guardian and venerable protector." He has furthermore a direct interest in the protection of the estate, for in case of her death without leaving her surviving a daughter or the mother of her deceased husband he has a right to the reversion. His authorisation is therefore essentially requisite to the validity of an adoption by her to her husband. If there is no father, the divided brothers take his place by virtue of the tie of blood as her husband's nearest sapindas; they become her natural guardians and the protectors of her interests. They also have an interest in the protection of the inheritance. In the absence, then, of the father the assent of the divided brothers is equally requisite for the validity of the widow's adoption. If a majority assent, and one refuses, his objection may be discounted. But the absence of their consent, or in case there is only one, of his consent, cannot be made good by the authorization of distant relatives remotely connected whose interest in the well-being of the widow or the spiritual welfare of the deceased, or in the protection of the estate, is of minute character, and whose assent is more likely to be influenced by improper motives (271-2). (*Mr. Ameer Ali.*) VEERA BASAVARAJU *v.* BALASURYA PRASADA ROW.

(1918) 45 I. A. 265 = 41 M. 998 (1009-10) = 25 M.L.T. 1 = 9 L.W. 243 = 17 A.L.J. 34 = 21 Bom. L. R. 238 = 23 C.W.N. 251 = 29 C.L.J. 184 = 48 I.C. 706 = 36 M. L. J. 44.

———*Lapse of time between giving of assent and adoption—Death of assenting sapinda in the interval—Validity of adoption in case of.*

Quære, whether an authority given by sapindas in 1901 could be validly executed in 1908 when several of the sapindas giving assent were dead and the opinion of others might have altered (107). (*Viscount Finlay.*) ADUSUMILLI KRISTNAYYA *v.* ADUSUMILLI LAKSHMIPATHI.

(1920) 47 I.A. 99 = 43 M. 650 (659) = 28 M.L T 70 = 18 A.L.J. 601 = (1920) M.W.N. 385 = 24 C.W.N. 905 = 12 L.W. 625 = 56 I.C. 391 = 39 M.L.J. 70.

———*Law of, in Madras—Not a substitute for Niyoga practice—Power of widow to adopt — Limitations on—Tracing of, by analogy from that practice—Propriety.*

Positive authority affords a foundation for the doctrine (that a widow in the Dravida country can adopt with the assent of her husband's kinsmen) safer than any built upon speculations touching the natural development of the Hindu Law, or upon analogies, real or supposed, between adoption according to the Dattaka form, and the obsolete practice, with which that form of adoption co-existed, of raising up issue to the deceased husband by carnal intercourse with the widow. It may be admitted that the arguments founded on this supposed analogy are in some measure confirmed by passages in several of the ancient treatises of the Hindu Law, and in particular by the Dattaka Mimamsa; but as a ground for judicial decision these speculations are inadmissible, though as explanatory arguments to account for an actual practice they may be deserving of attention. (*Sir James Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SATHUPATHY.

(1868) 12 M.I.A. 397 (441) = 10 W. R. (P.C.) 17 = 1 B.L.R. (P.C.) 1 = 2 Suth. 135 = 2 Sar. 361.

———The assumption is not well founded that the law of adoption by a widow with the assent of sapindas now prevalent in Madras is a substitute for the old and obsolete practice of raising up seed to a deceased husband by actual procreation; and that the limitations, if any, upon the power to adopt are to be traced by analogy from that practice. In the Ramnad case their Lordships made the following observations: "They think that positive authority affords a foundation for the doctrine safer than any built upon speculations touching the natural development of the Hindu Law, or upon analogies, real or supposed, between adoptions according to the Dattaka form, and the obsolete practice, with which that form of adoption co-existed, of raising up issue to the deceased husband by a carnal intercourse with the widow. It may be admitted that the arguments founded on this supposed analogy are in some measure confirmed by passages in several of the ancient treatises above referred to, and in particular by the Dattaka Mimamsa of Vidy Narainsamy, the author of the Madhavyam; but, as a ground for judicial decision, these speculations are inadmissible, though as explanatory arguments to account for an actual practice, they may be deserving of attention" (190).

To these remarks of their predecessors their Lordships adhere. (*Sir James W Colvile.*) SRI RAGHUNADHA *v.* SRI BROZO KISHORO.

(1876) 3 I.A. 154 = 1 M. 69 (80-1) = 25 W.R. 291 = 3 Sar. 583 = 3 Suth. 263.

———*Mother of deceased—Assent of—Sufficiency of.*

Again, the person who really filled the office of Protector, and that by the express appointment of *R* (the deceased) was, up to the time of her quarrel with her daughter-in-law (the deceased's wife), *M* (the deceased's mother). Nor is it by any means unusual in a Hindu family to find the mother-in-law occupying a position of considerable power and importance Moreover, she was unquestionably the heir to the property in succession to the widow, after the failure of *R's* descendants. It, therefore, appears to their Lordships that in this state of the family the assent of the mother-in-law, and of the other persons who are proved beyond all question to have assented, was sufficient to legitimate the adoption (444 5). (*Sir James Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SATHUPATHY.

(1868) 12 M.I.A. 397 = 10 W.R. (P.C.) 17 = 1 B.L.R. (P.C). 1 = 2 Suth. 135 = 2 Sar. 361.

———Motive of widow in making adoption—Capricious or corrupt motive—Ante-adoption agreement with natural father—Reservation of life interest by—Adoption pursuant to—Effect. *See* HINDU LAW—ADOPTION—ANTE-ADOPTION AGREEMENT—WIDOW AND NATURAL FATHER—AGREEMENT BETWEEN—LIFE INTEREST.

(1888) 16 I.A. 53 (58-9) = 16 C. 556 (563 4).

———*Motive of widow in making adoption—Capricious or corrupt motive—Life estate in husband's estate—Holding of—Object of.*

HINDU LAW—(*Contd.*)

Adoption—Widow—Adoption by—(*Contd.*)

ASSENT OF SAPINDAS—ADOPTION WITH—(*Contd.*)

In this case the High Court held that an adoption with the assent of sapindas, which was otherwise valid, was invalid, because it was not made by the widow in the proper and *bona fide* performance of a religious duty. This conclusion was based on the ground that her object appeared to have been to hold the estate till her death, and then continue the line in the person of the adopted son.

The Privy Council did not agree with the High Court (*Sir James W. Colvile.*) RAJAH VELLANKI VENKATA KRISHNA RAO *v.* VENKATA RAMA LAKSHMI NARASAYYA. **(1876) 4 I. A. 1 = 1 M. 174 = 26 W.R. 21 = 3 Sar. 669 = 3 Suth. 353.**

———It is not easy to lay down an inflexible rule for the case in which no father-in-law is in existence. Every such case must depend upon the circumstances of the family. All that can be said is, that there should be such evidence of the assent of kinsmen as suffices to show that the act is done by the widow in the proper and *bona fide* performance of her religious duty, and neither capriciously nor from a corrupt motive (442). (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SATHUPATHY. **(1868) 12 M.I.A. 397 = 10 W.R. (P.C.) 17 = 1 B.L.R. (P.C.) 1 = 2 Suth. 135 = 2 Sar. 361.**

———*Motives of widow in making adoption—Consideration of, in determining its validity—Propriety of.*

Purporting to rely upon the passage in 12 M.I.A. 397 at 442, the High Court held, in the case which went up on appeal to the Privy Council in 4 I.A. 1, that an adoption made by a Hindu widow with the assent of her husband's kindred, which adoption was otherwise valid, was invalid, because the learned judges thought " that it was not made out that there had been such an assent on the part of the kinsmen, as to shew, to quote the words of the judgment of the Privy Council in the Ramnad case, ' that the act was done by the widow in the proper and *bona fide* performance of a religious duty.' Her object appears to have been to hold the estate till her death, and then continue the line in the person of the plaintiff (adopted son)."

Their Lordships held that the High Court had misinterpreted the passage in the judgment in the Ramnad case (11).

Their Lordships give the correct interpretation of the passage in the judgment in the Ramnad case and state what they intended to lay down in the Ramnad case in the following passages:—The passage in question perhaps is not so clear as it might have been made. The passage is :— "It is not easy to lay down an inflexible rule for the case in which no father-in-law is in existence. Every such case must depend upon the circumstances of the family. All that can be said is, that there should be such evidence," not be it observed, of the widow's motives but "of the assent of kinsmen, as suffices to shew that the act is done by the widow in the proper and *bona fide* performance of a religious duty, and neither capriciously nor from a corrupt motive. In this case no issue raises the question that the consents were purchased and not *bona fide* attained" (13-4).

Their Lordships think it would be very dangerous to introduce into the consideration of these cases of adoption nice questions as to the particular motives operating on the mind of the widow, and that all which this committee in the former case intended to lay down was, that there should be such proof of assent on the part of the sapindas as should be sufficient to support the inference that the adoption was made by the widow, not from capricious or corrupt motives, or in order to defeat the interest of this or that sapinda, but upon a fair consideration by what may be called a family council, of the expediency of substituting an heir by adoption to the deceased husband (14). (*Sir James W. Colvile.*) RAJAH VELLANKI VENKATA KRISHNA ROW *v.* VENKATA RAMA LAKSHMI NARASAYYA. **(1876) 4 I. A. 1 = 1 M. 174 (190-1) = 26 W. R. 21 = 3 Sar. 669 = 3 Suth. 353.**

———The passage at p. 14 in 4 I. A. 1, " There should be such proof of assent on the part of the sapindas...., of the expediency of substituting an heir by adoption to the deceased husband " is quoted in (1) **45 I. A. 265 (273) = 41 M. 998 (1010-1) = 36 M. L. J. 44** and (2) **47 I. A. 99 (102-3) = 43 M. 650 (653-4) = 39 M. L. J. 70.**

———*Motive of widow in making adoption—Propriety of—Presumption—Adoption with requisite assent of sapindas.*

Where, in the Dravida country, a Hindu widow makes an adoption to her husband with the assent of all the sapindas whose assent is required by law, it should be presumed until the contrary is shown, that she acted from the proper motives which ought to actuate a Hindu female (14). (*Sir James W. Colvile.*) RAJAH VELLANKI VENKATA KRISHNA RAO *v.* VENKATA RAMA LAKSHMI NARASAYYA. **(1876) 4 I. A. 1 = 1 M. 174 (190-1) = 26 W. R. 21 = 3 Sar. 669 = 3 Suth. 353.**

———Nearest sapinda—Assent of—Omission to apply for—Justification for—Knowledge of widow that he would refuse if a. *See also* under this head NEAREST SAPINDAS—ONE OF TWO. **(1906) 34 I.A. 22 (26) = 30 M. 50.**

———Where it was argued that no application was made for the assent of a sapinda to an adoption made by a Hindu widow because it was known that he would refuse, *held* that that was a futile reason for not applying for his assent (274). (*Mr. Ameer Ali.*) VEERA BASAVARAJU *v.* BALASURYA PRASADA RAO. **(1918) 45 I. A. 265 = 41 M. 998 (1011) = 25 M. L. T. 1 = 9 L. W. 243 = 17 A. L. J. 34 = 21 Bom. L. R 238 = 23 C. W. N. 251 = 29 C. L. J. 184 = 48 I. C. 706 = 36 M. L. J. 44.**

———*See also* under this head NEAREST SAPINDAS—ASSENT OF—WHEN MUST BE ASKED, ETC. **(1920) 47 I. A. 99 = 43 M. 650**

———*Nearest sapinda—Assent of—Omission to obtain—Ground for—Change of, in Privy Council appeal for first time—Permissibility.*

Where in a suit to set aside an adoption by a widow on the ground that it was made with the assent, not of the nearest sapindas of her husband, but of his remote sapindas, the defendants pleaded that the widow did apply to the nearest sapindas for their assent but that out of dishonest and corrupt motives and by reason of long-standing enmity they refused or neglected to grant the authority asked for and that the adoption made under those circumstances with the assent of remote sapindas was therefore valid, and the case was tried and disposed of in the Courts below on that footing, their Lordships refused to allow an alternative contention to be put forward before them for the first time to the effect that in view of the great hostility between the widows and the nearest sapindas it was unnecessary for her to ask for their consent. (*Viscount Cave.*) ADUSUMILLI KRISTNAYYA *v.* ADUSUMILLI LAKSHMIPATHI. **(1920) 47 I. A. 99 (107) = 43 M. 650 (659) = 28 M. L. T. 70 = 18 A. L. J. 601 = 12 L. W. 625 = (1920) M. W. N. 385 = 24 C. W. N. 905 = 56 I. C. 391 = 39 M. L. J. 70.**

———*Nearest sapindas—Assent of—When must be asked and when need not be—Omission to ask—If can be excused on the ground that they would probably have refused.*

HINDU LAW—(*Contd.*)

Adoption—Widow—Adoption by—(*Contd.*)

ASSENT OF SAPINDAS—ADOPTION WITH—(*Contd.*)

Where there are agnatic relations closely related to the deceased, their assent must be obtained, and the absence of their consent cannot be made good by the authorisation of distant relatives whose assent is more likely to be influenced by improper motives (102).

Where, however, a near sapinda is incapable of forming a judgment on the matter, being, say, a minor or a lunatic, his assent is neither sufficient nor necessary. So, where a near relative is clearly proved to be actuated by corrupt or malicious motives, his dissent may be disregarded. Again, where the nearest sapinda happens to be in a distant country, and it is impossible without great difficulty to obtain his consent, or where he is a convict or suffering a term of imprisonment, the absence of his consent may be disregarded. The consent required is that of a substantial majority of those agnates nearest in relationship who are capable of forming an intelligent and honest judgment on the matter.

Save in exceptional cases such as those mentioned above, however, the consent of the nearest sapindas must be asked, and if it is not asked, it is no excuse to say that they would certainly have refused (102-3). (*Viscount Cave.*) ADUSUMILLI KRISTNAYYA *v.* ADUSUMILLI LAKSHMIPATHI.

(1920) 47 I. A. 99 = 43 M. 650 (654, 658-9) = 28 M. L. T. 70 = 18 A.L.J. 601 = (1920) M.W.N. 385 = 24 C. W. N. 905 = 12 L. W. 625 = 56 I. C. 391 = 39 M. L. J. 70

———*Nearest sapindas—Assent of substantial majority of, capable of forming intelligent and honest judgment on the matter—Necessity of.*

The assent required is that of a substantial majority of those agnates nearest in relationship who are capable of forming an intelligent and honest judgment on the matter. (*Viscount Cave.*) ADUSUMILLI KRISTNAYYA *v.* ADUSUMILLI LAKSHMIPATHI.

(1920) 47 I. A. 99 (102-3) = 43 M. 650 (658-9) = 28 M. L. T. 70 = 18 A. L. J. 601 = (1920) M. W. N. 385 = 24 C. W. N 905 = 12 L. W. 625 = 56 I. C. 391 = 39 M. L. J. 70.

———*Nearest sapindas—One of two—Assent of—Omission to ask for—Effect—Justification for—Knowledge of widow that he would refuse if a.*

Where an adoption is made by a widow with the assent of one only of the two nearest reversionary heirs and nearest kinsmen of her deceased husband, the persons relying on the validity of the adoption must justify the widow in omitting to ask for the authority of the other kinsman. It is not sufficient to say that she knew he would refuse. She is not entitled to say so, because to consult him is essential to her obtaining the mind of the kinsmen on that family question (26). (*Lord Robertson.*) VENKAMMA *v.* SUBRAHMANIAM.

(1906) 34 I. A. 22 = 30 M. 50 = 5 C. L. J. 140 = 11 C. W. N. 345 = 2 M. L. T. 91 = 9 Bom. L. R. 89 = 4 A. L. J. 150 = 17 M. L. J. 114.

———*Nearest sapindas six in number—Assent of one of, and of some remote sapindas—Sufficiency—Other five not withholding assent for any malicious or corrupt motive.*

Where in a case in which the nearest sapindas were six in number, the widow made an adoption with the assent of one of them and of some remote sapindas, and it appeared that she applied for the assent of another of the nearest sapindas but did not apply for the assent of the other four and that none of these five nearest sapindas withheld his consent for any malicious or corrupt reason, *held*, that the necessary assent of sapindas was not obtained, and the adoption was invalid (107). (*Viscount Cave.*) ADUSUMILLI KRISTNAYYA *v.* ADUSUMILLI LAKSHMIPATHI.

(1920) 47 I. A. 99 = 43 M. 650 (654, 658-9) = 28 M. L. T. 70 = 18 A. L. J. 601 = (1920) M. W. N. 385 = 24 C. W. N. 905 = 12 L. W. 625 = 56 I. C. 391 = 39 M. L. J. 70.

HINDU LAW—(*Contd.*)

Adoption—Widow—Adoption by—(*Contd.*)

ASSENT OF SAPINDAS—ADOPTION WITH—(*Contd.*)

28 M. L. T. 70 = 18 A. L. J. 601 = (1920) M.W.N. 385 = 24 C. W. N. 905 = 12 L. W. 625 = 56 I. C. 391 = 39 M. L. J. 70.

———Necessity for assent—Rule as to—Basis proper of—Property rights—Advice to widow incapable of independent action. *See* HINDU LAW—ADOPTION—WIDOW—ADOPTION BY—ASSENT OF SAPINDAS—ADOPTION WITH—PROPERTY—RIGHTS TO.

———Only son—Adoption of—Validity—Bombay—Madras—Law in. *See* HINDU LAW—ADOPTION—WIDOW—ADOPTION BY—VALIDITY OF—ONLY SON.

(1899) 26 I. A. 113 (127-8) = 22 M. 398 (407-8).

POWER OF.

———*Dravida country—Power in.*

There is enough of positive authority to warrant the proposition that, according to the law prevalent in the Dravida country, and particularly in that part of it wherein the Ramnad Zemindary is situate, a Hindu widow, not having her husband's permission, may, if duly authorized by his kindred, adopt a son to him (440-1). (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SATHUPATHY.

(1868) 12 M. I. A 397 = 10 W. R. (P. C.) 17 = 1 B. L. R. (P. C.) 1 = 2 Suth. 135 = 2 Sar. 361.

———Positive authority does no more than establish that, according to the law of Madras, which in this respect is something intermediate between the stricter law of Bengal and the wider law of Bombay, a widow, not having her husband's permission, may adopt a son to him, if duly authorized by his kindred (188, 191). (*Sir James W. Colvile.*) SRI RAGHUNADHA *v.* SRI BROZO KISHORO.

(1876) 3 I. A. 154 = 1 M. 69 (78, 81) = 25 W. R. 291 = 3 Sar. 583 = 3 Suth. 263.

———In Madras it is established that, unless there is some express prohibition by the husband, the wife's power, at least with concurrence of Sapindas, in cases when that is required, is co-extensive with that of the husband. (*Lord Hobhouse.*) SRI BALUSU GURULINGASWAMI *v.* SRI BALUSU RAMALAKSHMAMMA.

(1899) 26 I. A 113 (127-8) = 22 M. 398 (408) = 21 A. 460 = 3 C. W. N. 427 = 1 Bom. L. R. 226 = 7 Sar. 330 = 9 M. L. J. 67.

———Under the Mithakshara law as administered in the Dravida country, a widow, although not authorised by her husband to adopt a son for him, may nevertheless make such an adoption with the consent of his sapindas (101-2). (*Viscount Cave.*) ADUSUMILLI KRISTNAYYA *v.* ADUSUMILLI LAKSHMIPATHI.

(1920) 47 I. A. 99 = 43 M. 650 (653) = 28 M. L. T. 70 = 18 A. L. J. 601 = (1920) M. W. N. 385 = 24 C. W. N. 905 = 12 L. W. 625 = 56 I. C. 391 = 39 M. L. J. 70.

———*Exercise of—Foundation for—Religious duty.*

The power to adopt, when not actually given by the husband, can only be exercised when a foundation for it is laid in the otherwise neglected observance of religious duty, as understood by the Hindus. (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SATHUPATHY.

(1868) 12 M. I. A. 397 (442) = 10 W. R. (P. C.) 17 = 1 B. L. R. (P. C.) 1 = 2 Suth. 135 = 2 Sar. 361.

———Limitations on—Tracing of, by analogy from Niyoga practice—Propriety. *See* HINDU LAW—ADOPTION—WIDOW—ADOPTION BY—ASSENT OF SAPINDAS—ADOPTION WITH—LAW OF, IN MADRAS.

HINDU LAW—(*Contd.*)

Adoption—Widow—Adoption by—(*Contd.*)

ASSENT OF SAPINDAS—ADOPTION WITH—(*Contd.*)

——Prohibition of adoption by husband—Express and clear indication of—Necessity. *See* HINDU LAW—ADOPTION—AUTHORITY TO ADOPT—CONSTRUCTION—BOY NAMED. **(1921) 48 I. A. 513 (522) = 49 C. 1 (11-2).**

——*Prohibition of adoption by husband—Implication of—Conditions of—Effect of prohibition.*

Inasmuch as the authorities in favour of the widow's power to adopt with the assent of her husband's kinsmen proceed in a great measure upon the assumption that his assent to this meritorious act is to be implied wherever he has not forbidden it, so the power cannot be inferred when a prohibition by the husband either has been directly expressed by him, or can be reasonably deduced from his disposition of his property, or the existence of a direct line competent to the full performance of religious duties, or from other circumstances of his family which afford no plea for a supercession of heirs on the ground of religious obligation to adopt a son in order to complete or fulfil defective religious rites (443). (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SATHUPATHY.
(1868) 12 M. I. A. 397 = 10 W. R. (P. C.) 17 = 1 B. L. R. (P. C.) 1 = 2 Suth. 135 = 2 Sar. 361.

——*Prohibition of adoption by husband—Implication of, from his dispositions of property—Permissibility—Conditions.*

It has been argued, however, that even if this adoption would have been regular, had Ramasamy died childless and intestate, his arzi relating to the management and descent of the zemindary contains an indication of his intention that his daughters and their descendants should be his successors and representatives, which ought to be taken to imply a virtual prohibition of the act of adoption by his widow. Their Lordships cannot accede to this argument. Ramasamy, no doubt, intended to be represented by his daughter's line, should that line continue. But he made no express provision for its failure, and the same reasons which justify a presumption of authority to adopt in the absence of express permission are powerful to exclude a presumptive prohibition to adopt, when on a new and unforeseen occasion the religious duty arises. His widow has not claimed a power to adopt, except on the happening of the contingency for which her husband omitted to provide. And her power so limited, not having been qualified by his disposition, must be determined by the general law (445). (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SATHUPATHY. **(1868) 12 M. I. A. 397 = 10 W. R. (P. C.) 17 = 1 B. L. R. (P C.) 1 = 2 Suth. 135 = 2 Sar. 361.**

——*Prohibition of adoption by husband—Presumption of—Exclusion of, on new and unforeseen occasion giving rise to religious duty of adopting.*

The same reasons which justify a presumption of authority to adopt in the absence of express permission by the husband are powerful to exclude a presumptive prohibition to adopt, when on a new and unforeseen occasion the religious duty arises (445). (*Sir James W. Colvile*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SATHUPATHY. **(1868) 12 M. I. A. 397 = 10 W. R. (P. C.) 17 = 1 B. L. R. (P. C.) 1 = 2 Suth. 135 = 2 Sar. 361.**

——Prohibition by husband of. *See* under this Sub-head POWER OF.

——*Proof of assent of—Sapindas—Nature of, required.*

It is not easy to lay down an inflexible rule for the case in which no father-in-law is in existence. Every such case must depend upon the circumstances of the family. All hat can be said is, that there should be such evidence of the assent of kinsmen as suffices to show that the act is done by the widow in the proper and *bona fide* performance of her religious duty and neither capriciously nor from a corrupt motive (442). (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SATHUPATHY.
(1868) 12 M. I. A. 397 = 10 W. R. (P. C.) 17 = 1 B. L. R. (P. C.) 1 = 2 Suth. 135 = 2 Sar. 361.

——There should be such proof of assent on the part of the sapindas as should be sufficient to support the inference that the adoption was made by the widow, not from capricious or corrupt motives, or in order to defeat the interest of this or that sapinda, but upon a fair consideration by what may be called a family council, of the expediency of substituting an heir by adoption to the deceased husband (14).

In this case no issue raises the question that the consents were purchased and not *bona fide* attained (13-4).

N.B.—The above passage at p. 14 explains the passage in 12 M. I. A. 397 (442) and states what was really intended to be laid down by that passage. (*Sir James W. Colvile.*) RAJAH VELLANKI VENKATA KRISHNA ROW *v.* VENKATA RAMA LAKSHMI NARASAYYA. **(1876) 4 I. A. 1 = 1 M. 174 (190-1) = 26 W. R. 21 = 3 Sar. 669 = 3 Suth. 353.**

——The passage at p. 14 in 4 I. A. 1, " There should be such proof of assent on the part of the Sapindas . . . . . of the expediency of substituting an heir by adoption to the deceased husband " is quoted in (1) **45 I. A. 265 (273) = 41 M. 998 (1010-1) = 36 M. L. J. 44** and (2) **47 I. A 99 (102-3) = 43 M. 650 (653-4) = 39 M. L. J. 70.**

——*Property—Right to—Consideration of, in determining what Sapindas' assent is requisite—Necessity.*

(*N.B.*—There has in recent years been considerable divergence of judicial opinion on the question whether an adoption by a Hindu widow is a spiritual rather than a temporal institution or a temporal rather than a spiritual institution and whether the question of reversionary interest ought to be imported into the determination of the question of the sufficiency of sapindas' assent. It has therefore been thought appropriate to collect in chronological order under this head all the passages bearing on the point.)

——The assent of kinsmen seems to be required by reason of the presumed incapacity of women for independence, rather than the necessity of procuring the consent of all those whose possible and reversionary interest in the estate would be defeated by the adoption. (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SATHUPATHY. **(1868) 12 M. I. A. 397 (442) = 10 W. R. (P. C.) 17 = 1 B. L. R. (P. C.) 1 = 2 Suth. 135 = 2 Sar. 361.**

——Where the deceased was a member of a joint Hindu family, and his father is not alive, the consent of all the brothers, who, in default of adoption, would take the deceased's share, would probably be required, since it would be unjust to allow the deceased's widow to defeat their interest by introducing a new co-parcener against their will (441-2). (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SATHUPATHY.
(1868) 12 M. I. A. 397 = 10 W. R. (P. C.) 17 = 1 B. L. R. (P. C.) 1 = 2 Suth. 135 = 2 Sar. 361.

——In considering the question of the requisite assent in the case of a divided family where no father-in-law is in existence their Lordships observe that with reference to such a case " It is not easy to lay down an inflexible rule. Every such case must depend upon the circumstances of the family. All that can be said is, that there should be such evidence

HINDU LAW—(*Contd.*)

Adoption—Widow—Adoption by—(*Contd.*)

ASSENT OF SAPINDAS—ADOPTION WITH—(*Contd.*)

of the assent of kinsmen as suffices to show that the act is done by the widow in the proper and *bona fide* performance of her religious duty, and neither capriciously nor from a corrupt motive" (442). (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SATHUPATHY. **(1868) 12 M. I. A. 397 = 10 W. R. (P. C.) 17 = 1 B. L. R. (P. C.) 1 = 2 Suth. 135 = 2 Sar. 361.**

———In holding that the assent of the mother of the deceased was sufficient to legitimate the adoption Sir James W. Colvile refers to the two facts (1) that she filled the office of Protector, and that by the express appointment of the deceased, and (2) that she was unquestionably the heir to the property in succession to the widow, after the failure of the deceased's descendants (444-5). (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SATHUPATHY. **(1868) 12 M. I. A. 397 = 10 W. R. (P. C.) 17 = 1 B. L. R. (P. C.) 1 = 2 Suth 135 = 2 Sar. 361**

———Their Lordships observed that the circumstance that a Samanodaka of the deceased was also his natural brother might strengthen his title to be considered, in the absence of nearer connections, the natural male protector of the widow (444). (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SATHUPATHY.
(1868) 12 M. I. A. 397 = 10 W. R. (P. C.) 17 = 1 B. L. R. (P. C.) 1 = 2 Suth. 135 = 2 Sar. 361.

———Even in the case in which the person to whom an adoption is made died a divided member, and his widow took his estate by right of inheritance, the assent of some person who stands to her in the relation of protector may be requisite (188-9). (*Sir James W. Colvile.*) SRI RAGHUNADHA *v.* SRI BROZO KISHORO.
(1876) 3 I. A. 154 = 1 M. 69 (78 9) = 25 W. R. 291 = 3 Suth. 263 = 3 Sar. 583.

———The requisite authority is, in the case of an undivided family, to be sought within that family. It is in the members of that family that the widow must presumably find such counsellors and protectors as the law makes requisite for her (191). (*Sir James W. Colvile.*) SRI RAGHUNADHA *v.* SRI BROZO KISHORO.
(1876) 3 I. A. 154 = 1 M. 69 (81-2) = 25 W. R. 291 = 3 Suth. 263 = 3 Sar. 583.

———In discussing the question as to whose assent would be required in the case of an adoption to a deceased member of a joint Hindu family where the particular property of the deceased was his separate property and whether the rule applicable to the normal case of an adoption to a member of an undivided family, *viz.*, that the widow must obtain the assent of a member of that family and could not travel out of that undivided family, was inapplicable to such a case, their Lordships observed as follows:—A distinction which is founded on the nature of the property seems to belong to the law of property, and to militate against the principle that the validity of an adoption is to be determined by spiritual rather than temporal considerations, that the substitution of a son of the deceased for spiritual reasons is the essence of the thing, and the consequent devolution of property is a mere accessory to it (191-2). (*Sir James W. Colvile.*) SRI RAGHUNADHA *v.* SRI BROZO KISHORO. **(1876) 3 I. A. 154 = 1 M. 69 (81-2) = 25 W. R. 291 = 3 Suth. 263 = 3 Sar. 583.**

———The principle is that the validity of an adoption is to be determined by spiritual rather than temporal considerations, that the substitution of a son of the deceased for spiritual reasons is the essence of the thing, and the consequent devolution of property is a mere accessory to it (191-2). (*Sir James W. Colvile.*) SRI RAGHUNADHA *v.* SRI BROZO KISHORO. **(1876) 3 I. A. 154 = 1 M. 69 (81-2) = 25 W.R. 291 = 3 Suth. 263 = 3 Sar. 583.**

———Though it may be the duty of a Court of Justice administering the Hindu law to consider the effect of an adoption upon the devolution of property as a mere legal consequence and not as the essential foundation of the law of adoption, it is still impossible not to see that there are grave social objections to making the succession of property—and it may be in the case of collateral succession the rights of parties in actual possession—dependent on the caprice of a woman, subject to all the pernicious influences which interested advisers are too apt in India to exert over women possessed of, or capable of exercising dominion over property. It seems, therefore, to be the duty of the Courts to keep the power strictly within the limits which the law has assigned to it (193). (*Sir James W. Colvile.*) SRI RAGHUNADHA *v.* SRI BROZO KISHORO.
(1876) 3 I. A. 154 = 1 M. 69 (83) = 25 W. R. 291 = 3 Sar. 583 = 3 Suth. 263.

N. B.—The above passage is quoted with approval in (1) **(1918) 45 I. A. 265 (272-3) = 41 M. 998 (1010) = 36 M. L. J. 44.**
AND (2) **(1920) 47 I.A. 99 (103) = 43 M. 650 (654-5) = 39 M. L. J. 70.**

———There should be such proof of assent on the part of the sapindas as would be sufficient to support the inference that the adoption was made by the widow, not from capricious or corrupt motives in order to defeat the interests of this or that sapinda, but upon a fair consideration by what may be called a family council of the expediency of substituting an heir by adoption to the deceased husband. (*Sir James W. Colvile.*) RAJAH VELLANKI VENKATA KRISHNA RAO *v.* VENKATA RAMA LAKSHMI NARASAYYA. **(1876) 4 I. A. 1 (14) = 1 M. 174 (190-1) = 26 W.R. 21 = 3 Sar. 669 = 3 Suth. 353.**

———(*Viscount Cave.*) ADUSUMILLI KRISTNAYYA *v.* ADUSUMILLI LAKSHMIPATHI. **(1920) 47 I.A. 99 (102-3) = 43 M. 650 (653-4) = 28 M. L. T. 70 = 18 A. L. J. 601 = (1920) M. W. N. 385 = 24 C. W.N. 905 = 12 L. W. 625 = 56 I. C. 391 = 39 M. L. J. 70.**

———In a case in which the widow adopted with the assent of one only of the two nearest kinsmen and did not even apply for the authority of the other, she sought to justify the omission on the ground that she knew he would refuse. In holding that that was not a sufficient justification, their Lordships observed: "She is not entitled to say so, because to consult him is essential to her obtaining the mind of the kinsmen on that family question" (26). (*Lord Robertson.*) VENKAMMA *v.* SUBRAHMANIAM.
(1906) 34 I. A. 22 = 30 M. 50 = 5 C L. J. 140 = 11 C. W. N. 345 = 2 M L. T. 91 = 9 Bom. L. R. 89 = 4 A. L. J. 150 = 17 M. L. J. 114.

———In the judgment in the Ramnad case some expressions are used which might imply that the question of reversionary interest forms only a secondary consideration in determining what sapinda's assent is primarily requisite, but the remarks that follow as to the right of co-parceners in an undivided family to consider the expediency of introducing a new co parcener, coupled with the observations of the Board in the subsequent case (4 I. A. 1, 14) show clearly that rights to property cannot be left out of consideration in the determination of the question. In the latter case the Board observe as follows: "There should be such proof of assent on the part of the sapindas as should be sufficient

HINDU LAW—(*Contd.*)

Adoption—Widow—Adoption by—(*Contd.*)

ASSENT OF SAPINDAS—ADOPTION WITH—(*Contd.*)

to support the inference that the adoption was made by the widow not from capricious or corrupt motives, in order to defeat the interest of this or that sapinda, but upon a fair consideration of what may be called a family council of the expediency of substituting an heir by adoption to the deceased husband (273).

And an eminent Hindu lawyer, dealing with the question whose consent is requisite to the validation of an adoption when the husband is separate, remarks that an adoption is more a temporal than a spiritual institution, there being no spiritual reason for adoption if the deceased left a fraternal nephew, and that the requisites of a valid adoption are all temporal; therefore, the spiritual consideration should not be allowed to influence the judgment regarding the secular essential. And he then goes on to add: "Some light is thrown on the point by the decisions relating to alienations by widows with the assent of the next heir." (273). (*Mr. Ameer Ali.*) VEERA BASAVARAJU *v.* BALASURYA PRASADA ROW. **(1918) 45 I. A. 265 = 41 M. 998 (1010-1) = 25 M. L. T. 1 = 9 L. W. 243 = 17 A. L. J. 34 = 21 Bom. L. R. 238 = 23 C.W.N. 251 = 29 C. L. J. 184 = 48 I. C. 706 = 36 M. L. J. 44.**

———Assent of distant sapindas when nearest sapindas are alive *held* to be insufficient on the ground that the assent of the former is more likely to be influenced by improper motives (102). (*Viscount Cave.*) ADUSUMILLI KRISTNAYYA *v.* ADUSUMILLI LAKSHMIPATHI. **(1920) 47 I. A. 99 = 43 M. 650 (654) = 28 M. L. T. 70 = 18 A L. J. 601 = (1920) M. W. N. 385 = 24 C. W. N. 905 = 12 L. W. 625 = 56 I. C. 391 = 39 M. L. J. 70.**

———In considering the question of the requisite assent their Lordships observe that the consent required is that of a substantial majority of those agnates nearest in relationship who are capable of forming an intelligent and honest judgment on the matter. (*Viscount Cave.*) ADUSUMILLI KRISTNAYYA *v.* ADUSUMILLI LAKSHMIPATHI. **(1920) 47 I.A. 99 (102-3) = 43 M. 650 (658-9) = 28 M.L.T. 70 = 18 A.L.J. 601 = (1920) M.W.N. 385 = 24 C.W.N. 905 = 12 L W. 625 = 56 I.C. 391 = 39 M.L.J. 70.**

———*Remote sapindas — Assent of — Sufficiency of — Nearest sapinda—Consent of, not obtained.*

According to the Mithakshara law as applied in the Madras Presidency, in the absence of authority from the husband, and of the consent of the nearest sapinda, the assent of remote sapindas is not sufficient to validate an adoption by a Hindu widow.

The reasons which make the assent of divided brothers a requisite condition apply *mutatis mutandis* to the case of the nearest sapindas other than brothers (273-4). (*Mr. Ameer Ali.*) VEERA BASAVARAJU *v.* BALASURYA PRASADA ROW. **(1918) 45 I. A 265 = 41 M. 998 (1009-10) = 25 M.L.T. 1 = 9 L.W. 243 = 17 A.L.J. 34 = 21 Bom. L. R. 238 = 23 C.W.N. 251 = 29 C L.J. 184 = 48 I.C. 706 = 36 M.L J. 44.**

———*Samanodaka and natural brother of deceased—Assent of—Sufficiency of.*

M would be excluded from the category of sapindas, and would come only in that of samanodakas, or those connected only by a libation of water and a common family name. He was, however, the natural brother of *R*, the deceased, and that circumstance might strengthen his title to be considered, in the absence of nearer connections, the natural male protector of *R's* widow (444). (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SATHUPATHY. **(1868) 12 M.I.A 397 = 10 W.R. (P.C.) 17 = 1 B.L.R. (P.C.) 1 = 2 Suth. 135 = 2 Sar. 361.**

———*Son dying unmarried—Widow succeeding as heir to—Adoption by—Validity—Dravida country.*

According to the law prevalent in the Dravida country, a Hindu woman, not having her husband's permission, may, if duly authorised by his kindred, adopt a son to him. There is no reason why this general proposition should not apply to every case in which a widow might make an adoption under a written authority from her husband (10).

Where, therefore, a Hindu widow who had, on the death of her son under age and unmarried, succeeded to his estate, adopted a son to her husband with the assent of all the surviving sapindas of his family, *held* that the adoption was valid (10).

There is no ground for saying that because the estate descended to the son natural-born of the husband, and the widow of the latter took it as heiress of her son and not immediately from her husband, the adoption made by her, if otherwise valid, therefore became invalid (10). (*Sir James W. Colvile.*) RAJAH VELLANKI VANKATA KRISHNA RAO *v.* VENKATA RAMA LAKSHMI NARASAYYA. **(1876) 4 I.A 1 = 1 M. 174 (187) = 26 W.R. 21 = 3 Sar. 669 = 3 Suth. 353.**

———Spiritual or temporal institution. *See* HINDU LAW—ADOPTION—WIDOW— ADOPTION BY—ASSENT OF SAPINDAS—ADOPTION WITH—PROPERTY—RIGHTS TO. (*N.B.*—Especially 45 I.A. 265.)

AUTHORITY TO ADOPT.

———*See* HINDU LAW—ADOPTION—AUTHORITY TO ADOPT.

BOMBAY PRESIDENCY AND GUZERAT—WIDOW IN WHOM PROPERTY OF HUSBAND NOT VESTED AS HIS HEIR—ADOPTION BY.

———*Adopted son dying a minor and unmarried—Second adoption in case of—Validity.*

In the Mahratta country of the Presidency of Bombay and in Gujerat a Hindu widow, who is sole or joint heir to her husband's estate, may adopt a son to her deceased husband, without authority from her husband, and without the consent of his kindred, or of the caste or of the ruling authority, but she cannot adopt where her husband has expressly forbidden an adoption. There is no sound reason why the applicability of this rule should depend upon the question whether the widow's husband died as a separated or as an unseparated Hindu, or on the question whether the property which was vested in her when she made the adoption was or was not vested in her as his heir. If it was her religious duty to adopt a son to her husband, that duty would be the same in either case, although possibly the right of the adopted son to the property vested in the widow might be different (526).

Held, accordingly, that an adoption made by a widow on the death of a prior adopted son, a minor and unmarried, was valid. (*Sir John Edge.*) YADAS *v.* NAMDEO. **(1921) 48 I.A. 513 = 49 C. 1 (13, 17) = 26 C W.N 393 = 30 M L.T. 53 = L R. 3 P.C 41 = 15 L.W. 565 = 20 A.L.J. 481 = 24 Bom. L.R 609 = A I.R. 1922 P.C. 216 = 64 I.C. 536 = 42 M.L.J. 219.**

CUSTOM PROHIBITING.

———*Validity of.*

Quœre, whether a custom prohibiting widows from making an adoption—A custom wholly at variance with the

HINDU LAW—(*Contd.*)

Adoption—Widow—Adoption by—(*Contd.*)

CUSTOM PROHIBITING—VALIDITY OF—(*Contd.*)

Hindu law and Hindu religious conceptions—would, even if proved to exist in certain localities, be recognised in the British Indian Courts. (*Mr. Ameer Ali.*) PRATAP SINGH SHIVSINGH *v.* AGARSINGJI RAISINGJI.

(1918) 46 I. A. 97 (106) = 43 B. 778 (791) = 17 A.L.J. 522 = (1919) M.W.N. 313 = 21 Bom L R. 496 = 24 C.W.N. 57 = 10 L W. 339 = 27 M L.T. 47 = 50 I.C. 457 = 36 M.L.J. 511

DECLARATION OF VALIDITY OF—SUIT BY WIDOW FOR—MAINTAINABILITY.

———Wajib-ul-arz in which widow already recorded as proprietor—Entry of adopted son's name in, as successor—Refusal by Settlement Officer of, on reversioner's objection—Widow referred by him to civil suit. *See* SPECIFIC RELIEF ACT, S. 42—CASES UNDER—HINDU LAW—ADOPTION—WIDOW—ADOPTION BY.

(1878) 5 I A 87 (112) = 1 A. 688 (706).

DIVESTING OF ESTATE BY.

———Estate vested in adoptive mother—Estate vested in third party—Distinction. *See* HINDU LAW—ADOPTION—WIDOW—ADOPTION BY (1) EFFECT OF AND (2) POWER OF—VESTING OF HUSBAND'S ESTATE IN WIDOW.

EFFECT OF.

———*Divesting of estate vested in widow and vesting thereof in adopted son.*

The result of an act of adoption by a Hindu widow is to divest the whole property from the mother and to vest it in her adopted son, because the property is in the widow from the death of the husband, till the power of adoption is exercised, and then that adoption divests it from the widow, and vests it in the adopted son (242). (*Lord Campbell.*) DHURM DAS PANDEY *v.* MUSSUMAT SHAMA SOONDARI DEBIAH.

(1843) 3 M.I.A. 229 = 6 W.R. (P.C.) 43 = 1 Suth 147 = 1 Sar. 271.

———When an adoption is made by a Hindu widow to her husband, his property would, by the act of adoption, be divested from the widow, and vest in the adopted son as his son and heir (358). (*Sir James W. Colvile.*) CHOWDRY PUDUM SINGH *v.* KOER OODEY SINGH.

(1869) 12 M.I.A. 350 = 12 W. R. (P. C.) 1 = 2 B.L R. (P C) 101 = 2 Suth. 219 = 2 Sar. 447.

———Estate not vested in adoptive mother—Divesting of. *See* all cases under HINDU—LAW ADOPTION WIDOW—ADOPTION BY—POWER OF—VESTING OF HUSBAND'S ESTATE IN WIDOW.

———Joint Family—Surviving co-parcener in—Estate vested in—Divesting of, by adoption by widow of deceased co-parcener—Authority to adopt—Adoption by widow pursuant to. (*Sir James W. Colvile.*) SRI RAGHUNADHA *v.* SRI BROZO KISHORO. (1876) 3 I.A. 154 = 1 M. 69 = 25 W R. 291 = 3 Sar. 583 = 3 Suth. 263.

———*Joint Family—Surviving co-parcener's widow—Adoption by—Estate vested in predeceased Co-parcener's son if divested by.*

H and *B*, two brothers, were members of a joint Hindu family governed by the Mitakshara law. Neither had any male issue. *H* died first, leaving his widow pregnant. Then *B* died giving his widow authority to adopt a son. After the death of *B*, *H's* widow gave birth to a son, the appellant. Thereafter, *B's* widow adopted *N* as son to her deceased husband. The question was as to the effect of the adoption upon the title to joint family property.

It was contended for the appellant that, at the time when the adoption of *N* took place, the family estate had

HINDU LAW—(*Contd.*)

Adoption—Widow—Adoption by—(*Contd.*)

EFFECT OF—(*Contd.*)

become vested absolutely and exclusively in the appellant, and that the adoption could not detract from the right so vested.

Held, over-ruling the contention, that the decision in L. R. 3 I. A. 154 governed the case and excluded the appellant's contention (113). (*Sir Arthur Wilson.*) BACHOO HURKISONDAS *v.* MANKOREBAI.

(1907) 34 I. A. 107 = 31 B. 373 (379-80) = 2 M. L. T. 295 = 6 C. L. J. 1 = 11 C. W. N. 769 = 9 Bom. L. R. 646 = 17 M. L. J. 343.

See also HINDU LAW—ADOPTION—WIDOW—ADOPTION BY—VALIDITY—JOINT FAMILY.

(1918) 46 I. A. 265 = 41 M. 998 (1005-7).

———*Person entitled in default of son, natural-born or adopted—Rights within his competency created by, whilst in possession—Effect of, as against adopted son.*

Semble, if a Hindu widow lies by for a considerable time and makes no adoption, and the property comes into the possession of some one who would take it in the absence of a son, natural or adopted, and such person were to create rights in such property within his competency whilst in possession, in such cases totally different considerations would arise. (*Mr. Ameer Ali.*) PRATAPSINGH SHIVSINGH *v.* AGARSINGJI RAISINGJI. (1918) 46 I. A. 97 = 43 B. 778 (794-5) = 17 A. L. J. 522 = (1919) M. W. N. 313 = 21 Bom. L. R. 496 = 24 C. W. N. 57 = 10 L. W. 339 = 27 M. L. T. 47 = 50 I. C. 457 = 36 M. L. J. 511.

———*Second adoption on death of first leaving adoptive mother as his heir—Estate vested in widow as such heir if divested by.*

The first adopted son became his father's heir; on the death of that son after that of his father, the widow became the heir, not of her late husband but of the adopted son. Whether by the act of adopting another son she in point of law divested herself of that estate in favour of the second son may be a question of some nicety, on which their Lordships give no opinion (208). (*Sir Robert P. Collier.*) RAMASAWMI AIYAN *v.* VENCATARAMAIYAN.

(1879) 6 I. A. 196 = 2 M. 91 (101) = 5 C. L. R. 347 = 4 Sar. 42 = 3 Suth. 663.

ESSENCE OF.

———*Substitution of son for spiritual reasons—Devolution of property.*

The substitution of a son of the deceased for spiritual reasons is the essence of the thing (adoption), and the consequent devolution of property is a mere accessory to it. (191-2). (*Sir James W. Colvile.*) SRI RAGHUNADHA *v.* SRI BROZO KISHORO. (1876) 3 I. A. 154 = 1 M. 69 (81-2) = 25 W. R. 291 = 3 Suth. 263 = 3 Sar. 583.

ESTATE DIVESTED BY.

———Estate vested in adoptive mother—Estate vested in third person—Distinction. *See* HINDU LAW—ADOPTION—WIDOW—ADOPTION BY (1) EFFECT OF. (2) POWER OF—VESTING OF HUSBAND'S ESTATE IN WIDOW.

EVIDENCE AS TO.

———*Admission by widow of factum and regularity of adoption—Value of, in suit against her by adopted son—Evidence conflicting.*

In a case of conflicting evidence, in a suit brought on behalf of an adopted child against the adopting mother in respect of her deceased husband's estate, a declaration by her, whether by deed or word of mouth, that she had adopted the child with all necessary ceremonies would be strong corroborative evidence in the child's favour (162).

HINDU LAW—(*Contd.*)

Adoption—Widow—Adoption by—(*Contd.*)

EVIDENCE AS TO—(*Contd.*)

(*Sir Barnes Peacock.*) SREE NARAIN MITTER *v.* SREEMUTTY KISHEN SOONDERY DASSEE.

(1873) Sup. I. A. 149 = 11 B. L. R. 171 = 19 W. R. 133 = 3 Sar. 203 = 2 Suth. 774.

———*Revenue Collector's Books—Widow's name continued in, even after alleged adoption—Value of.*

Where the question is whether a person was adopted by a Hindu widow to her husband, the fact that, even after the alleged adoption, the widow remained the registered owner of her husband's property for the whole of her life is a very material circumstance showing that she did not really adopt to her husband (357-8).

As, by the act of adoption, the property of the deceased would be divested from his widow and would vest in the adopted son as son and heir of the deceased, the regular course would be for the substitution by the widow of the adopted son's name for her own in the Revenue Collector's Books (358). (*Sir James W. Colvile.*) CHOWDRY PUDUM SINGH *v.* KOER OODEY SINGH. **(1869) 12 M.I.A. 350 = 12 W. R. (P. C.) 1 = 2 B. L. R. (P. C.) 101 = 2 Suth. 219 = 2 Sar. 447.**

HUSBAND—ADOPTION BY—CEREMONIES OF—DIRECTION TO WIDOW TO PERFORM—NON-COMPLIANCE WITH—VALIDITY OF ADOPTION—EFFECT ON.

———Adoption of different boy by widow—Validity of. *See* HINDU LAW—ADOPTION—DECEASED—ADOPTION BY. **(1876) 3 I. A. 253 (258).**

HUSBAND—ADOPTION NOT TO, BUT TO WIDOW ALONE.

———*Adopted son's rights in case of.*

An adoption by the widow alone for any purpose required by the Hindu law, would not give to the adopted child, even after her death, any right to the property inherited by her from her husband (356). (*Sir James W. Colvile.*) CHOWDRY PUDUM SINGH *v.* KOER OODEY SINGH. **(1869) 12 M. I. A. 350 = 12 W. R. (P. C.) 1 = 2 B. L. R. (P. C.) 101 = 2 Suth. 219 = 2 Sar. 447.**

MEANING ORDINARY OF, IN HINDU LAW.

———*Adoption must be to husband and not to widow alone.*

As an adoption by a widow is for her husband's benefit, so the child must be adopted to him and not to the widow alone (356). (*Sir James W. Colvile.*) CHOWDRY PUDUM SINGH *v.* KOER OODEY SINGH. **(1869) 12 M. I. A. 350 = 12 W. R. (P. C.) 1 = 2 B. L. R. (P. C.) 101 = 2 Suth. 219 = 2 Sar. 447.**

———The adoption of an heir by a widow in the ordinary sense of the Hindu law, is the adoption of a person who should be heir to herself and husband, and capable of performing the religious ceremonies which are supposed to be for the benefit of the souls of both (12). (*Sir James W. Colvile.*) RAJAH VELLANKI VENKATA KRISHNA RAO *v.* VENKATA RAMA LAKSHMI NARASAYYA. **(1876) 4 I. A. 1 = 1 M. 174 (189) = 26 W. R. 21 = 3 Sar. 669 = 3 Suth. 353.**

NANDA PANDITA'S EXTENSION TO, OF RULE OF LEGAL MARRIAGE BEING POSSIBLE BETWEEN ADOPTER AND MOTHER OF ADOPTEE.

———*Correctness of.*

Nanda Pandita in the Dattaka Mimamsa extended to adoption by females the rule of Hindu law that no one can be adopted as a son whose mother the adopter could not have legally married. This extension of the rule by Nanda Pandita is not based upon the authority of any of the Smritis or institutes of sages; it is not supported by any text of the Dattaka Chandrika, or by any of the texts of

HINDU LAW—(*Contd.*)

Adoption—Widow—Adoption by—(*Contd.*)

NANDA PANDITA'S EXTENSION TO, OF RULE OF LEGAL MARRIAGE BEING POSSIBLE BETWEEN ADOPTER AND MOTHER OF ADOPTEE—(*Contd.*)

the sages Saunaka and Sakala from which most of the rules of the Dattaka Mimamsa were deduced; and the extension has also not been accepted as the law in India, at least, so far as adoptions by widows to their deceased husbands are concerned (161-2). The rule of the Hindu law that a legal marriage must have been possible between the adopter and the mother of the adopted boy refers to their relationship prior to marriage (162). (*Sir John Edge.*) PUTTU LAL *v.* PARBATI KUNWAR. **(1915) 42 I. A. 155 = 37 A. 359 (367-8) = 13 A. L. J. 721 = 19 C. W. N. 841 = 22 C. L. J. 190 = 17 Bom. L. R. 549 = 18 M. L. T. 61 = 2 L. W. 881 = (1915) M. W. N. 514 = 29 I. C. 617 = 29 M. L. J. 63.**

POWER OF.

(*See also* UNDER THIS HEAD—VALIDITY OF.)

———*Different in different schools.*

The authority of a widow to give or take in adoption differs in different schools of Hindu Law (127-8). (*Lord Hobhouse.*) SRI BALUSU GURULINGASWAMI *v.* SRI BALUSU RAMALAKSHMAMMA. **(1899) 26 I. A. 113 = 22 M. 398 (408) = 21 A. 460 = 3 C. W. N. 427 = 1 Bom. L. R. 226 = 7 Sar. 330 = 9 M.L.J. 67.**

———Limits to. *See* all cases collected under HINDU LAW—ADOPTION—WIDOW—ADOPTION BY—VALIDITY OF.

———*Limits which law has assigned to—Keeping power strictly within—Court's duty.*

Though it may be the duty of a Court of Justice administering the Hindu law to consider the effect of an adoption upon the devolution of property as a mere legal consequence and not as the essential foundation of the law of adoption, it is still impossible not to see that there are grave social objections to making the succession of property—and it may be in the case of collateral succession the rights of parties in actual possession—dependent on the caprice of a woman, subject to all the pernicious influences which interested advisers are too apt in India to exert over women possessed of, or capable of exercising dominion over, property. It seems, therefore, to be the duty of the courts to keep the power strictly within the limits which the law has assigned to it (193). (*Sir James W. Colvile.*) SRI RAGHUNADHA *v.* SRI BROZO KISHORO. **(1876) 3 I.A. 154 = 1 M. 69 (83) = 25 W. R. 291 = 3 Sar. 583 = 3 Suth. 263.**

———The above observations in L. R. 3 I. A. 154 (193) are quoted with approval in (1) (*Mr. Ameer Ali.*) VEERA BASAVARAJU *v.* BALASURYA PRASADA ROW. **(1918) 45 I. A. 265 (272-3) = 41 M. 998 (1010) = 25 M. L. T. 1 = 9 L. W. 243 = 17 A. L. J. 34 = 21 Bom. L. R. 238 = 23 C. W. N. 251 = 29 C. L. J. 184 = 48 I. C. 706 = 36 M. L. J. 44.**

and (2) (*Viscount Cave.*) ADUSUMILLI KRISTNAYYA *v.* ADUSUMILLI LAKSHMIPATHI. **(1920) 47 I. A. 99 (103, 108) = 43 M. 650 (654-5) = 28 M. L. T. 70 = 18 A.L.J 601 = (1920) M.W.N. 385 = 24 C.W.N. 905 = 12 L. W. 625 = 56 I. C. 391 = 39 M. L. J. 70.**

———*Mahratta country and elsewhere—Distinction.*

The Hindu law in the Mahratta country of the Presidency of Bombay and in Gujerat as to the power of widows to adopt to their deceased husbands differs widely from the Hindu law as it has been variously interpreted in other parts of India, but whether it is the original Hindu law on that subject, or a deviation from it is not now an easy question to decide with certainty; probably it is a devia-

HINDU LAW—(*Contd.*)

Adoption—Widow—Adoption by—(*Contd.*)

POWER OF (*Contd.*)

tion. (*Sir John Edge.*) YADAO *v.* NAMDEO.
(1921) 48 I.A. 513 = 49 C. 1 (16) = 26 C.W.N. 393 = 30 M.L.T 53 = L.R 3 P.C. 41 = 15 L W. 565 = 20 A. L. J. 481 = 24 Bom. L. R. 609 = 64 I. C. 536 = A I.R 1922 P.C. 216 = 42 M. L. J 219.

———*Marwari Banias of Jaisulmere — Custom among, greatly extending power.*

Quœre, whether, among the Marwari Banias of Jaisulmere, a custom exists under which the power of widows in regard to adoption is greatly extended. (*Sir Andrew Scoble.*) MUTSADDI LAL *v.* KUNDAN LALL.
(1905) 33 I.A. 55 = 28 A. 377 (380) = 3 A L. J. 246 = 1 M. L T. 93 = 8 Bom. L. R. 371 = 9 Sar. 42 = 16 M. L. J. 174.

———Vesting of husband's estate in widow — Necessity—Vesting of estate in another—Effect. *See* HINDU LAW—ADOPTION—WIDOW—ADOPTION BY—VALIDITY OF—SON'S SON, NATURAL OR ADOPTED.
(1865) 10 M.I.A. 279 (310).

———*See* HINDU LAW—ADOPTION—WIDOW — ADOPTION BY—VALIDITY OF—SON DYING UNMARRIED.
(1865) 10 M. I. A. 279 (311-2.)

———*See* HINDU LAW—ADOPTION — WIDOW—ADOPTION BY—ASSENT OF SAPINDAS—ADOPTION WITH — SON DYING UNMARRIED. **(1876) 4 I. A. 10 = 1 M. 174 (187).**

———*See* HINDU LAW—ADOPTION — WIDOW—ADOPTION BY—VALIDITY OF—SON — VESTING OF ESTATE IN. **(1881) 8 I.A. 229 (245) = 8 C. 302 (309. 310).**

———*See* HINDU LAW—ADOPTION — WIDOW—ADOPTION BY—VALIDITY OF HUSBAND'S ESTATE NOT VESTED IN WIDOW. **(1918) 46 I. A. 97 = 43 B. 778 (793).**

———*See* HINDU LAW—ADOPTION— WIDOW — ADOPTION BY—VALIDITY OF—JOINT FAMILY—SURVIVING CO-PARCENER'S WIDOW IN. **(1918) 46 I. A 265 = 41 M, 998 (1005-6, 1007).**

———*See* HINDU LAW—ADOPTION—WIDOW — ADOPTION BY—BOMBAY PRESIDENCY, ETC.
(1921) 48 I. A. 513 (526) = 49 C. 1 (13, 17).

———*See also* HINDU LAW — ADOPTION — WIDOW — ADOPTION BY—VALIDITY OF—SON'S WIDOW — VESTING OF ESTATE IN.

(1) (1865) 10 M. I. A. 279.
(2) (1876) 4 I A, 1 (9) = 1 M. 174 (186).
(3) (1881) 8 I. A. 229 (245) = 8 C. 302 (309-10).
(4) (1887) 14 I A. 67 = 10 M, 205.
(5) (1889) 16 I. A. 166 (170) = 17 C. 122 (127).
(6) (1918) 45 I. A. 156 (161-2) = 41 M. 855 (859-60).

———*See* HINDU LAW—ADOPTION—WIDOW — ADOPTION BY—EFFECT OF—JOINT FAMILY — SURVIVING CO-PARCENER'S WIDOW—ADOPTION BY—ESTATE VESTED IN PREDECEASED CO-PARCENER'S SON IF DIVESTED BY: **3 I A. 154 & (1907) 34 I.A. 107 (113) = 31 B 373 (379-80.)**

———*See* HINDU LAW—ADOPTION—WIDOW — ADOPTION BY—EFFECT OF—PERSON ENTITLED IN DEFAULT OF SON, NATURAL-BORN OR ADOPTED—RIGHTS WITHIN HIS COMPETENCY CREATED BY, WHILST IN POSSESSION—EFFECT OF, AS AGAINST ADOPTED SON.
(1918) 46 I. A. 97 = 43 B. 778 (794-5).

RETROSPECTIVE OPERATION OF.

———*See* HINDU LAW—ADOPTION — ADOPTED SON. (1) ADOPTIVE FATHER—WILL BY & (2) POSITION AND RIGHTS OF.

HINDU LAW—(*Contd.*)

Adoption—Widow—Adoption by—(*Contd.*)

SETTING ASIDE OF.

———*See* (1) HINDU LAW—REVERSIONER, (2) LIMITATION ACT OF 1908—ART. 118, & (3) SPECIFIC RELIEF ACT, S. 42—CASES UNDER—HINDU LAW—ADOPTION.

VALIDITY OF.

———(*See also* HINDU LAW—ADOPTION— VALIDITY OF.)

———Ante-adoption agreement providing for giving up to widow and her relatives greater part of adoptive father's estate—Adoption made pursuant to. *See* HINDU LAW—ADOPTION—ANTE-ADOPTION AGREEMENT — WIDOW AND NATURAL FATHER—AGREEMENT BETWEEN.
(1920) 47 I. A. 99 (107) = 43 M. 650 (659).

———Ante-adoption agreement reserving life interest to widow in husband's property—Adoption made pursuant to —Fraud upon authority to adopt if a—Validity of adoption and of agreement in such a case. *See* HINDU LAW—ADOPTION— ANTE-ADOPTION AGREEMENT— WIDOW AND NATURAL FATHER—AGREEMENT BETWEEN.
(1888) 16 I. A. 53 (58 9) = 16 C. 556 (563-4).

———Boy named in authority to adopt—Boy different from—Adoption of—Validity of. *See* HINDU LAW—ADOPTION—AUTHORITY TO ADOPT—CONSTRUCTION OF—BOY NAMED.

———Boy not in existence at time of authority to adopt—Adoption of. *See* HINDU LAW—ADOPTION—AUTHORITY TO ADOPT—ADOPTION UNDER—BOY NOT IN EXISTENCE ETC. **(1905) 33 I. A. 55 = 28 A. 377 (382).**

———Brother's son—Adoption of widow's own, pursuant to authority. *See* HINDU LAW—ADOPTION—AUTHORITY TO ADOPT - ADOPTION UNDER—BROTHER'S SON.
(1915) 42 I. A. 155 (161 2) = 37 A. 359 (366 8).

———Husband—Adoption by—Ceremonies of—Direction to widow to perform—Non-compliance with—Validity of adoption—Effect on—Adoption of different boy by widow —Validity of. *See* HINDU LAW—ADOPTION—DECEASED—ADOPTION BY. **(1876) 3 I. A. 253 (258).**

———Husband's estate being vested in widow—Necessity —Vesting of estate in another—Effect. *See* HINDU LAW —ADOPTION—WIDOW—ADOPTION BY—POWER OF—VESTING OF HUSBAND'S ESTATE IN WIDOW.

———Husband's estate not vested in widow as his heir—Adoption by her in case of—Validity—Bombay Presidency and Guzerat—Law in. *See* HINDU LAW—ADOPTION—WIDOW—ADOPTION BY—BOMBAY PRESIDENCY AND GUZERAT. **(1921) 48 I. A. 513 (526) = 49 C 1 (13, 17).**

———*Husband's estate not vested in widow—Adoption by her in case of—Right of.*

The right of a Hindu widow to make an adoption is not dependent on her inheriting as a Hindu female owner her husband's estate. She can exercise the power so long as is not exhausted or extinguished even though the property was not vested in her. (*Mr. Ameer Ali.*) PRATAPSINGH SHIVSINGH *v.* AGARSINGJI RAISINGJI.
(1918) 46 I. A. 97 = 43 B. 778 (793) = 17 A. L. J. 522 = (1919) M. W. M. 313 = 21 Bom. L. R. 496 = 24 C. W. N. 57 = 10 L. W. 339 = 27 M. L. T. 47 = 50 I. C. 457 = 36 M. L. J. 511.

———*Joint family—Surviving co-parcener's widow in—Property vested in—Adoption by predeceased co-parcener's widow after—Validity.*

P and *B* formed members of a joint Hindu family. On *P's* death without male issue but leaving a widow, the entire joint family property vested by right of survivorship in *B*.

HINDU LAW—(*Contd.*)

Adoption—Widow—Adoption by—(*Contd.*)

VALIDITY OF—(*Contd.*)

B then died leaving a son *V* who became entitled to the entire property. On *V's* death without male issue, the estate vested in his widow. Thereupon *P's* widow purported to adopt a son to him. The District Court held that, in that condition of the joint family, the power and capacity of *P's* widow to make any adoption to him came to an end when the joint family property vested in *V's* widow.

The High Court and the Privy Council left the question open. (*Mr. Ameer Ali.*) VEERA BASVARAJU *v.* BALASURYA PRASADA RAO. **(1918) 45 I. A. 265 = 41 M. 998 (1005-6, 1007) = 25 M.L.T. 1 = 9 L. W. 243 = 17 A L. J. 34 = 21 Bom. L. R. 238 = 23 C. W. N. 251 = 29 C. L. J. 184 = 48 I. C. 706 = 36 M. L. J. 44.**

———*Only son—Adoption of.*

Quære, whether an adoption by a widow of an only son is valid (178). (*Lord Macnaghten.*) SRI ANMI DEVI GARU *v.* SRI VIKRAMA DEVI GARU.

(1888) 15 I.A. 176 = 11 M. 486 (490) = 5 Sar. 190.

———*Only son—Adoption of, with assent of sapindas—Bombay—Madras—Law in.*

An adoption of an only son by a Hindu being perfectly, valid in Madras, such an adoption made by a widow with the assent of sapindas is not invalid in Madras on the ground that it is so improper that in the absence of express authority given by the husband the widow has no power to effect it.

Quære, whether the law on the point is different in Bombay. (*Lord Hobhouse.*) SRI BALUSU GURULINGASWAMI *v.* SRI BALUSU RAMALAKSHMAMMA.

(1899) 26 I. A. 113 (127-8) = 22 M. 398 (407-8) = 21 A. 460 = 3 C. W. N. 427 = 1 Bom. L. R. 226 = 7 Sar. 330 = 9 M. L. J. 67.

———Second adoption on death of prior adopted son a minor and unmarried—Validity of—Bombay Presidency and Guzerat—Law in. *See* HINDU LAW—ADOPTION—WIDOW—ADOPTION BY—BOMBAY PRESIDENCY AND GUZERAT. **(1921) 48 I. A. 513 (526) = 49 C. 1 (13, 17).**

———*Second adoption on death of first after attaining age of sufficient maturity—Validity of.*

It was contended that, by the adoption (by a Hindu widow) of one son, all the spiritual benefit to be derived from the act was secured to her deceased husband, and the adoption of a second boy was, therefore, supererogatory. This contention is disposed of by the judgment of Mitter, J. (in 22 W. R. 121):—An adopted son attaining an age of sufficient maturity and by performing the religious services enjoined by the shasters, cannot exhaust the whole of the spiritual benefit which a son is capable of conferring upon the soul of his deceased father; because these services are enjoined to be repeated at certain stated intervals, and the performance of them on each successive occasion secures fresh spiritual benefit to the soul of the deceased father. This contention is opposed to the general principles of the Hindu law. (*Sir Andrew Scoble.*) KANNEPALLI SURYANARAYANA *v.* PUCHA VENKATA RAMANNA.

(1906) 33 I. A. 145 (154 5) = 29 M. 382 (389) = 10 C. W. N. 921 = 4 C. L.J. 171 = 1 M. L. T 260 = 8 Bom. L. R. 700 = 3 A. L. J. 702 = 16 M. L. J. 276.

———*Several succcssive heirs—Lapse of—Adoption after—Validity.*

It could hardly have been intended by the deed of permission to adopt that after the lapse of several successive heirs a son should be adopted to the great-grand father of the last taker, when all the spiritual purposes of a son, according to the largest construction of them, would have been

HINDU LAW—(*Contd.*)

Adoption—Widow—Adoption by—(*Contd.*)

VALIDITY OF—(*Contd.*)

satisfied (310) (*Lord Kingsdown.*) MUSSUMAT BHOOBUN MOYEE DEBIA *v.* RAM KISHORE ACHARJ CHOUDRY.

(1865) 10 M. I. A. 279 = 3 W. R. P. C. 15 = 1 Suth. 574 = 2 Sar. 111.

———Son—Vesting of estate in—Authority to adopt if not exercisable after. *See* HINDU LAW—ADOPTION—WIDOW—ADOPTION BY—VALIDITY OF—SON'S WIDOW. **(1881) 8 I. A. 229 (245) = 8 C. 302 (309, 310).**

———*Son dying unmarried—Mother succeeding as heir to—Adoption by—Validity of.*

If *B* had died unmarried, his mother, *C*, would have been his heir, and the question of the validity of an adoption by *C* under an authority conferred upon her by her husband would have stood on quite different grounds. In that case, by exercising the power of adoption, she would have divested no estate but her own, and this would have brought the case within the ordinary rule (311-2). (*Lord Kingsdown.*) MUSSUMMAT BHOOBUN MOYEE DEBIA *v.* RAM KISHORE ACHARJ CHOWDHRY. **1 Suth. 574 = (1865) 10 M. I. A. 279 = 3 W. R. (P.C.) 15 = 2 Sar. 111.**

———*Son dying a minor and unmarried but after attaining ceremonial competence—Adoption in case of—Validity.*

Quære, as to the validity of an adoption made by a Hindu widow to her husband on the death of her son unmarried in a case in which that son had attained ceremonial competence (237). (*Lord Lindley.*) VERABHAI AJUBHAI *v.* BAI HIRABA. **(1903) 30 I. A. 234 = 27 B. 492 = 7 C.W.N. 716 = 5 Bom.L.R. 534 = 8 Sar. 508.**

———*Son's son, natural or adopted—Vesting of estate in—Adoption after—Validity of.*

If Bhowanee Kishore (the son) had left a son, or if a son had been lawfully adopted to him by his wife under a power legally conferred upon her, the power of adoption given to the mother of Bhowani Kishore by his father would have been at an end (310). (*Lord Kingsdown.*) MUSUMMAT BHOOBUN MOYEE DEBIA *v.* RAM KISHORE ACHARJ CHOWDHRY. **(1865) 10 M. I. A. 279 = 3 W. R. (P. C.) 15 = 1 Suth. 574 = 2 Sar. 111.**

———*Son's widow—Vesting of estate in—Adoption after—Validity.*

In 1811, *G*, being childless, executed a deed of permission to adopt by which he gave power to his wife, *C*, to adopt a son. He afterwards had a son, *B*, by his wife, *C*. In 1819, two years after his son's birth, and while he was living, *G* executed another deed of permission to adopt which permitted *C*, in the event of the death of *B*, to adopt a son, and, in the event of the death of that adopted son, to adopt other sons in succession, to avoid the extinction of the pinda. *B*, on coming of age, succeeded to the ancestral and other estate of his father who had died. On *B's* death, childless, his widow succeeded as heir to her deceased husband. Sometime after *B's* death, *C*, his mother, exercised the power given to her by the deed of 1819, by adopting a son to *G*. On a question arising as to the validity of the adoption made by *C*, Ram Kishore being the name of the adopted son, *held* that, when *C* professed to exercise the power given to her by the deed of 1819, the power was incapable of execution, and that the adoption of Ram Kishore was therefore invalid (307).

The deed of permission does not in express terms assign any limits to the period within which the adoption may be made. But it is plain that some limits must be assigned. It might well have been that *B* had left a son, natural-born or adopted, and that such son had died himself, leaving a son, and that such son had attained his majority in the lifetime of *C*. It could hardly have been intended that

HINDU LAW—(*Contd.*)

Adoption—Widow—Adoption by—(*Contd.*)

VALIDITY OF—(*Contd.*)

after the lapse of several successive heirs a son should be adopted to the great-grand-father of the last taker when all the spiritual purposes of a son, according to the largest construction of them, would have been satisfied (309-10).

In this case, *B* had lived to an age which enabled him to perform—and it is to be presumed that he had performed—all the religious services which a son could perform for a father. He had succeeded to the ancestral property as heir ; he had full power of disposition over it ; he might have alienated it ; he might have adopted a son to succeed to it if he had no male issue of his body. He could have defeated every intention which his father entertained with respect to property (310).

On the death of *B*, his wife succeeded as heir to him, and would have equally succeeded in that character in exclusion of his brothers, if he had had any. She took a vested estate, as his widow, in the whole of his property. It would be singular if a brother of *B*, made such by adoption, could take from his widow the whole of his property, when a natural-born brother could have taken no part. If Ram Kishore is to take any of the ancestral property, he must take all he takes by substitution for the natural-born son, and not jointly with him (310-1.) The estate of *B*, being unlimited, and he having married and left a widow as his heir, and that heir having acquired a vested estate in her husband's property as widow, a new heir cannot be substituted by adoption to *G* who is to defeat that estate, and take as an adopted son what a legitimate son of *G*, would not have taken (311).

An additional difficulty in holding the estate of the widow of *B*, to be divested may, perhaps, be found in the doctrine of Hindu law, that the husband and wife are one, and that as long as the wife survives, one-half of the husband survives ; but it is not necessary to press this objection (312). (*Lord Kingsdown.*) MUSSUMAT BHOOBUN MOYEE DEBIA *v.* RAM KISHORE ACHARJ CHOWDHRY. **(1865) 10 M.I.A. 279 = 3 W.R.(P.C.) 15 = 1 Suth. 574 = 2 Sar. 111.**

——The question is, whether the estate of the son of Gour Kishore being unlimited, and that son having married and left a widow as his heir, and that heir having acquired a vested estate in her husband's property as a widow, a new heir can be substituted by adoption who is to defeat that estate, and take as an adopted son what a legitimate son of Gour Kishore would not have taken. This seems contrary to all reason and to all the principles of Hindu Law (311). No case has been produced, no decision has been cited from the Text-Books, and no principle has been stated to show that by the mere gift of a power of adoption to a widow, the estate of the heir of a deceased son vested in possession, can be defeated and divested (312). (*Lord Kingsdown*) MUSSUMMAT BHOOBUN MOYEE DEBIA *v.* RAM KISHORE ACHARJ CHOWDHRY. **(1865) 10 M.I.A. 279 = 3 W.R.(P.C.) 15 = 1 Suth. 574 = 2 Sar. 111.**

——A Hindu having a legitimate son may authorise his widow to adopt a son in the event of his natural son dying under age and unmarried, and an adoption made by the widow in that event in pursuance of the authority would be valid, notwithstanding that the descent had been cast upon the natural-born son, unless the case fell within the authority of that of Chundrabullee (10 M. I. A. 279), in which it was decided that the son having died leaving a widow in whom the inheritance had vested, the mother could not defeat the estate which had so become vested by making an adoption, though in pursuance of a written authority from her husband (9). (*Sir James W. Colvile.*) RAJAH VELLANKI

HINDU LAW—(*Contd.*)

Adoption—Widow—Adoption by—(*Contd.*)

VALIDITY OF—(*Contd.*)

VENKATA KRISHNA RAO *v.* VENKATARAMA LAKSHMI NARASAYYA. **(1876) 4 I. A. 1 = 1 M. 174 (186) = 26 W.R. 21 = 3 Sar. 669 = 3 Suth. 353.**

——*Held*, that the decision in 10 M. I. A. 279 was that, upon the vesting of the estate in the widow of Bhawani (the son), the power of adoption (given by his father to his mother) was at an end, and incapable of execution, and that an adoption made after such vesting by the mother in pursuance of the power was therefore invalid for all purposes (245).

If the question had come before them without any previous decision upon it, their Lordships would have been of that opinion. The adoption intended by the deed of permission was for the succession to the Zemindary and other property, as well as the performance of religious services ; and the vesting of the estate in the widow of Bhawani, if not in Bhawani himself, as the son and heir of his father, was a proper limit to the exercise of the power (245). (*Sir Richard Couch.*) PUDMA COOMARI DEBI *v.* COURT OF WARDS. **(1881) 8 I.A. 229 = 8 C. 302 (309-10) = 4 Sar. 285.**

——*D*. a Hindu, who was entitled to certain property, died, leaving widow, and also an only son, *K*, his heir-at law, surviving him. *K*, married and subsequently died without issue, leaving his widow, who, upon the death of her husband, succeeded as heir to the property. After the death of *K*, and during the lifetime of his widow, *D's* widow, with permission of sapindas, adopted a son to her deceased husband. The question was as to the validity of that adoption.

Held, that the survival of *K's* widow and the vesting of the estate in her put an end to the right of *D's* widow to adopt a son to him, and that the adoption was therefore invalid.

The case is governed by the decision of this committee in the case of Pudma Coomari Debi, which was founded upon the case of Mussumat Bhoobun Moyee Debea. The adoption, with the permission of sapindas in the present case could have no greater effect as regards the right to property than the adoption under the deed of permission in the abovementioned two cases. (*Sir Barnes Peacock.*) THAYAMMAL *v.* VENKATARAMA AIYAR. **(1887) 14 I.A. 67 = 10 M. 205 = 5 Sar. 10.**

——The will of *M*, a Hindu, addressed to his brother *A*, provided. "If my only son dies before he gets children, my wife may with your consent adopt a son."

K, the only son of the testator died after attaining majority leaving a widow.

Held, that on the son's death after coming of age leaving his widow the testator's wife would not have power to adopt a son, the estate of the son having become vested in his widow (170). (*Sir Richard Couch.*) TARACHURN CHATTERJI *v.* SURESH CHUNDER MOOKERJI.

(1889) 16 I. A. 166 = 17 C. 122 (127) = 5 Sar. 379.

——The Hindu Law no doubt recognises the validity of an authority given to a Hindu widow by her deceased husband to make a second, or, even a third or fourth adoption on failure of the previous adoption to attain the object for which the power is given, namely, the perpetuation of the deceased's line to discharge the obligations that rest on a pious Hindu. There is, however, a limit imposed by law to the period within which a widow can exercise a power of adoption conferred upon her, and when that limit is reached the power is at an end.

A, the widow of the last male holder of an impartible estate, who had authority from her husband to adopt a son to him,

HINDU LAW—(*Contd.*)

Adoption—Widow—Adoption by—(*Contd.*)

VALIDITY OF—(*Contd.*)

adopted *B* in 1870, acting on that authority. *B* held the estate until his death in 1906, leaving a widow, but no son.

Held, that a second adoption made by *A*, in 1907 under the terms of her husband's authority was invalid (160).

The succession of *B*, and his dying after attaining full legal capacity to continue the line either by the birth of a natural-born son or by the adoption to him of a son by his own widow would in themselves be sufficient to bring the limiting principle into operation, and so to have determined the authority of *A*. (161-2). (*Viscount Haldane.*) MADANA MOHANA *v.* PURUSHOTHAMA. **(1918) 45 I. A. 156 = 41 M. 855 (859-60) = 24 M. L. T. 231 = (1918) M. W. N. 621 = 20 Bom. L. R. 1041 = 23 C. W. N. 177 = 28 C. L. J. 403 = 8 L. W. 167 = 5 P. L. W. 179 = 16 A. L. J. 725 = 46 I. C. 481 = 35 M. L. J. 138.**

———*Spiritual or temporal considerations applicable to determine.*

The validity of an adoption is to be determined by spiritual rather than temporal considerations ; the substitution of a son of the deceased for spiritual reasons is the essence of the thing, and the consequent devolution of property is a mere accessory to it (191-2). (*Sir James W. Colvile.*) SRI RAGHUNADHA *v.* SRI BROZO KISHORO.

(1876) 3 I. A. 154 = 1 M. 69 (81-2) = 25 W. R. 291 = 3 Suth. 263 = 3 Sar. 583.

———*Successive adoptions—Validity of.*

It is not necessary to consider in what way successive adoptions may operate. It is sufficient to say that the law has established that they may take place (10). (*Sir James W. Colvile.*) RAJAH VELLANKI VENKATA KRISHNA RAO *v.* VENKATA RAMA LAKSHMI NARASAYYA.

(1876) 4 I. A. 1 = 1 M. 174 (187) = 26 W. R. 21 = 3 Sar. 669 = 3 Suth. 353.

———Vesting of husband's estate in widow—Necessity—Vesting of estate in another—Effect. *See* ALL CASES COLLECTED UNDER HINDU LAW—ADOPTION—WIDOW—ADOPTION BY — POWER OF — VESTING HUSBAND'S ESTATE IN WIDOW.

———Widows' right to dispute, on ground of absence of authority to adopt—Estoppel. *See* HINDU LAW—ADOPTION—ADOPTED SON—STATUS OF—RIGHT TO DISPUTE—ESTOPPEL—ADOPTIVE MOTHER.

(1897) 24 I. A. 191 = 25 C. 187 and (1912) 39 I. A. 142 (148-9) = 34 A. 398 (404).

Alienation.

———*See* HINDU LAW (1) JOINT FAMILY—FATHER—ALIENATION BY, (2) JOINT FAMILY—MANAGER—ALIENATION BY, (3) JOINT FAMILY—MEMBER OF—ALIENATION BY, (4) RELIGIOUS ENDOWMENT, (5) WIDOW—ALIENATION BY.

Ancestral Property.

———(*See also* HINDU LAW—JOINT FAMILY—FATHER—ANCESTRAL PROPERTY.

———*Acquisitions with profits of—Nature of—Also ancestral.*

Accretions made by the investment of the profits of ancestral property form part of the ancestral estate (546). (*Lord Justice James.*) UMRITHNATH CHOWDHRY *v.* GOUREENATH CHOWDHRY. **(1870) 13 M. I. A. 542 = 15 W. R. (P. C.) 10 = 6 B. L. R. 232 = 2 Suth. 381 = 2 Sar. 618.**

———*Descent of, in co-parcenery—Rule as to.*

By the common law of Hindoostan, that is, the Hindu law, the descent of ancestral property is in co-parcenery

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Ancestral Property—(*Contd.*)

where no other custom or right is proved (546). (*Lord Justice James.*) UMRITHNATH CHOWDHRY *v.* GOUREENATH CHOWDHRY. **(1870) 13 M. I. A. 542 = 15 W. R. (P. C.) 10 = 6 B. L. R. 232 = 2 Suth. 381 = 2 Sar. 618.**

———Father and son. For all cases between father and son relating to ancestral property, *See* HINDU LAW—JOINT FAMILY—FATHER—ANCESTRAL PROPERTY.

———*Feeling as regards—Execution sale of—Impolicy of.*

The feeling on the subject of ancestral property is so strong in those provinces (North-West Provinces) that the policy of allowing it to be taken in execution and sold under judicial sales has been seriously questioned (473). (*Sir James W. Colvile.*) LALLA BUNSEEDHUR *v.* KOONWUR BINDESEREE DUTT SINGH. **(1866) 10 M. I. A. 454 = 2 Suth. 39 = 2 Sar. 167.**

———Gift of property as ancestral immoveable property subject to Mithakshara law—What amounts to. *See* HINDU LAW—ADOPTION—ADOPTED SON—ADOPTIVE FATHER—GIFT OF PROPERTY TO ETC. **(1881) 8 I. A. 215 (228).**

———*Lineal male ancestor—Descent through—Necessity.*

It is through their father, as heir of *D*, that the plaintiffs claimed, and unless the lands came to *D*, by descent from a lineal male ancestor in the male line, through whom the plaintiffs also in like manner claimed, they are not deemed ancestral in Hindu Law (211). (*Lord Collins.*) ATAR SINGH *v.* THAKAR SINGH. **(1908) 35 I. A. 206 = 35 C. 1039 (1045) = 4 M. L. T. 207 = 8 C. L. J. 359 = 12 C. W. N. 1049 = 10 Bom. L. R. 790 = 128 P. W. R. 1908 = 42 P. R. 1910 = 6 I. C. 721 = 18 M. L. J. 379.**

———*Maternal grandfather—Property inherited by a person from his—Ancestral or self-acquired.*

A zemindary, which has descended to a person from his maternal grandfather, is not his self-acquired property (143). (*Sir Barnes Peacock.*) MUTTAYAN CHETTIAR *v.* SANGILI VIRA PANDIA CHINNATAMBIAR. **(1882) 9 I. A. 128 = 6 M. 1 (17) = 12 C. L. R. 169 = 4 Sar. 354.**

———Where the separately acquired property of a Hindu is, on the death of his daughter, taken by her sons, the property is in the hands of the grandsons ancestral property which has devolved on them under the ordinary law of inheritance. (*Lord Lindley.*) RAJA CHELIKANI VENKAYAMMA GARU *v.* RAJA CHELIKANI VENKATARAMANAYAMMA. **(1902) 29 I.A. 156 (164) = 25 M. 678 (686) = 7 C. W. N. 1 = 4 Bom. L. R. 657 = 8 Sar. 286 = 12 M. L. J. 299**

———*Meaning of, in compromise between members of family for division of such property.*

In a *Ruffanamah*, or deed of compromise, of a suit between three sons, members of a Hindu family, respecting the distribution of their father's estate, it was stipulated, that all "ancestral" property should be equally divided into four shares. *Held*, that the sense in which the word "ancestral" was employed was not confined to such property as the father had derived from his ancestors, but included " paternal " property, or such as had been acquired by the father by whatever title, and was possessed by him at the time of his decease.

" Ancestral, " as here used, is not confined to such property, if any, as the father had derived from his father, or from any ancestor. The word "ancestral" is here employed in the sense of "paternal," that is, as meaning property of the father, in whatsoever manner, or by whatsoever title, the father had acquired it. Therefore "ancestral" property here means property derived from the father, at least immoveable

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Ancestral Property—(*Contd.*)

Property (96-7). (*Lord Justice Knight Bruce.*) RAJMOHUN GOSSAIN *v.* GOURMOHUN GOSSAIN.
(1859) 8 M. I. A. 91 = 4 W. R. (P. C.) 46 = 1 Suth. 378 = 1 Sar. 723.

———*Mutation of names on death of father in favour of eldest son in respect of—Effect of—Exclusion of other sons merely by reason of.*

On the death of the head of a joint Hindu family leaving 3 sons, the eldest of the sons applied under the provisions of Ss. 61 and 62 of the Oudh Land Revenue Act of 1876, praying that mutation of names in respect of his father's estate might be made in his favour. The Assistant Commissioner ordered that in place of the name of the deceased, the name of his eldest son should be entered as lambardar, and the names of the younger sons should be entered in place of the deceased as co-sharers. On appeal by the eldest son, the Deputy Commissioner modified the order of the Assistant Commissioner by canceiling so much of it as directed the registration of the names of the younger sons as co-sharers.

Held, that those proceedings afforded clear evidence that the eldest son took possession of the estate as property to which he was entitled to exclusive ownership, and not on behalf of his younger brothers, that he had sole legal possession in the sense that any person who on an application for mutation of names was put upon the registry as sole occupier would have sole legal possession, whether he was the head of a joint Hindu family, or not head of any family, or an absolute owner, but that they were not evidence that the eldest son was in possession as sole legal owner in a proprietary sense, to the exclusion of all claims of the other members of the family as co-owners or for maintenance or otherwise, and that the orders refused to above did not effect and were not intended to or designed to effect *proprio vigore* an exclusion of the younger sons from all interest in the property of the joint family of which they were members (227-8).

In the said proceedings the eldest son must not be held to have set up a claim to be sole proprietary owner of his father's estate, entitled to an interest in which his brothers had no claim. The revenue authorities had no jurisdiction to pronounce upon the validity of such a claim, and the orders in question did not attempt to do so (228). (*Lord Atkinson.*) NIRMAN SINGH *v.* LAL RUDRA PARTAB NARAIN SINGH. **(1926) 53 I. A. 220 = 48 A. 259 = 3 O. W. N. 623 = (1926) M. W. N. 716 = 25 A. L. J. 25 = 28 Bom. L. R. 1409 = 44 C. L. J. 330 = 25 L. W. 1 = 29 O. C. 316 = A.I.R. 1926 P. C. 100 = 98 I. C. 1013 = 51 M.. L. J. 836.**

———Partition of. *See* HINDU LAW—JOINT FAMILY—PARTITION—ANCESTRAL PROPERTY.

———*Right by birth in—Great-grandson if has a.*

Under the Mithakshara law the right in ancestral property extends to four generations, beginning with the father. This right springs from "birth." The great-grandson has also such an interest in ancestral property (208). (*Mr. Ameer Ali.*) MASIT-ULLAH *v.* DAMODAR PRASAD.
(1926) 53 I. A. 204 = 48 A. 518 = (1926) M. W. N. 816 = 3 O. W. N. 721 = 7 P. L. T. 815 = 31 C. W. N. 293 = 98 I. C. 1031 = 25 A. L. J. 1 = 28 Bom. L. R. 1402 = 44 C. L. J. 321 = 24 L. W. 551 = A. I. R. 1926 P.C. 105 = 51 M.L.J. 792.

———Right by birth in—Illegitimate son if has a. *See* HINDU LAW—ILLEGITIMATE SON—ANCESTRAL ESTATE—RIGHT BY BIRTH IN. **(1890) 17 I. A. 128 (132) = 18 C. 151 (155).**

———Right by birth in—Right to partition of—Connection between. *See* HINDU LAW—JOINT FAMILY—PARTITION—ANCESTRAL PROPERTY—RIGHT BY BIRTH IN.

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———Right by birth of son in. *See* UNDER HINDU LAW—JOINT FAMILY—FATHER—ANCESTRAL PROPERTY—SON'S RIGHT BY BRITH IN.

———*Self acquisition—Ancestral property mortgaged by ancestors—Foreclosure of mortgage against them—Acquisition of property subsequently by heir for money or for services—Nature of property in hands of heir.*

Where the question was whether certain property was the self-acquisition of *A* or not, and it appeared that it had been mortgaged by his ancestors, that the mortgage had been foreclosed under Regulation XVII of 1806 and that it had been subsequently acquired by *A*, for money or for services, *held* that the property was *A's* self-acquisition (75-6).

The effect of the foreclosure was to destroy the ancestral character of the property. (*Lord Hobhouse.*) RAO BALWANT SINGH *v.* RANI KISHORE. **(1898) 25 I. A. 54 = 20 A. 267 (292-3) = 2 C. W N. 273 = 7 Sar. 279.**

———Self-acquisition—Father—Partition with brothers—Property got by father at, and property subsequently acquired by him. *See* HINDU LAW—JOINT FAMILY—FATHER—ANCESTRAL PROPERTY—PARTITION WITH BROTHERS. **(1907) 34 I. A. 65 = 29 A. 244.**

———*Self-acquisition — Father — Property held under grant by—Re-grant of, in his lifetime, to his eldest son—Nature of property on a question between sons* inter se.

U and his four sons, the eldest of whom was one *P*, constituted a joint Hindu family. *U* appeared to have held, under different grants from the Raja of Benares, very extensive estates. Those estates, or a great part of them, were in his lifetime re-granted to his eldest son *P*. On a question arising between the sons *inter se*, the point for decision was whether the whole of what was granted to *P*, or a large portion of it, was to be treated as ancestral property. The court below appeared to have held that the mere circumstance of property which had been held by *U*, and, in some instances, by preceding members of his family, being afterwards transferred by a renewed grant in his lifetime to *P*, was not sufficient to evidence an hereditary interest, especially when the jumma or rent reserved to the Government, had from time to time varied, but that where the grant originally to *U*, was in terms which shewed that it was to continue in his family after his death, the property must be treated as ancestral.

Held, that the principle adopted by the Court below could not be said to be erroneous (256-7). (*Mr. Pemberton Leigh*). MUSSUMAT GOLAB KOONWAR *v.* THE COLLECTOR OF BENARES. **(1847) 4 M. I. A. 246 = 7 W. R. (P. C.) 47 = 1 Suth. 186 = 1 Sar. 343.**

———*Self-acquisition — Father — Property held under grant by—Re-grant of, in his lifetime, to his eldest son—Nature of property on a question between sons* inter se—*Decision of Indian Courts as to—Privy Council's interference with.*

U and his four sons, the eldest of whom was one *P*, constituted a joint Hindu family. *U* appeared to have held, under different grants from the Raja of Benares, very extensive estates. Those estates, or a great part of them, were in his lifetime regranted to his eldest son *P*. The question was whether the whole or a portion of what was granted to *P* was to be as ancestral property as between the sons *inter se*.

Held, that the question was one on which it was scarcely possible for their Lordships to come to a very satisfactory conclusion, for it depended upon the usages prevalent in the country and the inferences to be drawn from documents, naturally informal (255-6). (*Mr. Pemberton Leigh.*) MUS-

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Ancestral Property—(*Contd.*)

SUMAT GOLAB KOONWAR *v.* THE COLLECTOR OF BENARES. **(1847) 4 M. I. A. 246 = 7 W. R. (P.C.) 47 = 1 Suth. 186 = 1 Sar. 343.**

———Self-acquisition—Maternal grandfather — Property inherited from—Nature of, in a question between daughter's son inheriting and his sons. *See* HINDU LAW—ANCESTRAL PROPERTY—MATERNAL GRANDFATHER.

———Self-acquisition—Profits of ancestral property—Acquisitions with. *See* HINDU LAW—ANCESTRAL PROPERTY—ACQUISITIONS WITH PROFITS OF.
(1870) 13 M. I. A. 542 (546).

———*Self-acquisition or—Concurrent findings as to—Privy Council's interference with.*

JOYNARAIN GIRI *v.* SHEEB PROSHAD GIRI.
(1873) 2 Suth. 816 = 19 W, R. 275.

———(*Sir Robert P. Collier*). PANULIEM VALLOO *v.* PAULIEM SOORYAH. **(1877) 4 I. A. 109 (114) = 1 M. 252 (258) = 3 Sar. 698 = 3 Suth. 387.**

———(*Lord Robson*). BUR SINGH *v.* UTTAM SINGH.
(1910) 38 I. A. 13 (19) = 38 C. 355 (363) = 8 A. L J. 123 = 13 Bom. L. R. 59 = 21 P. L. R, 1911 = 9 M. L. T. 115 = 15 C. W. N. 177 = 1 P. W. R 1911 = 9 I. C. 33 = 21 P. R. 1911 = 13 C. L. J. 72 = (1911) M. W. N. 86 = 4 Bur. L. T. 35 = 21 M. L. J. 100.

———(*Mr. Ameer Ali*). PARBATI DASI *v.* BAIKUNTHA NATH DE. **(1914) 15 M.L.T. 66 = (1914) M.W.N. 42 = 12 A. L. J. 79 = 19 C. L. J. 129 = 18 C. W. N. 428 = 16 Bom L. R. 101 = 22 I. C. 51 = 26 M. L. J. 248 (250).**

———*Settlement of, in name of eldest member of joint family—Effect of, on rights of other members—Joint enjoyment and exercise of equal rights by all—Proof of.*

The question was whether a certain talook with accretions which, beyond all question, had been made by the investment of the profits of that estate, was an ancestral estate which descended to the plaintiffs-respondents and the defendant-appellant, who was a cousin, in co-parcenery.

It was proved that the talook in question was originally a Zemindary, of which the paternal grandfather of the parties was possessed. He had two sons, *B*, the father of the appellant, and *S*, the father of the respondents. The evidence showed that *B*, in the first Settlement, then in the Decennial Settlement, and then in the Perpetual Settlement, claimed to have it made with him by reason of his hereditary right to the Zemindary as hereditary Zemindar.

Held, it being proved that the property was the grandfather's property, and that *B* was entitled by descent, it followed, unless there was something to exclude it, that he would not be entitled to the property himself, but that he and his brother would succeed to it as coparceners. The fact that the Settlement was made in the name of the elder son, whether, originally, when he was a minor, or not,—the fact that he has continued to be solely registered from that time to this, affords no conclusive evidence against the title of the shareholder (547).

The mere fact that one of the two brothers was registered so as to be the proprietor to the outer world, does not seem to their Lordships to be of very great weight (547).

Where it further appeared that, in respect to the actual enjoyment of the property, there was beyond all question a continuous enjoyment by both the brothers upon equal terms, that the two lived together, that the families lived together, that they messed together, and that all the marriage and funeral ceremonies and other ceremonies of their religion were performed at the joint expense out of the income of the property, and apparently upon equal terms, and not as the bounty of an elder brother to a mere dependant who had no

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Ancestral Property—(*Contd.*)

right whatever to the property, *held*, that the property was coparcenary property which the two brothers and their descendants were entitled to share, and not an acquisition by *B* himself, so that he became a new root of descent (546, 548). (*Lord Justice James*) UMRITHNATH CHOWDHRY *v.* GOUREENATH CHOWDHRY. **(1870) 13 M. I. A. 542 = 15 W. R. (P. C.) 10 = 6 B. L. R. 232 = 2 Suth. 381 = 2 Sar. 618.**

———*Will bequeathing—Validity—Person without male issue or co-parcener—Will by.*

By the Hindu Law prevailing in Madras, a Hindu in possession, without male issue, kinsman. or co-parcener, has power to make a will disposing of ancestral as well as acquired estate (344, 345-6). (*Mr. Pemberton Leigh.*) NAGALUTCHMEE AMMAL *v.* GOPOO NADARAJA CHETTY. **(1856) 6 M. I. A. 309 = 1 Sar. 543.**

Caste.

———Conversion—Effect of. *See* HINDU (1) CONVERSION & (2) CONVERT.

———*Degradation from—Effect—Property acquired by outcaste by inheritance, etc.—Extinction of—Hindu Law rule as to—Effect of Act XXI of* 1850 *upon.*

Before Act XXI of 1850, upon degradation from caste, a Hindu, whether male or female, was considered as dead by the Hindu law, so much so that libations were directed to be offered to his manes as though he were naturally dead. His degradation caused an extinction of all his property, whether acquired by inheritance, succession, or in any other manner. *Quaere* as to the effect of Act XXI of 1850 upon this rule of the Hindu Law (156). (*Sir Barnes Peacock.*) MONIRAM KOLITA *v.* KERRY KOLITANY. (1880) **7 I. A. 115 = 5 C. 776 (792) = 6 C. L. R. 322 = 4 Sar. 103 = 3 Suth. 765.**

———Dhusars of district of Gurgaon—Caste of—Brahmins if. *See* DHUSARS OF DISTRICT OF GURGAON—CASTE OF. **(1921) 48 I. A. 405 (408) = 49 C. 120 (124-5).**

———Illegitimate child born of Christian father and Hindu woman living in adultery with him—Caste of. *See* HINDU LAW—ILLEGITIMATE CHILD—CASTE.
(1861) 8 M. I. A. 400 (423).

———Illegitimate son—Children of—Caste of. *See* HINDU LAW—ILLEGITIMATE SON—CHILDREN OF—CASTE OF.
(1869) 13 M. I. A. 141 (158).

———*Kayasthas of Bengal—Caste of.*

Quaere whether Bengali Kayasthas are Sudras (145). (*Sir John Edge.*) ASITA MOHAN GHOSH *v.* NIRODE MOHAN GHOSH. **(1920) 47 I. A. 140 = 24 C. W. N. 794 = (1920) M. W. N. 541 = 12 L. W. 556.**

———*Kshatriya caste if subsists—Rajputs in central India and in district where Rajdom of Ramnuggar is situate if of that caste.*

Held, that the Kshatriya class must be considered as subsisting and that according to the Hindu law generally prevailing in the part of India from which the case before their Lordships arose, and independently of exceptions arising out of any well-established usage or custom to the contrary, as to particular places or families, Rajputs in Central India, and in the district where the Rajdom of Ramnuggar was situate were to be considered as of the Kshatriya caste (47, 48). (*Sir Edward Ryan.*) CHUOTURYA RUN MURDUN SYN *v.* SAHUB PURHULAD SYN.
(1857) 7 M. I. A. 18 (46 48) = 4 W. R. 132 = 1 Sar. 591 = 1 Suth. 313.

———*Kshatriya and Vaisya castes—If obsolete.*

It was contended that the Khatri and Vaisya classes have ceased to exist, and were sunk into the Sudra class,

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Caste—(*Contd.*)

and that there are now two classes only, namely, the Brahmins and the Soodras (45). Their Lordships have no doubt that the existence of the Khatri class, as one of the regenerate tribes, is fully recognised thoughout India. The courts in all cases seem to assume that the four great classes remain (46-7). (*Sir Edward Ryan.*) CHUOTURYA RUN MURDUN SYN *v.* SAHUB PURHULAD SYN.

(1857) 7 M. I. A. 18 = 4 W. R. 132 = 1 Suth. 313 = 1 Sar. 591.

———Low caste child—Putting forward of, by high class Hindu, as his or her own child—Improbability of. *See* HINDU LAW--LEGITIMACY---PRESUMPTION—CHILDREN OF LOW OR UNKNOWN CASTE. **(1879) Bald. 235 (244).**

———*Nattukottai Chetties—Caste of.*

The Chetties (Nattukottai) are generally deemed to be Sudras. The judgment in the High Court in this case describes them as Vaisyas, but apparently without any foundation for this in the evidence. The explanation for this may be that the Chetties now forming a prosperous class of the community are gradually claiming to be considered as Vaisyas. (*Lord Phillimore.*) PALANIAPPA CHETTIAR *v.* ALAYAN CHETTI.

(1921) 46 I. A. 539 (548) = 44 M. 740 (746) = (1921) M. W. N. 687 = 30 M, L. T. 208 = 26 C. W. N. 417 = 15 L. W. 521 = 4 U. P. L. R. (P. C.) 21 = (1922) P. C 228 = 64 I.C. 439.

———New castes—Formation of. *See* HINDU—ORTHODOX PRACTICES—LAPSE FROM—EFFECT OF—INDIVIDUAL. **(1921) 48 I. A. 553.**

———*Number original of.*

It is undoubted that there were originally four classes of Hindoos: First, the Brahmins; second, the Khatris; third, the Vaisyas; fourth, the Soodras; the first three were the regenerate or twice-born classes, the latter the servile class (45). (*Sir Edward Ryan.*) CHUOTURYA RUN MURDUN SYN *v.* SAHUB PURHULAD SYN.

(1857) 7 M. I. A. 18 = 4 W. R. 132 = 1 Suth. 313 = 1 Sar. 591.

———*Regard for, among men and women.*

Hindu women are presumably as sensitive as men on the subject of caste (244). (*Sir Montague E. Smith.*) BURRA LALL OPENDRONATH SAHEE DEO *v.* COURT OF WARDS. **(1879) Bald. 235 = 3 I. J. 376.**

Compromise.

———*See* (1) COMPROMISE (2) HINDU LAW—FAMILY ARRANGEMENT.

———*Construction—Lineal descendants—Monthly allowance to a lady and her—Meaning of "lineal descendants" in—Married daughter of lady if entitled.*

In a case in which under a deed of compromise a monthly allowance of Rs. 300 was given to a Hindu lady and her "lineal descendants," *held*, affirming the High Court, which had reversed the Sub-Judge, that the expression "lineal descendants" included all the descendants and was not restricted to male descendants, that every female claimant under the designation of "lineal descendants" had rights under the compromise, and that, therefore, a married daughter of the lady was entitled to participate in the allowance. (*Lord Shaw.*) BHIMNATH MISSIR *v.* TARA DAI. **(1929) 33 C. W. N. 837 = 49 C. L. J. 594 = 30 L. W. 75 = 116 I. C. 608 = A. I. R. (1929) P. C. 216 = (1929) M. W. N. 639 = A. I. R. 1929 P. C. 162 = 57 M. L. J, 580.**

———Daughter—Compromise by. *See* HINDU LAW—DAUGHTER.

———Father—Compromise by. *See* HINDU LAW—JOINT FAMILY—FATHER—COMPROMISE BY.

HINDU LAW—(*Contd.*)

Compromise—(*Contd.*)

———Religious Endowment—Shebait of—Compromise by. *See* HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT OF.

———Widow—Compromise by. *See* HINDU LAW—WIDOW—COMPROMISE BY.

Conversion.

———*See* HINDU (1) CONVERSION TO BRAHMO SAMAJ, (2) CONVERT TO CHRISTIANITY, (3) CONVERT TO MAHOMEDANISM; AND ALSO HINDU FAMILY.

Custom.

(*See also* CUSTOM)

ALIENABILITY OF PROPERTY—CUSTOM AGAINST—EVIDENCE OF.
ANCIENT AND INVARIABLE CUSTOM—CLAIM TO.
APPLICABILITY OF.
CHANGES BROUGHT ABOUT BY.
CONTINUANCE OF—CESSATION—PRESUMPTION.
DECISION AS TO.
EFFECT OF WELL-ESTABLISHED.
EFFICACY OF.
ESSENTIALS OF VALID.
EVIDENCE OF.
FAMILY CUSTOM.
GENERAL LAW.
IMPARTIBLE ESTATE.
INDIA.
INHERITANCE.
JUDICIAL RECOGNITION OF.
LEGAL SENSE OF.
MATTERS OUTSIDE.
ORDINARY LAW.
ORIENTAL TENACITY AS REGARDS.
PROOF OF.
SUCCESSOR — SELECTION OF — FREE CHOICE IN REGARD TO—CUSTOM OF.
VALIDITY OF—ESSENTIALS OF—PROOF STRICT OF—NECESSITY.

ALIENABILITY OF PROPERTY—CUSTOM AGAINST—EVIDENCE OF.

———*Absence of instances of alienation—Value of.*

The fact that there is no evidence of a sale of any portion of an impartible estate is, no doubt, in favour of a custom of inalienability, but that is not sufficient. The absence of evidence of an alienation, without any evidence of facts which would make it probable that an alienation would have been made, cannot be accepted as proof of a custom of inalienability (66). (*Sir Richard Couch.*) RANI SARTAJ KUARI *v.* RANI DEORAJ KUARI.

(1887) 15 I. A. 51 = 10 A. 272 (289) = 5 Sar. 139.

——— The absence of evidence of an alienation, without any evidence of facts which would make it probable that an alienation would have been made, cannot be accepted as proof of a custom of inalienability. (*Lord Atkinson.*) DURGADUT SINGH *v.* RAMESHWAR SINGH.

(1909) 36 I. A. 176 (184) = 36 C. 943 (954) = 6 M. L. T. 68 = 10 C. L. J. 233 = 13 C. W. N. 1013 = 11 Bom. L. R. 901 = 6 A. L. J. 847 = 4 I. C. 2 = 19 M. L. J. 567.

The fact that there has been no instance of a will purporting to dispose of a joint ancestral impartible estate is not by itself sufficient evidence of a custom restricting alienation by will (298).

The mere absence of any will is an equivocal circumstance. It might be attributable to an assumption on the part of the several Rajas that the law did not admit of a bequest of the Raj, or to the absence of any desire on their part so to dispose of the Raj (298). (*Lord Warrington*

HINDU LAW—(*Contd.*)

Custom—(*Contd.*)

ALIENABILITY OF PROPERTY—CUSTOM AGAINST—EVIDENCE OF—(*Contd.*)

Clyffe.) PROTAP CHANDRA DEO *v.* JAGADISH CHANDRA DEO. (1927) 54 I.A. 289 = 54 C. 995 = 25 A. L. J. 628 = 102 I. C. 599 = 20 Bom. L. R. 1136 = (1927) M. W. N. 513 = 31 C. W. N. 943 = 4 O. W. N. 650 (2) = 39 M. L. T. 1 = 46 C. L. J. 136 = 8 Pat. L. T. 623 = A. I. R. (1927) P. C. 159 = 53 M L. J. 30.

ANCIENT AND INVARIABLE CUSTOM—CLAIM TO.

———Maintainability—Period required for. *See* HINDU LAW—IMPARTIBILITY OF ESTATE—CUSTOM OF—ANCIENT AND INVARIABLE CUSTOM.

(1927) 55 I. A. 45 = 55 C 403.

APPLICABILITY OF.

———*Aboriginal Bhuyias—Presumption in case of—Onus of Proof.*

The suit related to the succession to an impartible estate, called the Lachmipur Raj, which appeard to be one of several which were comprised under the term, the 84 gaddis called Chowrasi. It was alleged that the clan or collection of families in question, and in particular the family in which the suit estate had heen held, were aboriginal Bhuyias ; and the question was whether in matters of succession they had retained their aboriginal customs, or had adopted Hindu law, in whole or in part, and specifically whether by law or custom the succession of an adopted son was excluded.

Held that, on the principle of the decisions in L.R. 12 I.A. 72, and L. R. 49 I. A. 119, 123, the proper inquiry was whether the family of the parties to the suit could be said to have become so far Hindu as to throw the burden of proof on the party alleging the custom, or whether the opposite conclusion should be come to, which would throw the burden on the party relying on the general Hindu law (62 4). (*Lord Phillimore.*) SAHDEO NARAIN DEO *v.* KUSUM KUMARI. (1922) 50 I. A. 58 = 2 P. 230 = 32 M.L.T. 121 = 4 Pat. L. T. 217 = 37 C. L. J. 369 = 18 L. W. 597 = (1923) M. W. N. 377 = 27 C. W. N. 901 = 25 Bom. L. R. 560 = A. I. R. 1923 P. C. 21 = 71 I.C. 769 = 44 M.L. J. 476 =

———*Applicability of Hindu Law except where it is modified by custom—Admission in pleading of—What amounts to.*

The plaint of the appellant (the plaintiff in the suit, stated that Jogendra Deb Raikat, the last possessor of the suit Baikunthpur estate, died on the 10th of March, 1878, without leaving any son of his body, and "therefore, according to the immemorial family custom and practice descending from generation to generation in our Raikat family of Baikunthpur and the Shastras, I have acquired an absolute title in all the properties left by him, and I am entitled to recover possession thereof." It then referred to a title by adoption, and under a will and agreement (angikar-patra) made by Jogendra Deb, which had been set up on behalf of the respondent, who was then a minor, but had since become of age and was the respondent, by the widow of Jogendra Deb. Then followed another paragraph, which said,—"According to the Kulachar (family custom) and custom prevailing in our Raikat family from very ancient times and descending from generation to generation, no one among the Raikats is competent to adopt or to alter the line of succession thereby, or by will or any other deed to give away the kingdom and the raj-guddi. According to the said immemorial kulachar, no female also is competent to hold property and the gaddi. Consequently the said Jogendra Deb Raikat is not, contrary to the above kulachar and custom, empowered to receive in adoption any one competent to hold the property, or to give or alienate the rajgi and the kingdom to the said adopted son or to any other person, either by will or agreement (angikar-

HINDU LAW—(*Contd.*)

Custom—(*Contd.*)

APPLICABILITY OF—(*Contd.*)

patra) or by any other deed. In fact, the above will and agreement (angikar-patra) are contrary to the prevailing family custom, the law, and the Hindu Shastras, and are, indeed, not true."

It was contended by the counsel for the respondent that by the references in the plaint to the Shastras, the plaintiff admitted that the family was governed by the Hindu law, except where it was modified by custom.

Held, over-ruling the contention, that the meaning was to insist upon the family custom as being allowed by the Shastras to govern the family (78). (*Sir Richard Couch.*) FANINDRA DEB RAIKAT *v.* RAJESWAR DASS. (1885) 12 I. A. 72 = 11 C. 463 (472-3) = 4 Sar. 610.

———Burma—Hindus migrating to, intermarrying with Burmans, settling there, and forming a community. *See* HINDU—BURMA. (1921) 48 I. A. 553 (564).

———Burma—Kalais of. *See* BURMA LAWS ACT OF 1898, S. 13—HINDUS—KALAIS OF ETC. (1921) 48 I. A. 553 (564).

———*Chowrasi-gaddis.*

Held, that the combination of the plaintiff's own statement in his plaint, the oral evidence and the judgments in former cases was sufficient to justify the conclusion of the High Court that the clan of Chowrasi-gaddis, even supposing its origin to be not Hindu, had adopted in general, not only Hindu religion and Hindu social usages, but also the Hindu Law regulating the succession of landed property, and this though, as the judges held, " there were still some relics of non-Hinduism." (*Lord Phillimore.*) SAHDEO NARAIN DEO *v.* KUSUM KUMARI. (1922) 50 I.A. 58 (66) = 2 P. 230 = A.I.R. 1923 P. C. 21 = 32 M.L.T. 121 = 4 Pat. L.T. 217 = 37 C.L.J. 369 = 18 L.W. 597 = (1923) M.W.N. 377 = 27 C.W.N. 901 = 25 Bom. L.R. 560 = 71 I.C. 769 = 44 M.L.J. 476.

———Dhusars of District of Gurgaon—Law governing. *See* DHUSARS OF DISTRICT OF GURGAON—LAW GOVERNING. (1921) 48 I.A. 405 (413) = 49 C. 120 (130).

———Gharbari Gossavis. *See* GHARBARI GOSSAVIS—LAW GOVERNING.

———*Impartibility of estate—Custom of—Existence of—Effect on applicability of Hindu Law as a whole.*

It is true that an estate only becomes impartible by custom, and that the custom has in each case to be proved. But it is a custom which is usually found to exist where the estate belongs to a king or independent chief, or even a semi-dependent chief, of sufficient importance. The prince, to use a neutral term, regards the whole estate which his predecessor had as necessary for the support of his dignity or gaddi, giving appanages or maintenance to the junior members of the family. The custom of impartibility in such a case affords no indication whereby to determine that a family does not follow Hindu law as a whole. Reg. X of 1800, points to the frequency of this custom among Hindus in parts of Bengal. (*Lord Phillimore.*) SAHDEO NARAIN DEO *v.* KUSUM KUMARI. (1922) 50 I.A. 58 (68) = 2 P. 230 = A.I.R. 1923 P. C. 21 = 32 M.L.T. 121 = 4 Pat L. T. 217 = 37 C.L.J. 369 = 18 L.W. 597 = (1923) M. W. N. 377 = 27 C. W. N. 901 = 25 Bom. L. R. 560 = 71 I. C. 769 = 44 M. L. J. 476.

———Jains. *See* JAINS.

———*Kuch Behar family—Baikunthpur branch of.*

Held, on the evidence, that the Baikunthpur branch of the Kuch Behar family, though they affected to be Hindus, were not generally governed by Hindu law, but had retained and were governed by family customs which, as regards

HINDU LAW—(*Contd.*)

Custom—(*Contd.*)

APPLICABILITY OF—(*Contd.*)

some matters, were at variance with Hindu law (83). (*Sir Richard Couch.*) FANINDRA DEB RAIKAT *v.* RAJESWAR DASS. **(1885) 12 I.A. 72 = 11 C. 463 (477-8) = 4 Sar. 610.**

———Matters outside custom—Applicability of Hindu Law to. *See* HINDU LAW—CUSTOM—GENERAL LAW—MUTUAL SCOPE AND APPLICABILITY OF.

———Memons. *See* MEMONS.

———*Non-Hindu clan converted to Hinduism—Customs before conversion—Abrogation of, and adoption of general Hindu Law—Possibility of—Ancient conversion.*

It is a thing possible in law that a clan, which was originally non-Hindu, became sufficiently Hindu to make succession by adoption, even if non-existent in non-Hindu times, come in with the rest of Hindu law, though the custom of non-adoption might be a survival.

With regard to ancient conversions the Indian Courts and this Board have admitted the possibility that they might carry with them abrogation of former customs, (*Lord Phillimore.*) SAHDEO NARAIN DEO *v.* KUSUM KUMARI. **(1922) 50 I.A. 58 (66-7) = 2 P. 230 = A.I.R. 1923 P.C. 21 = 32 M.L.T. 121 = 4 Pat L.T. 217 = 37 C.L.J. 369 = 18 L.W. 597— (1923) M.W.N. 377 = 27 C.W.N. 901 = 25 Bom. L.R. 560—71 I.C. 769 = 44 M.L.J. 476.**

———*Northern India—Agricultural and other classes in—Presumption in case of.*

It is beyond doubt that in some parts of Northern India, particularly in districts now in the Punjab or adjacent to the Punjab, the strict rules of the Mitakshara, as recognised by the School of Benares, have not been followed by some castes, tribes and families of Hindus, and that customs which are at variance with the law of the Mitakshara, as recognised by the School of Benares, have been for long consistently followed and acted upon, and when such customs are established they, and not the strict rules of the Mitakshara with which they are at variance, are to be applied. Such customs relate to a variety of subjects, as for instance to widows, adoptions, and the descent of lands and interest in lands; they are to be found principally amongst the agricultural classes, but they are also to be found amongst classes which are not agricultural (410). The onus of proving such customs is on the party setting them up (410). (*Sir John Edge.*) RAMKISHORE *v.* JAINARAYAN. **(1921) 48 I.A. 405 = 49 C. 120 (127) = 20 A.L.J. 857 = 15 L.W. 144 = (1922) M.W.N. 125 = 30 M.L.T. 144 = 26 C.W.N. 881 = A.I.R. 1922 P. C. 2 = 64 I.C. 782 = 42 M.L.J. 80.**

———Sikhs. *See* SIKHS—LAW APPLICABLE TO.
(1903) 30 I. A. 249 (254) = 31 C. 11 (30-1.)

CHANGES BROUGHT ABOUT BY.

———*Court's duty to give effect to.*

Hindu law and customs have not stood still and what courts are now concerned with is the law which obtains at present on the subject in question. (*Sir John Edge.*) NAGINDAS BHUGWANDAS *v.* BACHOO HURKISSONDAS. **(1915) 43 I. A. 56 (67) = 40 B. 270 (287) = 14 A. L. J. 185 = 3 L.W. 259 = 19 M. L.T. 193 = 20 C. W. N. 702 = (1916) 1 M.W.N. 258 = 18 Bom. L. R. 172 = 32 I. C. 403 = 23 C. L. J. 395 = 30 M.L.J. 193.**

CONTINUANCE OF—CESSATION—PRESUMPTION.

———*Proof—Tenacity of orientals in regard to customs.*

Since orientals are commonly tenacious of their usages and customs, and more especially of their family and religious observances, therefore, on the ordinary principles of viewing evidence, a continuance of this state of things is presumable, and the onus would then lie on the party alleging an interruption or cessation of it to prove such allegation (92). (*Sir James W. Colvile,*) SOORENDRONATH ROY *v.* MUSSUMAT HEERAMONEE BURMONEAH. **(1868) 12 M.I.A. 81 = 10 W.R. 35 = 1 B.L.R. (P.C.) 26 = 2 Suth. 147 = 2 Sar. 372.**

DECISION AS TO.

———Binding character of, in particular case — Binding character of, as precedent. *See also* HINDU LAW—CUSTOM—PROOF OF—EVIDENCE SUFFICIENT FOR DECISION OF THE CASE ETC.

These questions of custom, which are questions of fact, need not be concluded by the present decision, which is simply that upon the evidence in the present case it ought to be presumed that whatever was necessary was done (360). (*Lord Phillimore.*) HARIGIR KISANGIR GOSAVI *v.* BHARATHI VISHNU BHARATHI GOSAVI. **(1925) 22 L.W. 355 = 88 I. C. 343 = (1925) M. W. N. 414 = 21 N. L. R. 127 = A. I. R. 1925 P. C. 127.**

———*Native Panchayat—Peculiar fitness of.*

A native panchayat is a tribunal peculiarly adapted to determine disputes necessarily involving many nice considerations founded on Hindu usage, Hindu ritual, Hindu belief, and Hindu feeling. ARUMUGAM CHETTY *v.* PERIYANNAN SERVAI. **(1875) 3 Suth. 218 (222) = 25 W. R. 81.**

EFFECT OF WELL-ESTABLISHED.

———There is no doubt that the general law with respect to inheritance, as well as with respect to other matters, may, in the case of great families where it is shown that usage has prevailed for a very long series of years, be controlled, unless there be positive law to the contrary (187). (*Mr. Pemberton Leigh.*) BABOO GANESH DUTT SINGH *v.* MAHARAJA MOHESHUR SINGH. **(1855) 6 M.I.A. 164 = 2 Suth 20 = 1 Sar. 521.**

———Under the Hindu system of law, clear proof of usage will outweigh the written text of the law. (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SATHUPATHY. **(1868) 12 M. I. A. 397 (436) = 10 W.R. (P.C.) 17 = 1 B.L.R. (P.C.) 1 = 2 Suth. 135 = 2 Sar. 361.**

———The consequence of a well proved and established custom is that it prevails against the general law (83). (*Sir James W. Colvile.*) RAJAH VURMAH VALIA *v* RAVI VURMA MUTHA. **(1876) 4 I.A. 76 = 1 M. 235 (250) = 3 Sar. 687 = 3 Suth. 382.**

———The rules of the Mithakshara yield to a well-established custom, though only to the extent of that custom (27). (*Lord Fitz Gerald.*) TEKAIT KALI PERSHAD *v.* ANUND ROY. **(1887) 15 I.A. 18 = 15 C. 471 (481) = 5 Sar. 121.**

———Under the Hindu system of law clear proof of usage will outweigh the written text of the law. (*Lord Phillimore.*) PALANIAPPA CHETTIAR *v.* ALAYAN CHETTI **(1921) 48 I. A. 539 (547) = 44 M. 740 (747) = (1921) M.W.N. 687 = 30 M.L.T. 208 = 26 C.W.N. 417 = 15 L.W. 521 = 4 U.P.L.R. (P.C.) 21 = (1922) P.C. 228 = 64 I.C. 439.**

EFFICACY OF.

———*Difficulties insoluble from logical point of view—Solution by custom of.*

HINDU LAW—(*Contd.*)

Custom—(*Contd.*)

EFFICACY OF—(*Contd.*)

In many matters custom solves difficulties which appear to be insoluble when the questions are considered from a purely logical point of view (69). (*Lord Moulton.*) VENKATA NARASIMHA APPA ROW *v.* PARTHASARATHY APPA ROW. **(1913) 41 I.A. 51 = 37 M. 199 (220) = 18 C.W.N. 554 = (1914) M.W.N. 299 = 16 Bom. L.R. 328 = 19 C. L. J. 369 = 15 M.L.T. 285 = 12 A.L.J. 315 = 23 I.C. 166 = 26 M.L.J. 411.**

ESSENTIALS OF VALID.

———*See* HINDU LAW—CUSTOM—VALIDITY—ESSENTIALS.

EVIDENCE OF.

———(*See also* HINDU LAW—CUSTOM—PROOF OF).

———Decided cases if and to what extent. *See* HINDU LAW—CUSTOM—JUDICIAL RECOGNITION OF.

———Evidence sufficient for decision of particular case but insufficient to make decision a precedent. *See* HINDU LAW—CUSTOM—PROOF OF—EVIDENCE SUFFICIENT, ETC.

FAMILY CUSTOM.

———*Binding nature of—Non-observance in one case of—Effect.*

A well-established custom in a family cannot be defeated by the fact that in one case the custom was not enforced (288-9). (*Sir John Edge*). EKRADESHWAR SINGH *v.* JANESHWARI BAHUASIN.

(1914) 41 I.A, 275 = 42 C. 582 (606) = (1914) M.W.N. 807 = 16 M.L. T. 382 = 1 L.W. 863 = 18 C. W. N. 1249 = 12 A.L.T. 1217 = 17 Bom. L.R. 18 = 21 C.L.J. 9 = 25 I.C. 417 = 27 M.L.J. 373.

———Continuance of—Cessation — Presumption—Proof. *See* HINDU LAW—CUSTOM—CONTINUANCE OF—CESSATION.

———Continuance of, after change in condition of things necessitating custom—Maxim *cessat ratio cessat lex*—Applicability. *See* HINDU LAW—IMPARTIBLE ESTATE—SUCCESSION TO—CUSTOM OF—FAMILY CUSTOM.

(1919) 12 L.W. 730 (737, 740).

———*Destruction of—Modes of—Accidental causes—Consensus of family.*

Well-established discontinuance must be held to destroy family usages. This would be so when the discontinuance has arisen from accidental causes; and the effect cannot be less, when it has been intentionally brought about by the concurrent will of the family. It would lead to much confusion and abundant litigation, if the law attempted to revive and give effect to usages of this kind, after they had been clearly abandoned and the abandonment has been long acted upon (749). RAJAH RAJ KISHEN SINGH *v.* RAMJOY SURMA MOZOOMDAR.

(1872) 2 Suth. 744 = 19 W.R. 8 = 8 M.J. 151.

———*Essence of—Certainty, etc.*

It is of the essence of family usages that they should be certain, invariable, and continuous (749). RAJAH RAJ KISHEN SINGH *v.* RAMJOY SURMA MOZOOMDAR.

(1872) 2 Suth. 744 = 19 W.R. 8 = 8 M.J. 151.

———*Tenacity of, even under strain of migration.*

The tenacity of family customs, even under the strain of migration, has been repeatedly recognised by the law in questions such as the present, *viz.*, whether a migrating family divested themselves of their original customs, (*Lord Robertson.*) SRIMATI RANI PARBATI KUMARI DEBI *v.* JAGADIS CHUNDER DHABAL.

(1902) 29 I.A. 82 = 29 C. 433 (452) = 6 C.W.N. 490 = 4 Bom. L.R. 365 = 8 Sar. 205.

———*Tenacity of orientals in regard to.*

An adherence to family usages is a strong Oriental habit; it is in most places not a weak one, and since, generally, the love of them increases with their long prevalence, it requires no effort to believe that the retention of religious usages and customs spoken to by the defendant's witnesses did prevail in that particular branch of the family (96). (*Sir James W. Colvile.*) SOORENDRANATH ROY *v.* MUSSUMAT HEERAMONEE BURMONEAH.

(1868) 12 M.I.A. 81 = 10 W.R. P.C. 35 = 1 B.L.R. (P.C.) 26 = 2 Suth. 147 = 2 Sar. 372.

GENERAL LAW.

———*Claim based on—Privy Council appeal—Maintainability—Claim in Courts below based on custom found against.*

The claim of the defendant in this case to succeed to his father's estate in preference to his half-brother, the plaintiff, was, in the first Court, rested, not upon the general Hindu law, but upon a special family custom. The Custom was found against him, and he did not, on his appeal to the High Court, insist, as one of his grounds of appeal, that by the general Hindu law he was entitled, his grounds of appeal being directed only to the other points which had arisen in the case, and to an allegation that the custom ought to have been found in his favour. Their Lordships, however, allowed the point to be argued, and determined it (4). (*Sir Montague E. Smith.*) PEDDA RAMAPPA NAYANIVARU *v.* BANGARI SESHAMMA NAYANIVARU. **(1880) 8 I.A. 1 = 2 M. 286 (290) = 8 C.L.R. 815 = 4 Sar. 203.**

———*Claim under—Unsustainability of—Admission of—Inference of, from claim being based on custom—Propriety.*

In a case in which the later born son of the third wife claimed to be entitled to succeed to his father's estate in preference to the earlier born son of the fourth wife, the claim of the son of the third wife was rested in the Court below, not upon the general Hindu law, but upon a special family custom-

Held that the fact that his case was so rested implied an admission that he and his advisers did not consider that by the general Hindu law he was entitled to succeed (4). (*Sir Montague E. Smith*). PEDDA RAMAPPA NAYANIVARU *v.* BANGARI SESHAMMA NAYANIVARU.

(1880) 8 I.A. 1 = 2 M. 286 (290) = 8 C. L.R. 315 = 4 Sar. 203.

———Effect of well-established custom on. *See* HINDU LAW—CUSTOM—EEFECT OF WELL-ESTABLISHED.

———*Mutual scope and applicability of—Matters outside custom—General law applicable to.*

Where a custom is proved to exist, it supersedes the general law, which however, still regulates all beyond the custom. (*Lord Chelmsford*). NEELKISTO DEB BURMONO *v.* BEERCHUNDER THAKOOR.

(1869) 12 M. I. A. 523 (542) = 12 W.R. (P.C.) 21 = 3 B. L. R. (P.C.) 13 = 2 Suth. 243 = 2 Sar. 523.

Local and family custom, if proved to exist, may supersede the general (Hindu) law, though in other respects the general law may govern the relations of parties outside that custom (27) (*Lord Fitz Gerald.*) KALI PERSHAD *v.* ANUND ROY. **(1887) 15 I. A. 18 = 15 C. 471 (480-1) = 5 Sar. 121.**

HINDU LAW—(*Contd.*)

Custom—(*Contd.*)

GENERAL LAW—(*Contd.*)

Where a custom is proved to exist, it supersedes the general law, which, however, still regulates all beyond the custom (62). (*Sir Richard Couch.*) RANI SARTAJ KUARI *v.* RANI DEORAJ KUARI. **(1887) 15 I. A. 51 = 10 A. 272 (285) = 5 Sar. 139.**

Where a custom is proved to exist it supersedes the general law, which, however, still regulates all outside the custom (194). (*Lord Davey.*) RAM NUNDUN SINGH *v.* MAHARANI JANKIKOER. **(1902) 29 I. A. 178 = 29 C. 828 (852) = 7 C. W. N. 57 = 4 Bom. L. R. 664 = 8 Sar. 351.**

Where a custom is proved to exist it supersedes the general law, which, however, still regulates all outside the custom (198). (*Sir John Edge.*) THAKURAIN TARA KUMARI *v.* CHATTURBHUJ NARAYAN SINGH. **(1915) 42 I. A. 192 = 42 C. 1179 (1191) = 19 C. W. N 1115 = 18 M. L. T. 228 = 2 L. W. 843 = (1915) M. W. N. 717 = 13 A. L. J. 1034 = 17 Bom. L. R. 1012 = 22 C L. J. 498 = 30 I. C. 833 = 29 M. L. J. 371.**

If a custom alleged in derogation of the ordinary Hindu law applicable to the parties ceases to apply, the ordinary Hindu Law applicable applies unmodified. (*Lord Buckmaster.*) BRAJA SUNDAR DEB *v.* SWAMA MANJERI DEI. **(1917) 47 I. C. 36 = 22 C. W. N. 433 = (1918) M. W. N. 313.**

Where it was found on evidence that in the family to which the litigants belonged a custom of primogeniture prevailed; that under it women were excluded from inheritance, and that the male relative who was in the eldest line of male descent from the last holder or his father or grandfather succeeded. *held* that that custom became the law of the family regulating the succession to the family estate, and that the ordinary Hindu law did not apply to it save so far as it was not inconsistent with the custom. (*Lord Atkinson.*) RAO KISHORE SINGH *v.* MUSAMMAT GAHENABAI. **(1919) 12 L. W. 730 (737) = 15 N. L. R. 176 = 17 A. L. J. 1077 = 26 M. L. T. 494 = 24 C. W. N. 601 = 22 Bom. L. R. 507 = 53 I. C. 630 = 37 M. L J. 562.**

———*Thing permitted by—Custom to do—Existence of—Possibility of*

There cannot be a custom to do that which the general law permits any one to do or abstain from at his own will. (*Lord Hobhouse.*) SRI BRAJA KISORA DEVU GARU *v.* SRI KUNDANA DEVI PATTA MAHADEVI. **(1899) 26 I. A. 66 = 22 M. 431 (434) = 1 Bom. L. R. 287 = 3 C. W. N. 378 = 7 Sar 528 = 9 M. L. J. 157.**

IMPARTIBLE ESTATE.

———Customs relating to. *See* HINDU LAW—IMPARTIBLE ESTATE.

INDIA.

———*Caste, family, and local customs in.*

India is a land where there are very many customs appropriate to certain areas of territory; families, or castes. (*Lord Phillimore.*) PALANIAPPA CHETTIAR *v.* ALAYAN CHETTI. **(1921) 48 I. A. 539 (546) = 44 M. 740 (747) = (1921) M. W. N. 687 = 30 M. L. T. 208 = 26 C. W. N. 417 = 15 L. W. 521 = 4 U. P. L. R. (P. C.) 21 = (1922) P. C. 228 = 64 I.C. 439.**

INHERITANCE.

———Custom relating to. *See* UNDER HINDU LAW—INHERITANCE.

HINDU LAW—(*Contd.*)

Custom—(*Contd.*)

JUDICIAL RECOGNITION OF.

———*Effect of.*

The evidence that the doctrine for which the respondents contend has been sanctioned by usage in the South of India consists partly of the opinions of Pundits, partly of decided cases. The decided cases are certainly not many. But there is at least the case *G*, and there are the French cases, which ought not to be wholly disregarded as recognitions of the law prevailing in the South of India. They are to be relied on in this case as affording evidence of a long continued series of opinions officially given, and judicially received, which were adopted as the grounds of decision, showing a continued and recognised existence of the doctrine (438, 439-40) (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SATHUPATHY. **(1868) 12 M. I. A. 397 = 10 W. R. P. C. 17 = 1 B. L. R. P. C. 1 = 2 Suth. 135 = 2 Sar. 361.**

———*Effect of—Proof of custom in each case—Necessity.*

When a custom of usage, whether in regard to a tenure or a contract or a family right, is repeatedly brought to the notice of the Courts of a country, the Courts may hold that custom or usage to be introduced into the law without the necessity of proof in each individual case. It becomes in the end truly a matter of process and pleading. Analogy may be found in instances in the law merchant or in certain customs in copyhold tenure. (*Lord Dunedin.*) RAMA RAO *v.* RAJA OF PITTAPUR. **(1918) 45 I. A. 148 (154-5) = 41 M. 778 (785) 16 A. L. J. 833 = 20 Bom. L. R. 1056 = 24 M. L. T. 276 = 23 C. W. N. 173 = 28 C. L. J. 428 = (1918) M. W. N. 922 = 5 Pat. L W. 267 = 47 I.C. 354 = 35 M. L. J. 392.**

LEGAL SENSE OF.

A custom in its legal sense is a rule exceptional to the general law. (*Lord Hobhouse*) SRI BRAJA KISORE DEVU GARU *v.* KUNDANA DEVI PATTA MAHADEVI. **(1899) 26 I. A. 66 = 22 M. 431 (434) = 1 Bom. L. R. 287 = 3 C. W. N. 378 = 7 Sar. 528 = 9 M. L. J. 157.**

MATTERS OUTSIDE.

General law applicable to. *See* HINDU LAW—CUSTOM—GENERAL LAW—MUTUAL SCOPE AND.

ORDINARY LAW.

———*See* HINDU LAW—CUSTOM—GENERAL LAW.

ORIENTAL TENACITY AS REGARDS.

———*See* HINDU LAW—CUSTOM—CONTINUATION OF —CESSATION.

PROOF OF.

———*Evidence sufficient for decision of particular case but insufficient to make decision a precedent.*

———*See* JAINS—AGARWALLA JAINS—ADOPTION. **(1910) 37 I. A. 93 (104).**

In a case in which the question was whether, in the matter of adoption, the general rules of Hindu law or custom applied to the Agarwalla Banias of Zira, the Courts below concurrently found that custom and not the general Hindu Law of adoption applied. The evidence on which the finding was based was, however, limited. Their Lordships nevertheless accepted the finding as binding between the parties to the suit and their representatives, but held that the case ought not to be considered a satisfactory precedent if in any future instance among other parties fuller evidence regarding the alleged custom of the Agarwalla Banias of Zira should be forthcoming (160). (*Sir John*

HINDU LAW—(*Contd.*)

Custom—(*Contd.*)

PROOF OF—(*Contd.*)

Edge.) CHIMAN LAL *v.* HARI CHAND.
(1913) 40 I A. 156 = 40 C. 879 (890) = 17 C.W. N. 885 = 18 C L. J. 70 = 19 I. C. 669 = 15Bom. L. R 646 = 15 M. L. T. 83 = 102 P. R. 1913 = 187P. L. R. 1913 = 126 P. W. R 1913 = (1913) M. W. N. 509.

———*See* HINDU LAW—CUSTOM—DECISION AS TO—BINDING CHARACTER OF, ETC.
(1925) 22 L. W. 355 (360).

———Judicial recognition of custom—Effect of—Proof of custom not necessary in each case. *See* HINDU LAW—CUSTOM—JUDICIAL RECOGNITION OF—EFFECT OF—PROOF OF CUSTOM ETC. (1918) 45 I. A. 148 (154-5)—41 M. 778 (785).

———*Quantum—England and India—Distinction.*

Their Lordships have carefully considered the difficulty of applying all the strict rules that govern the establishment of custom in this country (England) to circumstances which find no analogy here. Custom binding inheritance in a particular family has long been recognised in India, although such a custom is unknown to the law of this country, and is foreign to its spirit. Customs affecting descent in certain areas or customs affecting rights of inhabitants of a particular district are perhaps the nearest analogies in this country. But in England, if a custom were alleged as applicable to a particular district and the evidence tendered in its support proved that the rights claimed had been enjoyed by people outside the district the custom would fail. This principle, however, it seems to their Lordships, ought not to be applied in considering such a custom as the one claimed here, since, if the custom were in fact well established in one particular family, whether it was enjoyed or no by another family, would not affect the question, since the custom might be independent in each case, and the evidence would not establish that the custom failed by reason of the inability to define the exact limits within which it was to be found when once it was established that, within certain and defined limits, it undoubtedly existed (14). (*Lord Buckmaster.*) ABDUL HUSSAIN KHAN *v.* BIBI SONA DERO. (1917) 45 I. A. 104 5 C. 450 (460) = 22 C. W. N. 353 = 23 M. L. T. 117 = 16 A. L. J. 17 = 27 C. L. J. 240 = 20 Bom. L.R. 528 = 4 Pat. L. W. 27 = 43 I. C. 306 = 34 M L. J. 48.

———*Question as to—Fact or Law.*

The question in the present case was, and is whether a custom, applicable to the parties concerned, and authorising the adoption of a married boy, has been established. This is strictly speaking a pure question of fact determinable upon the evidence given in the case (551). (*Sir Arthur Wilson.*) LALA RUP CHAND *v.* JAMBU PERSHAD.
(1910) 14 C. W. N. 545 = 7 A. L, J. 349 = 12 Bom. L. R. 402 = 11 C. L. J. 454 = 6 I. C. 272.

———Validity of custom—Essentials of—Proof strict of—Necessity. *See* HINDU LAW—CUSTOM—VALIDITY—ESSENTIALS OF—PROOF STRICT OF.

SUCCESSOR—SELECTION OF—FREE CHOICE IN REGARD TO—CUSTOM OF.

———Proof against—Seniority—Observance actual of, in considerable series of successions — Evidence of power of selection—Effect, *See* HINDU LAW — IMPARTIBLE ESTATE—TIPPERAH RAJ—SUCCESSOR—SELECTION OF.
(1869) 12 M. I. A. 523 (538).

VALIDITY OF—ESSENTIALS OF — PROOF STRICT OF — NECESSITY.

———Their Lordships are fully sensible of the importance and justice of giving effect to long established usages existing in particular districts and families in India, but it is of the essence of special usages, modifying the ordinary law of succession, that they should be ancient and invariable; and it is further essential that they should be established to be so by clear and unambiguous evidence. It is only by means of such evidence that the courts can be assured of their existence, and that they possess the conditions of antiquity and certainty on which alone their legal title to recognition depends. (*Sir Montague E. Smith.*) RAMALAKSHMI AMMAL *v.* SIVANANTHA PERUMAL SETHURAYAR.
(1872) Sup. I. A. 1 (3) = 14 M. I. A. 570 = 17 W.R. 553 = 12 B.L.R. 396 = 2 Suth. 603 = 3 Sar. 108.

———A custom is a rule which in a particular family or in a particular district, has from long usage obtained the force of law. It must be ancient, certain, and reasonable, and being in derogation of the general rules of law, must be construed strictly (285). (*Sir Barnes Peacock.*) HURPURSHAD *v.* SHEO DYAL. (1876) 3 I. A. 259 = 26 W. R. 55 = 3 Sar. 611 = 3 Suth. 304 = Bald. 25 = R. & J.'s No. 41 (Oudh).

———In the case of Ramalakshmi Ammal *v.* Sivanantha (14 M. I. A. 570), it was said :—

"Their Lordships are fully sensible of the importance and justice of giving effect to long established usage in particular districts and families in India, but it is of the essence of special usages, modifying the ordinary law of succession, that they should be ancient and invariable; and it is further necessary that they should be established to be so by clear and unambiguous evidence. It is only by means of such evidence that the court can be assured of their existence, and that they possess the conditions of antiquity and certainty on which alone their legal title to recognition depends."

Their Lordships entirely concur in that doctrine (162). (*Sir Barnes Peacock.*) RAJAH RUP SINGH *v.* RANI BAISNI. (1884) 11 I.A. 149 = 7 A. 1 (18) = 4 Sar. 533 = A. W. N. (1884) 246.

As pointed out by this Board in 14 M. I. A. 585 : "It is of the essence of special usages modifying the ordinary law of succession that they should be ancient and invariable; and it is further essential that they should be established to be so by clear and unambiguous evidence. It is only by means of such evidence that the courts can be assured of their existence, and that they possess the conditions of antiquity and certainty on which alone their legal title to recognition depends (15). (*Lord Buckmaster.*) ABDUL HUSSEIN KHAN *v.* BIBI SONA DERO. (1917) 45 I.A. 10 = 45 C. 450 (461) = 23 M. L. T. 117 = 16 A. L. J. 17 = 22 C.W.N. 353 = 27 C.L.J. 240 = 20 Bom. L. R. 528 = 4 Pat. L. W. 27 = 43 I. C. 306 = 34 M. L. J. 48.

It is of the essence of special usages modifying the ordinary law of succession that they should be ancient and invariable; and it is further essential that they should be established to be so by clear and unambiguous evidence. It is only by means of such evidence that the courts can be assured of their existence and that they possess the conditions of antiquity and certainty on which alone their legal title to recognition depends (124). (*Sir Lawrence Jenkins.*) MUHAMMAD IBRAHIM ROWTHER *v.* SHAIKH IBRAHIM ROWTHER. (1922) 49 I.A. 119 = 45 M. 308 (315) = 30 M. L. T. 85 = 15 L. W. 354 = 26 C. W.N. 793 = (1922) M. W. N. 470 = 36 C. L. J. 64 = 24 Bom. L. R. 944 = A.I R. 1922 P C. 59 = 67 I. C. 115 = 43 M. L. J. 69.

HINDU LAW—(*Contd*)

Custom—(*Contd.*)

VALIDITY OF - ESSENTIALS OF—PROOF STRICT OF —NECESSITY—(*Contd.*)

———*See also* HINDU LAW — IMPARTIBILITY OF ESTATE—CUSTOM OF—ESSENTIALS OF.

(1927) 55 I. A. 45 = 55 C. 403.

Damdaput.

———Rule of—Applicability. *See* HINDU LAW—INTEREST—DAMDAPUT. **(1928) 57 M. L. J. 581.**

Daughter.

APPOINTED DAUGHTER.

APPOINTMENT OF, TO RAISE A SON.

BENGAL JOINT FAMILY — MARRIED DAUGHTER OF DECEASED MEMBER IN — ADVERSE POSSESSION AGAINST.

COMPROMISE BY.

DECREE FOR OR AGAINST—RES JUDICATA AGAINST REVERSIONERS.

FATHER'S ESTATE — SUIT TO RECOVER ALLEGED AS HEIR—FATHER'S OWNERSHIP OF PROPERTY — PROOF OF.

GIFT TO.

INHERITANCE.

WILL—BEQUEST UNDER.

APPOINTED DAUGHTER.

———*Daughter who has brothers when she is married if can be an.*

Under the Hindu Law a daughter cannot be an appointed daughter, if she has brothers when she is married. (*Mr. Baron Parke.*) YACHEREDDY CHINNA BASSAVAPPA *v.* YACHEREDDY GOWDAPPA. **(1835) 5 W. R. 114 P. C. = 1 Suth. 41 (43) = 1 Sar. 84.**

APPOINTMENT OF, TO RAISE A SON.

———*By whom and when should be made.*

Looking at the text, it seems not only that the act of appointment must proceed from the father himself, but apparently should be made by himself. A special form of stipulation is given. It is stated that it must be expressed, and Menu also speaks of an express appointment proceeding in the same way from the father himself upon the marriage of the daughter (166-7). (*Sir Montague E. Smith.*) THAKOOR JEEBNATH SINGH *v.* COURT OF WARDS.

(1875) 2 I.A. 163 = 15 B.L.R. 190 = 3 Sar. 490 = 23 W. R. 409 = 3 Suth. 142.

———Brother—Appointment by, to raise a son to his father—Validity—Effect. *See* HINDU LAW—DAUGHTER—APPOINTMENT OF, TO RAISE A SON—DELEGATION BY FATHER, ETC. **(1875) 2 I. A. 163 (167-8).**

———*Delegation by father of, to his son—Validity—Brother—Appointment by, to raise a son to his father—Validity—Effect.*

It certainly requires positive law or evidence of a custom from which the law may be presumed, that, supposing the rule still to exist that a father may appoint a daughter for the purpose of raising a son to him, it is a part of it that he may delegate the appointment to his sons. There is nothing said of that power to delegate being a part of the law, but, on the contrary, the rules as to the manner of appointment given in the old authorities point to the act proceeding personally from the father. The law as to adoption of sons bears an analogy to this, but the usages of that law cannot, without authority, be imported into this mode of appointment. These adoptions must stand upon the authority relating to each. In this case there was no formal appointment by the father himself in his lifetime, and no sufficient authority has been cited to establish that what was done afterwards can have the effect of making the son of the

HINDU LAW—(*Contd.*)

Daughter—(*Contd.*)

APPOINTMENT OF, TO RAISE A SON—(*Contd.*)

daughter, who appears to have been married with the consent of her brother upon the condition that the husband should live in the house, equal for the purposes of succession to the son of a son (167-8).

In this case what the plaintiff (appellant) who claimed to be the son of an appointed daughter of his maternal grandfather alleged was that his maternal uncle, agreeably to the counsel of his father (*i.e.*, the maternal grandfather), having given in marriage the plaintiff's mother, kept her under his roof, declaring and giving her hopes that if a son was born to her such son would stand in the relation of son's son to his mother's father, and that if at any time occasion arose, he would observe the religious rites of Sraddh, and keep the estate intact; and that accordingly the plaintiff, from the day of his birth to the date of suit lived with his maternal uncle in common for all the purposes of board, lodging, and worship (166). (*Sir Montague E. Smith.*) THAKOOR JEEBNATH SINGH *v.* COURT OF WARDS.

(1875) 2 I.A. 163 = 15 B. L. R. 190 = 3 Sar. 490 = 23 W.R. 409 = 3 Suth. 142.

———*Importation into, of usages of law adoption—Propriety.*

The law as to adoption of sons bears an analogy to this (the appointment of a daughter to raise a son), but the usages of that law cannot, without authority, be imported into this mode of appointment. These adoptions must stand upon the authority relating to each (167-8).

The above observation was made in connection with the question whether a father can validly delegate to his sons the appointment of a daughter to raise a son to himself (the father.) (*Sir Montague E. Smith.*) THAKOOR JEEBNATH SINGH *v.* COURT OF WARDS.

(1875) 2 I.A. 163 = 15 B. L. R. 190 = 3 Sar. 490 = 23 W. R. 409 = 3 Suth. 142.

———*Proof of—Quantum.*

The plaintiff (appellant) alleged that his mother's father, *S*, appointed his daughter to raise a son to him, who should stand in the place of son's son; and he contended that, by the rule of Hindu law, he, as the son of a daughter so appointed, was entitled to succeed in preference to more distant male relatives. The question for decision was whether the plaintiff brought himself within that rule.

The plaint said this: "Your petitioners' maternal uncle, *L*, agreeably to the counsel of his father. *S*, having given in marriage your petitioner's mother, kept her under his roof, declaring and giving her hopes that if a son be born to her such son will stand in the relation of son's son to his mother's father, and that if at any time occasion arise, he will observe the religious rites of Sraddh (obsequies), and keep the estate intact; and accordingly your petitioner, from the day of his birth to the present moment lived with the deceased Maharajahs (*S* and *L*) in common for all the purposes of board, lodging, and worship."

The plaintiff's attempt was to bring himself within the description of son of an appointed daughter.

The evidence of the authority supposed to have been given by *S*, to his sons, and of the exercise of it by them, was most vague and unsatisfactory. No more appeared respecting the supposed exercise of it by the sons, than that when their sister married a condition was imposed upon the husband that they should live in her brother's house, and the son be brought up as one of his. No ceremonies were proved to have been performed, nor any express form of appointment used.

Held, that the evidence was wholly insufficient to establish a formal appointment which was to have the serious consequences of altering the line of succession (167-8). (*Sir*

HINDU LAW—(*Contd.*)

Daughter—(*Contd.*)

APPOINTMENT OF, TO RAISE A SON—(*Contd.*)

Montague E. Smith.) THAKOOR JEEBNATH SINGH *v.* COURT OF WARDS. **(1875) 2 I. A. 163 = 15 B. L. R. 190 = 3 Sar. 490 = 23 W. R. 409 = 3 Suth. 142.**

———*Rule of Hindu law as to—If obsolete.*

It is not necessary in this case to decide whether the old rule of Hindu law that a daughter may be specially appointed to raise a son and that a son of a daughter so appointed is entitled to succeed in preference to more distant male relations is obsolete, although there certainly does not appear to have arisen in modern times any instance in the Courts where this custom has been considered (165-6.) (*Sir Montague E. Smith.*) THAKOOR JEEBNATH SINGH *v.* COURT OF WARDS. **(1875) 2 I. A. 163 = 15 B. L. R. 190 = 3 Sar. 490 = 23 W. R. 409 = 3 Suth. 142.**

———The practice of constituting, in the person of a daughter's son, a "putrica-putra," or son of an *appointed* daughter is almost, if not wholly, obsolete (233). (*Sir James W. Colvile.*) MAHARAJAH PERTAB NARAIN SINGH *v.* MAHARANEE SUBHAO KOOER. **(1877) 4 I. A. 228 = 3 C. 626 (631) = 1 C. L. R. 113 = 3 Sar. 740 = 3 Suth. 458 = R. and J's No. 46.**

———*Rule of Hindu Law as to—Inheritance right based on—Claim of daughter's son to—Maintainability—Condition.*

Supposing the old rule of Hindu Law that a daughter may be specially appointed to raise a son and that a son of a daughter so appointed is entitled to succeed in preference to more distant male relations exists in modern times and is not obsolete, inasmuch as it breaks in upon the general rules of succession, whenever an heir claims to succeed by virtue of that rule, he must bring himself very clearly within it (166). (*Sir Montague E. Smith.*) THAKOOR JEEBNATH SINGH *v.* COURT OF WARDS. **(1875) 2 I. A. 163 = 15 B. L. R. 190 = 23 W. R. 409 = 3 Sar. 490 = 3 Suth. 142.**

———*Rule of Hindu Law as to—Texts relating to.*

The leading passage is in Menu, Ch. 9, S. 127 ; and it is as follows : " He who has no son may appoint his daughter in this manner to raise up a son for him, saying, 'the male child who shall be born from her in wedlock shall be mine for the purpose of performing my obsequies.'" The passages in the Mithakshara are to the same effect. In Chap. 1, S. 11, cl. 3 : " The son of an appointed daughter is equal to him,—that is, equal to the legitimate son. The term signifies son of a daughter. Accordingly, he is equal to the legitimate son, as described by Vasishta,—'This damsel, who has no brother, I will give unto thee decked with ornaments : the son who may be born of her shall be my son . . . . .' Still she is only similar to a legitimate son, for she derives more from the mother than from the father. Accordingly, she is mentioned by Vasishta as a son, but as third in rank." Then the note to that is,—" The *putrica-putra* is of four descriptions ; the first is the daughter appointed to be a son ; she is so by stipulation to that effect. The next is her son. He obtains, of course, the name of a son of an appointed daughter, without any special compact. This distinction, however, occurs : he is not in place of a son, but in place of a son's son, and is a daughter's son,"—that is, the son of a daughter who is herself appointed to be in the place of a son. Then there is this : "The third description of son of an appointed daughter is the child born of a daughter who was given in marriage with an express stipulation in this form. The child which shall be born of her shall be mine for the purpose of performing my obsequies" (166-7). (*Sir Montague E. Smith.*) THAKOOR JEEBNATH SINGH *v.* COURT OF WARDS. **(1875) 2 I. A. 163 = 15 B. L. R. 190 = 3 Sar. 490 = 23 W. R. 409 = 3 Suth. 142.**

BENGAL JOINT FAMILY—MARRIED DAUGHTER OF DECEASED MEMBER IN—ADVERSE POSSESSION AGAINST.

———*Possession by surviving members of her father's property if amounts to—Presumption—Daughter living with surviving members after her husband's death—Effect.*

As regards the married daughters of a deceased Hindu, who became entitled to their father's property after their mother's death, there is no presumption that the possession of that property by the surviving members of their father's joint family (Bengal) is not adverse to them. Being married, they would naturally go to the residences of their respective husbands and become members of their respective families. In their case, it must be shown that, upon their mother's death, they entered into joint possession of the estate with their father's brothers or their representatives, or that during the lives of their husbands they participated in the profits of the estate (123).

Quœre as to the effect of one of such daughters living with her father's brothers after her husband's decease (123). (*Sir Barnes Peacock*), AUMIRTOLALL BOSE *v.* RAJONEEKANT MITTER. **(1875) 2 I. A. 113 = 15 B. L. R. 10 = 23 W. R. 214 = 3 Sar. 430 = 3 Suth. 94.**

COMPROMISE BY.

———*Father's estate—Transfer invalid of, under compromise—Setting aside of—Necessity—Treating it as a nullity without intervention of court—Reversioner's right of.*

Where a Hindu daughter purports to transfer her father's estate under a compromise which is invalid against the reversioners, her sons can on their mother's death as reversionary heirs of their maternal grandfather treat it as a nullity without the intervention of any Court. (*Sir Lawrence Jenkins.*) OBALA KONDAMA NAICKER AYYAN *v.* KANDASAMI GOUNDAR. **(1923) 51 I. A. 145 (152) = 47 M. 181 = 22 A. L. J. 16 = 19 L. W. 107 = A. I. R. (1924) P. C. 56 = (1924) M. W. N. 86 = 26 Bom. L. R. 198 = 10 O. and A. L. R. 176 = 34 M. L. T. 20 = 39 C. L. J. 194 = 28 C. W. N. 1050 = 79 I. C. 961 = 46 M. L. J. 172.**

———*Father's estate—Transfer to father's collateræls of, under compromise—Validity against grandson of—Purdanashin without independent advice—Daughter a—Claim of collateral false to his knowledge—Compromise under his advice and influence.*

On the death of *M*, a Hindu, his daughter-in-law, *S*, sued *A*, (*M's* daughter), and a collateral of *M*, to establish a will alleged by *S* to have been executed by *M* and praying that possession should be given to her of one-third share of the property left by him. That suit was settled by a compromise by which a portion of the property of *M*, was delivered by the defendants to *S*, and the remainder of the property was divided into moieties, each of the defendants taking a moiety.

M and the collateral were in fact separate and not joint, and that fact was known to the collateral at the time of the compromise. The compromise was, however, based on the assumption that there was a question as to whether there had been a separation between the two lines of the family. There was no evidence to show that *A* entered into the compromise from ulterior motives with full knowledge of the false nature of the collateral's claim and that, in assenting to

HINDU LAW—(*Contd.*)

Daughter—(*Contd.*)

COMPROMISE BY—(*Contd.*)

the compromise, she was not acting *bona fide* in the light of the circumstances then brought to her notice. But *A* was at the time of the compromise a purdanashin lady recently widowed, the mother of infant sons, and without any adult male relation except the collateral to advise her. She therefore stood in need of especial protection. But she acted entirely under the advice and influence of the collateral who knew the false nature of his claim.

Held, in a suit brought by the sons of *A*, against the representatives in interest of the collateral, that as against them the plaintiffs had established the invalidity of the compromise after their mother's death. (*Sir Lawrence Jenkins.*) OBALA KONDAMA NAICKER AYYAN *v.* KANDASAMI GOUNDAR. **(1923) 51 I. A. 145 (150-1) = 47 M. 181 = 22 A. L. J. 16 = 19 L. W. 107 = A. I. R. 1924 P. C. 56 = (1924) M. W. N. 86 = 26 Bom. L. R. 198 = 10 O. and A. L. R. 176 = 34 M. L. T. 20 = 39 C. L. J. 194 = 28 C. W. N. 1050 = 79 I.C. 961 = 46 M. L. J. 172.**

———*Grandfather's estate—Share in, taken under compromise in right of father—Estate taken in—Absolute estate or life estate only.*

Where daughters took a share in their grand-father's property under a compromise in right of their father, *held* that they took, in the said share, not an absolute estate, with the result that the property, in their hands, was self-acquired, but only a daughter's estate, that is to say, a life-interest (145-6). (*Sir Andrew Scoble.*) KARIM-UD-DIN *v.* GOBIND KRISHNA NARAIN. **(1909) 36 I.A. 138 = 31 A. 497 (504-5) = 6 M. L. T. 275 = 10 C. L. J. 243 = 13 C. W. N. 1117 = 11 Bom. L. R. 911 = 6 A. L. J. 807 = 3 I.C. 795 = 19 M.L.J. 687.**

DECREE FOR OR AGAINST—RES JUDICATA AGAINST REVERSIONERS.

———*Shivagunga case—Rule in—Applicability.*

In the judgment of this Committee in the Shivagunga case it is said, with reference to an adverse decree in a suit brought by a Hindu widow for possession of a Zemindary as heir to her husband, that if it had become final in her lifetime it would have bound those claiming the Zemindary in succession to her; and unless it could be shown that there had not been a fair trial of the right in that suit, or in other words, unless that decree could have been successfully impeached on some special ground, it would have been an effectual bar to any new suit by any person claiming in succession to the widow. The principle of that decision applies equally to an adverse decree in a suit brought by a Hindu daughter for possession of property as heir to her father (191-2.) (*Sir Richard Couch.*) HURRINATH CHATTERJI *v.* MOHUNT MOTHOOR MOHUN GOSWAMI.

(1893) 20 I.A. 183 = 21 C. 8 = 6 Sar. 334.

FATHER'S ESTATE—SUIT TO RECOVER ALLEGED, AS HEIR—FATHER'S OWNERSHIP OF PROPERTY—PROOF OF ———*Onus.*

In a suit by the surviving daughter of a deceased Hindu for the recovery of property alleged to have belonged to her father on the ground that she had become entitled to possession of the property as her father's sole heir on the death of her mother and sisters, the question was whether the suit property was the property of the plaintiff's father or formed part of the Stridhanam of her mother.

Held that the onus was on the plaintiff of proving that the suit property belonged to her father and that she had discharged that onus. (*Viscount Cave.*) MUSAMMAT HARDEI *v.* BHAGWAN SINGH.

(1919) 13 L.W. 436 (439) = 2 Pat. L.T. 237 = 24 C.W.N. 105 = 50 I.C. 812.

HINDU LAW—(*Contd.*)

Daughter—(*Contd.*)

GIFT TO.

———Estate taken under. *See* HINDU LAW—GIFT—DAUGHTER.

INHERITANCE.

———*Daughter's right to succeed to father's estate by—Preference—Benares School — Indigent childless widowed daughter—Wealthy married daughter with children.*

A Hindu governed by the law of the Benares School died leaving two daughters. One of them, the plaintiff, was a childless widow, dependent upon and living with her father at the time of his death, whilst defendant, the other daughter, was living with her husband, a man of some substance, by whom she had had children, living at date of suit.

In a suit by the plaintiff seeking, as between herself and the defendant, to be declared the preferential heir of their father, *held* that the plaintiff, as compared with her sister, was an indigent; or, in the words of the Mithakshara, "an unprovided daughter," and that the plaintiff, though a childless widow, was entitled to succeed in preference to the defendant (46).

The statement to the following effect in Sir William Macnaghten's Principles and Precedents of Hindu Law is a correct exposition of the law:—According to the Benares School a maiden is in the first instance entitled to the property; failing her, the succession devolves on the married daughters who are indigent, to the exclusion of the wealthy daughters; in default of indigent daughters, the wealthy daughters are competent to inherit; but no preference is given to a daughter who has, or is likely to have, male issue, over a daughter who is barren or a childless widow (46). (*Sir James W. Colvile.*) SRIMATI UMA DEVI *v.* GOKOOLANUND DAS. **(1878) 5 I.A. 40 = 3 C. 587 (593) = 2 C.L.R. 51 = 3 Sar. 786 = 3 Suth 499.**

———*Daughter's right to succeed to father's estate by—Preference—Bengal Law—Daughter married and likely to have issue—Childless widow—Who is a.*

R died, without a son, leaving a widow and three daughters. The widow then died, and upon her death the heirs of *R* were the two daughters, who were then married and likely to have sons. The third daughter was a childless widow at the time of her death and so could not take any interest in her father's estate (119).

N. B.—The case was governed by the Bengal law. (*Sir Barnes Peacock.*) AUMIRTOLALL BOSE *v.* RAJONEEKANT MITTER. **(1875) 2 I.A. 113 = 15 B.L.R. 10 = 23 W.R. 214 = 3 Sar. 430 = 3 Suth. 94.**

———*Daughters succeeding to father's estate by—Compromise regarding inheritance between—Enlargement of estate by—Provision for enjoyment of estate by—Validity of.*

Semble: Under the ordinary Hindu Law, daughters have no power by means of a compromise to enlarge their estates, so as to prejudice the rights of the next male reversioners to succeed to the whole of the father's estate on the death of the last surviving daughter; but they can provide for the enjoyment of the estate until the death of the last survivor. (*Sir John Wallis.*) MUSST. VAISHNO DITTI *v.* MUSST. RAMESHRI. **(1928) 55 I.A. 407 = 29 Punj. L.R. 654 = 28 L. W. 908 = A. I. R. 1928 P. C. 294 = 55 M.L.J. 746.**

———*Daughters succeeding to father's estate by—Estate taken by—Survivorship between—Right of—Disqualification at the time—Effect of.*

Daughters inheriting their father's property, upon the death of their mother, together constitute their father's heir and take a joint interest in his estate with rights of survivorship; and, upon the death of one of the daughters, the pro-

HINDU LAW—(*Contd.*)
Daughter—(*Contd.*)
INHERITANCE - (*Contd.*)

perty which descended to them jointly survives to the surviving daughter, and her disqualification to inherit at that time does not destroy that right of survivorship which she had previously acquired by inheritance (125-7). (*Sir Barnes Peacock.*) AUMIRTOLALL BOSE *v.* RAJONEEKANT MITTER. **(1875) 2 I.A. 113 = 15 B.L.R. 10 = 23 W.R. 214 = 3 Sar. 430 = 3 Suth. 94.**

———*Estate taken by—Nature of—Alienation of—Validity—Conditions—Onus of proof of— Madras Presidency—Law in.*

In the Madras Presidency a daughter as heiress of her father takes a restricted interest similar to that taken by a widow with a similar power of disposal. This power is conditional ; she can dispose of the inheritance for legal necessity, but it lies on the alienee to prove the existence of this necessity, and this is so even though the absence of necessity be not pleaded by the reversioner. It may be conceded that even though there may not be legal necesslty in fact, the alienee would be equally protected if he honestly did all that was reasonable to satisfy himself that the required necessity existed. (*Sir Lawrence Jenkins.*) OBALA KONDAMA NAICKER AYYAN *v.* KANDASAMI GOUNDAN.
(1923) 51 I. A. 145 (152) = 47 M. 181 = 22 A. L. J. 16 = 19 L.W. 107 = A.I.R. 1924 P. C. 56 = (1924) M.W.N. 86 = 26 Bom. L R. 198 = 10 O. & A. L.R. 176 = 34 M.L T. 20 = 39 C L.J. 194 = 28 C.W.N. 1050 = 79 I.C. 961 = 46 M.L.J 172.

———*Estate taken by—Nature of—Bombay Presidency—Law in.*

The rule is well established in the Bombay Presidency that a daughter inheriting from her father takes an absolute interest, not merely a widow's estate as in other parts of India. To throw a doubt on this rule mig!t be productive of great mischief (223). (*Lord Dunedin.*) BALWANT RAO *v.* BAJI RAO. **(1920) 47 I.A. 213 = 48 C. 30 (43-4) = 25 C.W.N. 243 = 18 A.L J. 1049 = (1920) M. W. N. 483 = 28 M.L.T. 157 = 12 L.W. 679 = 22 Bom L.R. 1070 = 57 I. C, 545 = 39 M.L.J. 166.**

———*Estate taken by—Nature of—Bombay and other parts of India—Law in—Distinction.*

The quality of the right which a daughter takes who inherits immoveable property from her father, has been differently determined in different parts of India. The absolute right has been affirmed by the Courts of Western India, according to the view of the High Court of Bombay. The limited right (the same class of limited interest as is possessed by a Hindu widow) has been affirmed by the other Courts, and this Board has upheld the rules as determined in each case as applicable to the persons whose law is the law of Western or of other parts of India (218-9). (*Lord Dunedin.*) BALWANT RAO *v.* BAJI RAO.
(1920) 47 I. A. 213 = 48 C. 30 (38-9) = 25 C. W. N. 243 = 18 A.L.J. 1049 = (1920) M.W.N. 483 = 28 M.L.T. 157 = 12 L.W. 679 = 22 Bom. L.R. 1070 = 57 I.C. 545 = 39 M.L.J. 166.

———*Estate taken by—Nature of—Devolution of, on her death—Mithakshara law.*

According to the law of the Mithakshara, as received in Benares and elsewhere, the estate which a daughter inherits from her father is a limited and a restricted one only, and not an estate of the nature of stridhan. On her death, it does not go as stridhun to her husband or other heir, but devolves upon the next heirs of her father (31-2). (*Sir Montague E. Smith.*) CHOTAY LALL *v.* CHUNNO LALL.
(1878) 6 I. A. 15 = 4 C. 744 (755-6) = 3 C. L. R. 465 = 3 Sar. 880 = 3 Suth. 572.

HINDU LAW—(*Contd.*)
Daughter—(*Contd.*)
INHERITANCE—(*Contd.*)

———Under the Mithakshara law, as applied in the Carnatic, a daughter inheriting the estate of her father does not take it as stridhan, and as a heritage transmissable to her own heirs. She takes only a limited interest in the estate which ceases with her life, and on her death the root of title is to be sought not in herself but in her father (109). (*Sir Arthur Hobhouse.*) MUTTU VADUGANADHA TEVAR *v.* DORASINGA TEVAR. **(1881) 8 I. A. 99 = 3 M. 290 (301-2) = 4 Sar. 239.**

———Under the law of the Mithakshara a daughter's estate inherited from the father is a limited and restricted estate only and not stridhanam. Upon her death the next heirs of her father succeed thereto. (*Lord Lindley.*) RAJA CHELIKANI VENKAYAMMA GARU *v.* RAJA CHELIKANI VENKATARAMANAYAMMA. **(1902) 29 I. A. 156 (164) = 25 M. 678 (686) = 7 C. W. N. 1 = 4 Bom. L. R. 657 = 8 Sar. 286 = 12 M. L. J. 299.**

———*Estate taken by—Widow's estate—Similarity to.*

Whether, under the Hindu law, the widow and the daughter stand in the same situation or not, with respect to the right of disposition of the property inherited by them, they at all events stand in the same situation as to the right of administration, and right of enjoyment for their lives (445-6). (*Mr. Pemberton Leigh.*) HARRYDOSS DUTT *v.* SREEMUTTY UPPOORNAH DOSSEE.
(1856) 6 M. I. A. 433 = 1 Sar. 561.

———The estate to which *S*, as the survivor of the daughters of the last male owner succeeded, was similar to the estate of a widow (192). (*Sir Richard Couch.*) HURRINATH CHATTERJI *v.* MOHUNT MOTHOOR MOHUN GOSWAMI.
(1893) 20 I. A 183 = 21 C. 8 = 6 Sar. 334.

———*Exclusion from—Custom of—Nature of, required—Proof strict of, necessary.*

The daughter of a divided sonless Hindu is under the Mithakshara law, entitled to succeed to the estate of her father and it is for those who allege a custom excluding her to prove it. The custom must be ancient and the proof conclusive. The general law would be weakened if this rule were not always strictly adhered to even in a case where the custom alleged is neither unique nor unknown.

Held, affirming the High Court, that the custom set up had not been proved. (*Lord Blanesburgh.*) CHANDRA SHEKHAR BAKHSH SINGH *v.* MUSSUMAT RAJ KUNWAR.
(1926) 24 L. W. 320 (323) = (1926) M. W. N. 596 = A. I. R. 1926 P. C. 91 = 96 I. C. 836.

———*Exclusion from—Custom of—Onus of proof of.*

By the general Hindu law, which would prevail in the absence of any special custom, the daughter would be entitled to the inheritance of her sonless father (66). (*Sir Montague E. Smith.*) RANI LEKRAJ KUAR *v.* BABOO MAHPAL SINGH. **(1879) 7 I.A. 63 = 5 C. 744 (749-50) = 6 C. L. R. 593 = 4 Sar. 94 = 3 Suth. 704 = R. & J's No. 61 (Oudh).**

———*Exclusion from--Custom of—Proof of—Bahrulia clan.*

In a case in which the question was whether in the Bahralia clan a custom existed to exclude daughters from succeeding to the inheritance of their father's estate, *held*, affirming the Court below, that the custom had been fully proved (66, 72). (*Sir Montague E. Smith.*) RANI LEKRAJ KUAR *v.* BABOO MAHPAL SINGH.
(1879) 7 I. A. 63 = 5 C. 744 (750, 756) = 6 C. L.R 593 = 4 Sar. 94 = 3 Suth. 704 = R. & J.'s No. 61 (Oudh).

———*Exclusion from--Custom of—Wajib-ul-arz—Entry as to custom in—What amounts to.*

HINDU LAW—(*Contd.*)

Daughter—(*Contd.*)

INHERITANCE—(*Contd.*)

When the Wajib-ul-arz applicable to a village stated: "The rule of inheritance and division in this village is that on the death of a co-sharer his sons become owners of his share in equal shares and the daughter does not get any share by inheritance;" *held* that, on the true construction of the wajib-ul-arz, it contained an unambiguous record of a custom that on the death of an owner of the village no daughter of his was under any circumstances entitled to a share in his property by inheritance, whether he had left sons or not.

Quære, how such a custom would operate in cases in which an owner died leaving no relation but a daughter who could inherit.

The provision that on the death of a co-sharer his sons became owners of his share in equal shares was probably inserted to exclude any claim under a custom of primogeniture which is not an uncommon custom in Oudh. (*Sir John Edge.*) BALGOBIND *v.* BADRI PRASAD.

(1923) 50 I. A. 196 (201) = 45 A. 413 (418) = 26 O. C. 217 = 38 C. L. J. 302 = 33 M. L. T. 317 = (1923) M. W. N. 799 = 9 O. & A. L. R. 581 = 10 O. L. J. 368 = 21 A. L. J. 578 = 29 C. W. N. 465 = A. I. R. 1923 P. C. 70 = 74 I. C. 449 = 45 M. L. J. 289.

———*Exclusion by collaterals from—Custom of—Proof of—Quantum.*

In this case the courts below concurrently found that there was a custom in the family of the plaintiff and the defendants "that a daughter is excluded by the collaterals of the deceased from inheritance."

Held that the concurrent finding was, after due allowance for all limitations and qualifications, abundantly justified by overwhelming evidence. (*Lord Collins.*) PARBATI KUNWAR *v.* CHANDAR PAL KUNWAR.

(1909) 36 I. A. 125 (137) = 31 A. 457 (476) = 10 C. L. J. 216 = 13 C.W.N. 1073 = 11 Bom. L. R 890 = 6 A L.J. 767 = 12 O. C. 304 = 4 I.C. 25 = 19 M. L. J. 605.

———*Exclusion from, together with issue—Custom of—Common.*

A custom excluding daughters and their issue from inheritance is not uncommon in Oudh and in other parts of India. (*Sir John Edge.*) BALGOBIND *v.* BADRI PRASAD.

(1923) 50 I. A. 196 (198) = 45 A. 413 (415) = 26 O. C. 217 = 38 C. L. J. 302 = 33 M. L. T. 317 = (1923) M. W. N. 799 = 9 O. & A. L. R. 581 = 10 O.L.J. 368 = 21 A.L.J. 578 = A.I.R. 1923 P. C. 70 = 74 I. C. 449 = 29 C. W. N. 465 = 45 M. L. J. 289.

———*Exclusion from, together with issue—Custom of—Validity of.*

A custom which excluded daughters and their issue from inheritance would be a lawful variation of the Mithakshara law. (*Sir John Edge.*) BALGOBIND *v.* BADRI PRASAD.

(1923) 50 I. A. 196 (198) = 45 A. 413 (415) = 26 O. C. 217 = 38 C. L. J. 302 = 33 M. L. T. 317 = (1923) M. W. N. 799 = 9 O. & A. L. R. 581 = 10 O. L. J. 368 = 21 A. L. J. 578 = 29 C. W. N. 465 = A. I. R. 1923 P. C. 70 = 74 I. C. 449 = 45 M. L. J. 289.

———*Exclusion from—Grounds—Insanity at opening of succession one of.*

It seems to be admitted on both sides (the point has not been argued here, nor was it argued in the Court below) that by the Hindu law, if a daughter was, when the succession opened to her, that is to say, on the death of her mother, insane, she did lose her right to inherit her father's estate, and that it passed to her sons (523). (*Sir James W. Colvile.*) BABOO BODHNARAIN SINGH *v.* BABOO OMRAO SINGH. **(1870) 13 M. I. A. 519 = 15 W.R. (P.C.) 1 = 6 B.L.R. 509 = 2 Suth. 371 = 2 Sar. 607.**

HINDU LAW—(*Contd.*)

Daughter—(*Contd.*)

INHERITANCE—(*Contd.*)

———*Right of, under Mithakshara law.*

According to the Mithakshara law a daughter is entitled in the absence of sons to inherit the separate estate of her father after the death of his widows (135). (*Sir Richard Couch.*) PRIT KOER *v.* MAHADEO PERSHAD SINGH.

(1894) 21 I. A. 134 = 22 C. 85 (89) = 6 Sar. 485.

———*Right once vested by—Not divested by reason of subsequent disqualification.*

The suit was by the only son of a daughter of *R* to recover *R's* properties from the defendants, who represented *R's* brothers.

R died without a son, leaving a widow and three daughters. The widow succeeded to his share of the property, and died. At her death, one of the three daughters was a childless widow and was therefore not entitled to succeed to her father's property. The other two daughters, plaintiff's mother and one *N*, were married daughters and succeeded to their father's property. Subsequently thereto, but before the institution of the suit, *N* also became a childless widow. She was living when the suit was commenced.

The title upon which the plaintiff relied in his plaint was, that in consequence of *N*'s becoming a childless widow after the death of his grandmother and during the lifetime of his mother, who had died before suit, all the property accrued to his mother according to the shasters.

Held, that the plaintiff's contention was untenable (124).

The right to inherit vested in *N* jointly with the plaintiff's mother, her sister, upon the death of their mother; for at that time she and her sister (plaintiff's mother) were two young married women, likely to have sons; and it is clear that, according to the Hindu law, the right once vested in a daughter by inheritance does not cease until her death, notwithstanding she become barren, or a widow who has not borne a son. Circumstances of that nature do not destroy a heritable right which has once vested (124). (*Sir Barnes Peacock.*) AUMIRTOLALL BOSE *v.* RAJONEEKANT MITTER. **(1875) 2 I.A. 113 = 15 B. L. R. 10 = 23 W. R. 214 = 3 Sar. 430 = 3 Suth. 94.**

———A daughter, becoming a sonless widow, or unchaste after having succeeded to the estate of her father, does not forfeit the estate (151-2). (*Sir Barnes Peacock*). MONIRAM KOLITA *v.* KERRY KOLITANY. **(1880) 7 I. A. 115 = 5 C. 776 (787) = 6 C. L. R. 322 = 4 Sar. 103 = 3 Suth. 765.**

WILL—BEQUEST UNDER.

———Estate taken under. *See* HINDU LAW—WILL—DAUGHTER.

Daughter's daughter.

———*Inheritance—Right of.*

A daughter's daughter is not an heir under the Hindu law except in certain cases of Stridhun (38). (*Sir Richard Couch.*) SRIMATI JANOKI DEBI *v.* SRI GOPAL ACHARJIA.

(1882) 10 I. A. 32 = 9 C. 766 (772) = 13 C. L. R. 30 = 4 Sar. 411 = 7 I. J. 218.

Daughter's son.

———Appointed daughter—Son of. *See* HINDU LAW—DAUGHTER—APPOINTMENT OF, TO RAISE A SON.

———*Maternal grand-father—Impartible estate inherited from—Devolution of, on his death—Son of that daughter's son—Son of another daughter of original Zemindar—Preference.*

A daughter's son who succeeds by inheritance to an impartible estate owned by his maternal grand-father acquires

HINDU LAW—(*Contd.*)

Daughter's son—(*Contd.*)

full and complete ownership, and becomes a fresh root of title. On his death leaving a son, the estate devolves on that son, and not on another daughter's son of the original Zemindar. (*Lord Hobhouse*). MUTHUVADUGANADHA TEVAR *v.* PERIASAMI. **(1896) 23 I.A. 128 = 19 M. 451 = 6 M. L. J. 149 = 7 Sar. 83.**

———*Maternal grand-father—Impartible estate inherited from — Survivorship as regards—Right of — Another daughter's son if has a.*

On the death of an impartible estate holder, the estate devolved upou *D*, his elder daughter's son. *D* died leaving a son, the respondent. The appellant, the son of a younger daughter of the original zemindar, claimed the estate to the exclusion of the respondent, contending that, upon the death of the original zemindar, the estate devolved upon *D* and the appellant as joint family property, and that on the death of *D*, it devolved upon the appellant by survivorship to the exclusion of the respondent.

The High Court held that the right of survivorship contended for by the appellant did not subsist, and their Lordships affirmed that view. (*Lord Hobhouse.*) MUTHUVADUGANADHA TEVAR *v.* PERIASAMI. **(1896) 23 I. A. 128 = 19 M. 451 = 7 Sar. 83 = 6 M. L.J. 149.**

———*Maternal grandfather— Impartible Estate of— Inheritance to—Right of —Sons of several daughters—Preference as between—Eldest surviving grandson—Right of.*

On the death of the daughter of the last male holder of an impartible estate, the question was as to who was entitled to succeed to the same. The respondent was the eldest surviving grandson of the istimrar zemindar by a daughter of his second wife. The appellant was the grandson of the istimrar zemindar by a daughter of his third wife. The respondent contended that, the estate being impartible and being therefore capable of being enjoyed by only one person at a time, he, as the eldest surviving grandson, was entitled.

Held, that, if the estate was impartible, the respondent was entitled to it as sole heir of the istimrar zemindar (109). (*Sir Arthur Hobhouse.*) MUTTUVADUGANADHA TEVAR *v.* DORASINGA TEVAR. **(1881) 8 I. A. 99 = 3 M. 290 (300) = 4 Sar. 239.**

———*Maternal grandfather—Property inherited from—Alienation of—Restrictions on—Ancestral property—Alienation of—Restrictions applicable to—Applicability of.*

Quœre, whether a person, who has inherited property from his maternal grandfather, is not as regards his son under the same restrictions as to the alienation or hypothecation of the property as he would have been if it had descended to him from his father or paternal grandfather (143). (*Sir Barnes Pecock.*) MUTTAYAN CHETTIAR *v.* SANGILI VEERA PANDIA CHINNATAMBIAR.

(1882) 9 I. A. 128 = 6 M. 1 (17) = 12 C. L. R. 169 = 4 Sar. 354.

———*Maternal grandfather—Property inherited from—Nature of, in hands of daughter's son—Self-acquisition if.*

An impartible estate to which a daughter's son succeeds by inheritance to his maternal grandfather is not his self-acquired property. (*Sir Barnes Peacock*). MUTTAYAN CHETTIAR *v.* SANGILI VEERA PANDIA CHINNATAMBIAR. **(1882) 9 I. A. 128 (143) = 6 M. 1 (17) = 12 C.L.R. 169 = 4 Sar. 354.**

———*Maternal grandfather—Property of— Succession to, by sons of a daughter living as a joint Hindu family—Survivorship between them.*

Under the Mithakshara law, the sons of a daughter living together as members of a joint Hindu family succeed on their mother's death to the estate of their maternal grandfather jointly with benefit of survivorship, and not jointly or

HINDU LAW—(*Contd.*)

Daughter's son—(*Contd.*)

in common without benefit of survivorship. (*Lord Lindley*). RAJA CHELIKANI VENKAYAMMA GARU *v.* RAJA CHELIKANI VENKATARAMANAYAMMA GARU.

(1902) 29 I.A. 156 (163-6) = 25 M. 678 (686-8) = 7 C. W. N. 1 = 4 Bom. L. R. 657 = 8 Sar. 286 = 12 M. L. J. 299.

———*Position of.*

According to Hindu religious ideas a daughter's son stands in the place of a son and like a son is putrika, or a liberator from *put*. (*Sir John Wallis.*) NARSINGH RAO *v.* MAHALAKSHMI BAI. **(1928) 55 I.A. 180 = 50 A. 375 = 109 I. C. 703 = 48 C. L. J. 106 = 32 C. W. N. 1065 = 28 L. W. 171 = 26 A. L. J. 897 = 30 Bom. L. R. 1331 = 5 O. W. N. 951 = A. I R. 1928 P. C. 156 = 55 M. L. J. 42.**

Debt.

———Antecedent debt. *See* HINDU LAW—JOINT FAMILY—FATHER—DEBT OF.

———Father—Debt of. *See* HINDU LAW—JOINT FAMILY—FATHER—DEBT OF.

———Grandfather—Debt of. *See* HINDU LAW—JOINT FAMILY—GRANDFATHER—DEBT OF.

———Great-grandfather—Debt of. *See* HINDU LAW—JOINT FAMILY—GREAT-GRANDFATHER—DEBT OF.

———Inheritance—Debt binding on—Liability for, of person taking estate. *See* HINDU LAW—INHERITANCE—DEBTS BINDING ON. **(1909) 36 I. A. 138 (147) = 31 A. 497 (506).**

———*Liability for, of sons, grandsons and great-grandsons—Basis and extent of—Original Hindu law—Law as established by British Indian Courts.*

The Hindu lawyers appear to have made a difference in the obligations resting upon sons, grandsons and great-grandsons. The son was bound to discharge the ancestral debt as his own, principal and interest, whether he received any assets or not from the ancestor. The grandsons had to discharge the debt without interest and the great grandson's liability arose only if he received any assets from the ancestor. The British Indian Courts have held that the son and grandson are not liable for any debt unless they receive assets and that the obligations of each of them, sons and grandsons, are co-extensive. That rule extends equally to grandsons and great-grandsons. (211-2). (*Mr. Ameer Ali.*) MASIT—ULLAH *v.* DAMODAR PRASAD.

(1926) 53 I. A. 204 = 48 A. 518 = (1926) M. W. N. 816 = 3 O. W. N. 721 = 25 A. L. J. 1 = 28 Bom. L. R. 1402 = 44 C. L. J. 321 = 24 L. W. 551 = 7 P. L. T. 815 = 31 C. W. N. 293 = A. I. R. 1926 P. C. 105 = 98 I. C. 1031 = 51 M. L. J. 792.

———Manager—Debt of. *See* HINDU LAW—JOINT FAMILY—MANAGER—DEBT OF.

Disposition of property by Hindu—Validity of—Law governing.

———*Mithila District—Transaction within—Applicability of Mithakshara law to.*

Where the question was as to the validity of a disposition made by a Hindu of his self-acquired property, and the transaction occurred within the Mithila District.

Quœre. Whether the Mithakshara law, instead of the Mithila law, would apply to the case. (*Sir Robert Collier.*) RAJAH BISHEN PERKASH NARAIN SINGH *v.* BAWA MISSER. **(1873) 2 Suth. 878 = 20 W. R. 137 = 12 B. L. R. 430 = 3 Sar. 272.**

HINDU LAW—(*Contd.*)

Estates known to and recognised by.

———*Estate* pur autre vie *of English law.*

An estate *pur autre vie* is very unusual, and scarcely known in India (159). ROBERT WATSON & CO. *v.* MOHESH NARAIN ROY. **(1875) 3 Suth. 159 = 24 W. R. 176.**

———Estate tail—Not recognised. *See* HINDU LAW—GIFT—ESTATE TAIL. **(1927) 55 I. A. 74.**

———Joint family estate indivisible and descendible to nearest male heir, subject to rights of junior branches to share in profits and to demand partition of such shares. *See* OUDH ESTATE—JOINT FAMILY ESTATE INDIVISIBLE AND DESCENDIBLE ETC. **(1888) 16 I. A. 71 (75) = 16 C. 397 (405).**

———Legal and equitable estates—English law distinction between—Inapplicability in India of. *See* (1) ENGLISH LAW—LEGAL AND EQUITABLE ESTATES. **(1872) Sup. I. A. 47 (72).**

(2) HINDU LAW—INHERITANCE—MURDERER. **(1924) 51 I. A. 368 (373-4) = 48 B. 569.**

———Personal and real estates—Distinction. *See* ENGLISH LAW—PERSONAL AND REAL ESTATES. **(1878) 5 I. A. 116 (128) = 3 C. 806 (814).**

Expressions in—Meaning of.

———*Avaruddha—Avaruddha Stri.*

The word "Avaruddha" in the Hindu law is ordinarily and accurately rendered by "concubine" in English. "Avaruddha" Stri means women who are the protected slaves of another (160). (*Lord Darling.*) BAI NAGUBAI *v.* BAI MONGHIBAI. **(1926) 53 I. A. 153 = 50 B. 604 = 24 A. L. J. 729 = (1926) M. W. N. 514 = 3 O. W. N. 599 = 44 C. L. J. 53 = 24 L. W. 309 = 28 Bom. L. R. 1143 = 31 C. W. N. 128 = A. I. R. 1926 P. C. 73 = 96 I. C. 20 = 51 M. L. J. 577.**

———"*Benefit to estate*" *in the rule laid down in Hunooman Pershad's case and other cases that follow it.*

It is impossible to give a precise definition of the expression "Benefit to the Estate," referred to in the case of Hunooman Pershad Panday (6 M. I. A. 393) and the other cases which have followed it, applicable to all cases. The preservation, however. of the estate from extinction, the defence against hostile litigation affecting it, the protection of it or portions from injury or deterioration by inundation, these and such like things would obviously be benefits. The difficulty is to draw the line as to what are, in this connection, to be taken as benefits and what not. (*Lord Atkinson.*) PALANIAPPA CHETTY *v.* DEIVASIKAMANY PANDARA. **(1917) 44 I. A. 147 = 40 M. 709 = 22 M. L. T. 1 = (1917) M. W. N. 507 = 6 L. W. 222 = 21 C. W. N. 729 = 19 Bom. L. R. 567 = 26 C. L. J. 153 = 1 Pat. L. W. 697 = 15 A. L. J. 485 = 39 I. C. 722 = 33 M. L. J. 1.**

Family.

———Cherished institution of Hindus. (*Sir Robert Phillimore.*) BHYAH RAM SINGH *v.* BHYAH UGUR SINGH. **(1870) 13 M. I. A. 373 (391) = 14 W. R. (P. C.) 1 = 5 B. L. R. (P. C.) 293 = 2 Suth. 330 = 2 Sar. 566.**

———Conversion to Mahomedanism. *See* HINDU FAMILY.

———*Ownership by—Individual ownership—Feature of Hindu law.*

Individual separate ownership is less the subject of the general remarks of commentators on the Hindu Law than the associated aggregate community, the family. In this respect an analogy is observed between family ownership and that of the old village community (391). (*Sir Robert Phillimore.*) BHYAH RAM SINGH *v.* BHYAH UGUR SINGH. **(1870) 13 M. I. A. 373 = 14 W. R. (P. C.) 1 = 5 B. L. R. (P. C.) 293 = 2 Suth. 330 = 2 Sar. 566.**

HINDU LAW—(*Contd.*)

Family—(*Contd.*)

———*Rights and duties of, connected with ancestral customs and religious convictions—Law relating to—Variations of, or uncertainties in—Introduction of—Impropriety.*

It is of the highest importance that no variations or uncertainties should be introduced into the established and widely recognised laws which govern an Eastern Civilisation, and least of all in matters affecting family rights and duties connected with ancestral customs and religious convictions (174). (*Lord Sumner.*) AMAR NATH AND GOKUL CHAND *v.* FIRM OF HUKM CHAND NATHU MAL. **(1921) 48 I. A. 162 = 2 Lah. 40 (52) = 23 Bom. L. R. 671 = 14 L. W. 435 = 2 P. L. T. 201 = 3 U. P. L. R. (P. C.) 12 = 19 A. L. J. 249 = (1921) M. W. N. 175 = 29 M. L. T. 258 = 25 C. W. N. 534 = 33 C. L. J. 355 = 60 I. C. 379 = 40 M. L. J. 327.**

Family Arrangement.

———*See also* (1) COMPROMISE AND (2) HINDU LAW—COMPROMISE.

———*Benevolent construction of.*

Their Lordships are willing, to give, if possible, that benevolent construction to the Ekrarnama which, it has often been said, that, "family arrangements" deserve, but all depends in the long run on the construction of the written words. (*Lord Sumner.*) KARIMUNNESSA KHATUN *v.* MAHOMED FAZLUL KARIM. **(1924) 88 I. C. 149 = A. I. R. 1925 P. C. 70 (73).**

———*Brothers—Division of maternal grandfather's property—Arrangement for—Proof of.*

The suit was brought by one *G*, for a declaration of his proprietary right and possession of a large quantity of land in a Zemindari, and to set aside an order of the Collector which was against his possession. The title set up by him was, that he was one of two brothers, his brother being *B*, who died in 1850; that he was joint in property with *B*, that upon *B's*, death, leaving two sons, his estate went to those two sons and that he, *G*, then became joint with them; upon their both dying without issue the whole estate devolved on him. He brought his action against, *inter alia*, the appellant, the widow of one of the sons of *B*. Her case was that *B*, and *G*, were separate; that the whole of the property in question belonged to *B*, the plaintiff having no interest therein, but acting only as manager; that consequently it descended to the sons of *B*; and that she as the widow of the survivor was entitled to the property. That was the issue between the parties. The defendant alleged that *S*, who died in the year 1800, shortly before his death, adopted his grandson, *B*, then a young child, and that by that adoption *B* obtained the whole of the property. The plaintiff denied the adoption; he further contended that no such adoption could have been legally made, and asserted that *B*, soon after or about the time when he became of age, entered into possession of the property of his grandfather by the permission of the widow of the grandfather and his own mother, who certainly would have taken before him, and that he in point of fact was in possession; that the plaintiff, his younger brother, who was born some ten years after him, making a claim to the property, he and *B*, after some dispute between them, came to an arrangement which was embodied in an agreement dated 4-1-1835, whereby they shared the property equally between them, *B's* name alone being entered in the

HINDU LAW—(*Contd.*)

Family Arrangement—(*Contd*)

register as the owner. The question was whether that agreement was made out.

Held, on the evidence affirming the High Court, that there was a very strong case on behalf of *G*, that there had been some arrangement between the brothers, and that he had been in possession of the estate for such a space of time as would throw on the defendant a burden of proof that he was wrongfully in possession, which she had altogether failed to discharge (461). (*Sir Robert P. Collier.*) RANI BADAN KUNWAR *v.* COLLECTOR OF BIJNOR.

(1882) **Bald. 455.**

———*Compromise in nature of—Binding character of, on the parties and their representatives*

Disputes having arisen respecting the marriage of *A*, a Hindu, the two sons of *A*, each claiming to be legitimate, the one against the other as illegitimate, to avoid litigation, they entered, with the surviving widow of *A*, into a family arrangement and compromise to the effect, that the sons were to be equally entitled in moieties of *A's* estate, provision being made for maintenance to the widow, but the division was not to take effect until the youngest son was of age. No actual partition took place, and the youngest son predeceased his brother, who died in possession. Both sons left widows, but no male issue. *Held*, that the compromise was binding on the sons, and the widows claiming under them.

Whatever effect this transaction might have as against heirs of the common ancestor, after the death of the widow, it bound her and the sons, and all claiming under them (513). (*Lord Cairns.*) SRI GAJAPATHI RADHIKA PATTA MAHA DEVI GARU *v.* SRI GAJAPATHI NILAMANI PATTA MAHA DEVI GARU. (1870) **13 M. I. A. 497 = 14 W. R. (P. C.) 33 = 6 B. L. R. 202 = 2 Suth. 365 = 2 Sar. 601.**

———*Estate taken under—Absolute or limited--Will bequeathing village in equal moieties to two legatees—Compromise in* 1869 *between legatees and testator's widow giving entire village to one of legatees—Writing—Necessity—Validity of compromise—Estate conveyed under it.*

By his will, dated 6th December, 1864, *N* gave his Zamindari and all his other property to his two wives. To *J* and *S*, he gave the village of *V*, in perpetuity. The testator gave three other villages to *S's* son.

Neither *J*, nor *S*, took any steps to obtain possession of the village, *V*, on the testator's death. There was no opposition on the part of *N's* widows, nor was there any unwil lingness on their part to carry out the testator's wishes. But *J*, considered that he had not been fairly treated by the testator, who had made a more liberal provision for the family of *S*, and so he refrained from accepting the bequest in his favour in the hope that *N's* widows would increase it. In the meantime the village remained part of the Zamindari and the rents were received by or on behalf of *N's* widows and went into their treasury.

In 1869, *S*, being then dead, and his son having succeeded to his rights, the family differences were composed. It was arranged that the entirety of the village of *V*, should be made over to *J*, as from the commencement of the current year with the consent of *S's* son, who was to receive satisfaction for his moiety from *N's* widows.

That arrangement was come to on 22nd January, 1869. In pursuance of it an order dated the same day, was addressed by *S's* son to the amildar directing him to make over the management of the village to the person sent by *J*, on behalf of his master. The order so far as it went was consistent with an absolute interest in the person in whose favour it was issued. There was not a word in it cutting down *J's* interest to a life interest, or to a tenancy at will,

HINDU LAW—(*Contd.*)

Family Arrangement—(*Contd.*)

or imposing any terms as the condition of his continuing to hold the village.

On a question arising as to the character or capacity in which *J* held the village while he was in possession, whether he was absolute owner, or was only tenant for life, or tenant at will, or grantee upon certain conditions for the breach of which he was liable to be dispossessed, or merely manager under a revocable appointment, *held* that, as *J* took an absolute estate in the moiety of the village under the will of *N*, the effect of the arrangement of 1869 was that he was to hold the entire village in the same way as he was entitled to hold his own moiety, and that his interest in the two moieties should be commensurate (91).

Such a transaction would be perfectly good as a family arrangement. *J* was put in possession of the whole, and as the law then stood no writing was necessary to vest *S's* moiety in him (91). (*Lord Macnaghten*). RAJA VELLANKI VENKATA RAMA RAO *v.* RAJA PAPAMMA RAO.

(1898) **25 I. A. 84 = 21 M. 299 = 7 Sar. 313.**

———Father—Family arrangement by. *See* HINDU LAW—JOINT FAMILY—FATHER—FAMILY ARRANGEMENT BY.

———*Favour by Court of.*

———Courts favour family arrangements. (*Viscount Cave.*) MUSAMMAT HARDEI *v.* BHAGWAN SINGH.

(1919) **13 L. W. 436 (440) = 2 Pat L. T. 237 = 24 C. W. N. 105 = 50 I. C. 812.**

———*Impartible Estate—Junior member—Release of all interest in estate by, on receipt of allotment for maintenance—Family arrangement effecting—Binding nature of—Custom of family—Arrangement purporting to be in accordance with—Effect.*

The respondent, the appellant, and another, were brothers, the appellant being the eldest son. Their family owned an estate called "Nad Gowdki," Gowdki Enam, Government land and Houses in several villages. The respondent sued for a partition of the estate and for the recovery of his share thereof. The appellant alleged a family custom by which the younger sons were excluded from inheritance and were entitled only to maintenance. The appellant also relied upon a deed of release executed by the respondent in his favour nearly ten years before suit.

That deed of release recited that it was customary in the family for grants for maintenance to be allowed for junior members, that in pursuance of the custom the respondent asked for land for the support and maintenance of his family, and that the appellant gave him for maintenance the land and houses described in the deed. The deed provided that as the appellant had given the respondent land and houses for maintenance, the respondent was not to be liable for any debts contracted by their ancestors and by the appellant, that the appellant was solely to be entitled to and liable for the debts, that he was to be solely entitled to the family estate and rights and privileges, and that the respondent was to have no manner of claim to them, nor the appellant to the land and houses allotted to the respondent.

The respondent entered into possession of the allotted property and remained in possession till 1861, the date of the suit, without any complaint on his part except that the portion allotted to him by way of maintenance was too small, which complaint was met by a further portion being allotted to him for the purpose of increased maintenance.

Held that the deed of release, if not open to challenge on the ground of fraud, or upon any other ground, would be given effect to as a family arrangement, followed, as it had been, by enjoyment and possession for a period of 10 years (37).

HINDU LAW—(*Contd.*)

Family Arrangement—(*Contd.*)

The fact that the arrangement was made upon the expression of belief on the part of the respondent that he was acting in accordance with the custom of the family does not in any way detract from, but rather adds to, the stringency and the effect of the family arrangement (36-7). (*Lord Cairns.*) MANDAPPA NAD GOWDA *v.* BASWANTRAO NAD GOWDA.
(1871) 14 M. I. A. 24 = 15 W. R. (P.C.) 33 = 2 Suth. 407 = 2 Sar. 648.

———Manager—Family arrangement by. *See* HINDU LAW—JOINT FAMILY—MANAGER—FAMILY ARRANGEMENT BY.

———Partition—Family arrangement of nature of. *See* HINDU LAW—JOINT FAMILY—PARTITION—FAMILY ARRANGEMENT OF NATURE OF.

———Stringency and effect of. *See* HINDU LAW—FAMILY ARRANGEMENT—IMPARTIBLE ESTATE.
(1871) 14 M.I.A. 24 (36-7).

———Will or. *See* HINDU LAW—WILL—FAMILY ARRANGEMENT—TEST.

Gift.

ABSOLUTE ESTATE—GIFT OF.
ADOPTED SON—GIFT TO A PERSON DESCRIBED AS AN—INVALIDITY OF ADOPTION.
ALIENATION—RESTRAINT UPON.
ANCESTRAL PROPERTY—SELF-ACQUIRED PROPERTY—GIFT OF—VALIDITY.
AURASA SON—GIFT TO A PERSON DESCRIBED AS AN—DONEE NOT IN FACT SUCH—EFFECT OF.
CHARITY.
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CONDITION.
CONFIRMATORY GIFT—FRESH GIFT.
CONSIDERATION IMAGINARY—INSERTION OF, IN DEED OF GIFT.
CONSTRUCTION OF—BENIGNANT CONSTRUCTION.
DAUGHTER—GIFT TO.
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DEED OF—NATURE OF—CASE IN PLEADINGS AND IN COURT BELOW AS TO—FINDING IN APPEAL INCONSISTENT WITH.
DEFEASANCE—CONDITION OF—APPLICATION OF—POSTPONEMENT OF, FOR INDEFINITE PERIOD.
DONEES UNDER—PERSONS IN EXISTENCE CAPABLE OF TAKING AT TIME WHEN GIFT TAKES EFFECT.
DONOR OUT OF POSSESSION—GIFT BY.
ESSENTIALS OF—INTENTION TO TRANSFER TITLE.
ESTATE CONVEYED UNDER.
ESTATE TAIL—ATTEMPT TO CREATE.
EVIDENCE OF.
FREEHOLD INTEREST—GRANT TO HINDU OF—HERITABILITY OF.
FRESH GIFT—CONFIRMATION OF PRIOR GIFT.
GIFT OVER.
GOVERNMENT NOTES—GIFT OF.
HEIRS—CLASS OF—LEADING MEMBER OF—ENUMERATION OF.
ILLEGITIMATE CHILD.
IMMOVABLE PROPERTY SUBJECT OF—FURNITURE AND PLANT ATTACHED TO—DONEE'S RIGHT TO.
IMPERFECT GIFT—COMPLETED GIFT—EVIDENCE.
INCOME—GIFT OF.
INFERENCE OF, FROM A SERIES OF TRANSACTIONS—CASE OF.
INHERITANCE—LEGAL COURSE OF—ALTERATION OF.
JOINT GIFT TO TWO DONEES—ONE OF THEM INCAPABLE OF TAKING AND THE OTHER NOT.

HINDU LAW—(*Contd.*)

Gift—(*Contd.*)

LEGAL OBLIGATION—GIFT IN DISCHARGE OF—DISTINCTION.
LIFE INTEREST—IMMOVEABLE PROPERTY GIFTED BY PERSON WITH—FURNITURE AND PLANT ATTACHED TO—DONEE'S RIGHT TO.
LIFETIME OF DONOR—GIFT TO TAKE EFFECT AFTER—DONEE'S RIGHTS UNDER, IN LIFETIME OF DONOR.
LIMITATION—WORDS OF—INSERTION OF, NOT IN CLAUSE EMBODYING GIFT, BUT IN CLAUSE DEALING WITH EXPIRATION THEREOF AND WITH GIFT OVER.
MAINTENANCE.
MAINTENANCE ALLOWANCE TO DONOR—PAYMENT OF—CONDITION OF.
NATURE OF—IMMEDIATE ABSOLUTE CONVEYANCE OF PROPERTY—LIFETIME OF DONOR—GIFT TO TAKE EFFECT AFTER.
PERSONA DESIGNATA.
PIOUS GIFT.
PREAMBLE OF DEED—SUBSTANTIVE DISPOSITION.
PROOF OF.
RELIGIOUS ENDOWMENT.
SALE DEED—GIFT INTENDED BY—FINDING OF.
SETTING ASIDE OF DEED OF.
SUBSTANTIVE DISPOSITION—PREAMBLE OF DEED.
TRUST.
UNBORN PERSONS—GIFT TO.
VALIDITY OF.
WIDOW—GIFT BY.
WIDOW—GIFT TO.
WIFE—GIFT TO.
WILL—DISPOSITIONS BY—POWERS OF.
WILL OR.
WOMAN—GIFT TO.
WORDS IN DEED OF.

ABSOLUTE ESTATE—GIFT OF.

——*Restraint on alienation—What amounts to.*

Where a gift of an absolute estate to a lady was followed by the clause "you shall enjoy it with your sons and grandsons; if at any time any heir of mine shall make any claim, that will be null and void," *held*, that the clause could not be construed as a limitation to the sons, and consequently as a restraint on alienation.

The clause may have been added to express the absolute and irrevocable nature of the gift. COLLECTOR OF MOORSHEDABAD *v.* RANEE SHEBESSURREE.
(1872) 2 Suth. 661 (662) = 18 W. R. 226.

———Word—Dakhilkar—Use of—Effect. *See* DAKHILKAR. **(1889) 16 I. A. 166 (172-3) = 17 C. 122 (129).**

ADOPTED SON—GIFT TO A PERSON DESCRIBED AS AN—INVALIDITY OF ADOPTION.

———Effect of, on validity of gift. *See* HINDU LAW—ADOPTION—ADOPTED SON—GIFT TO A PERSON DESCRIBED AS AN.

ALIENATION—RESTRAINT UPON.

———Clause amounting to. *See* HINDU LAW—GIFT—ABSOLUTE ESTATE—GIFT OF—RESTRAINT UPON ALIENATION. **(1872) 18 W. R. 226.**

———Estate created—Restraint inconsistent with—Validity of—Effect of. *See* HINDU LAW—WILL—ALIENATION—RESTRAINT UPON.

ANCESTRAL PROPERTY—SELF-ACQUIRED PROPERTY—GIFT OF—VALIDITY.

———*Law in Bengal and in Madras.*

The Law of Gifts during life is of the simplest character. As to ancestral estate it is said to be improper that it should be aliened by the holder, without the concurrence of those

HINDU LAW—(*Contd.*)

Gift—(*Contd.*)

ANCESTRAL PROPERTY — SELF-ACQUIRED PROPERTY—GIFT OF—VALIDITY—(*Contd.*)

who are interested in the succession, but by the law as prevailing in Bengal at least the impropriety of the alienation does not affect the legal character of the act (factum valet), and it has long been recognised as law in Bengal that the legal power of transfer is the same as to all property, whether ancestral or acquired (66-7). (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE. **(1872) Sup. I. A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.**

AURASA SON—GIFT TO A PERSON DESCRIBED AS AN—DONEE NOT IN FACT SUCH—EFFECT OF.

———Persona designata—*Gift if to donee as a.*

On February 16, 1889, the then Raja of Pittapur made a will, whose terms were: "Though it is not specially necessary according to Hindu law that (property) should be passed to the aurasa son by means of a will I have written this will to declare my opinion to all people that I have according to Hindu Law passed the property to my aurasa son without (property) being disturbed. It is hereby settled that my entire property should go to my aurasa son Venkata Surya and that cash (allowance) settled already to be paid to my adopted son Ramakrishna should continue to be paid."

On September 7, 1889, the Raja made another will, by which after saying it had been his intention to give all his moveable and immoveable property to his aurasa son (again naming him) he gave him his self-acquired properties and other immoveable property which he had got under a will, and also the whole of his moveable property. On March 17, 1890, he made another will, by which he confirmed the gifts to his aurasa son and the allowance to the adopted son.

Held, on a construction of the will, that there was a gift to Venkata Surya, though he was not the aurasa son of the Raja, and that the false description of him as aurasa son did not vitiate the gift. (*Sir Richard Couch.*) SRI RAJA RAO VENKATA SURYA MAHIPATI RAMA KRISHNA RAO BAHADUR *v.* COURT OF WARDS.

(1899) 26 I. A. 83 (89-90) = 22 M. 383 (390-1) = 3 C. W. N. 415 = 1 Bom. L. R. 277 = 7 Sar. 481.

CHARITY.

———Gift to. *See* CHARITY.

CLASS—GIFT TO A.

———Class of which no member existed at date of deed—Gift to—Invalidity of. (*Lord Buckmaster.*) MADHAVRAO GANPATRAO DESAI *v.* RAGHUNATH AGASKAR.

(1927) 55 I. A. 74 = 52 B. 176 = 47 C. L. J. 198 = 30 Bom. L. R. 282 = 107 I. C. 119 = 27 L. W. 400 = I. L. T. 40 B. 86 = 26 A. L. J. 560 = 32 C. W. N. 925 = A. I. R. 1928 P. C. 33 = 54 M. L. J. 245.

———Class some of whom not in existence at the time and therefore not capable of taking—Gift to—Validity of—Effect of—English rules as to—Applicability. *See* HINDU LAW—JOINT FAMILY—MANAGER—GIFT BY.

(1883) 11 I. A. 26 = 10 C. 626.
(1884) 11 I. A. 164 (177-8, 178-9) = 6 A. 560 (572-3, 574-5).

———*Designated person coupled with a class described in general terms if merged into that class.*

It is a question in each case whether a designated person who is coupled with a class described in general terms is merged into that class or not (177-8). (*Sir Arthur Hobhouse.*) RAI BISHEN CHAND *v.* ASMAIDA KOER.

(1884) 11 I. A. 164 = 6 A. 560 (573-4) = 4 Sar. 512.

HINDU LAW—(*Contd.*)

Gift—(*Contd.*)

CLASS—GIFT TO A—(*Contd.*)

———*Leake* v. *Robinson—Rule in.*

The will of a childless Hindu, after giving his mother and wife possession of his property for their lives, provided as follows:—"On the death of my mother and my wife, the sons of my sisters, that is to say, those sons who are now in existence, as also those who may be born hereafter, shall, in equal shares, hold the said property in possession and enjoyment by right of inheritance."

Held, that the devise in favour of the testator's nephew, alive at the time of his death, was valid, and was not invalidated, because it could not operate in favour of nephews then unborn.

It was contended that the gift, including, as it did, a gift to persons not in existence at the time of the testator's death was altogether void. In their Lordships' opinion the question was set at rest for all practical purposes by the judgment of Wilson, J., in 12 Cal. 663. In that case the learned Judge showed that the rule commonly referred to as the rule in *Leake* v. *Robinson* was introduced into India owing to a mistaken analogy and stated that he should be "prepared to hold as the general rule that where there is a gift to a class, some of whom are or may be incapacitated from taking because not born at the date of gift or the death of the testator as the case may be and where there is no other objection to the gift, it should enure for the benefit of those members of the class who are capable of taking." In that conclusion their Lordships agree (64). (*Lord Macnaghten.*) BHAGABATI BARMANYA *v.* KALICHARAN SINGH.

(1911) 38 I. A. 54 = 38 C. 468 (472-3) = 15 C. W. N. 393 = 9 M. L. T. 411 = 13 C. L. J. 434 = 8 A. L. J. 433 = 13 Bom. L. R. 375 = 10 I. C. 641 = (1911) 2 M. W. N. 295 = 21 M. L. J. 387.

COMPLETED GIFT.

———*Case of—Finding of gift of corpus with reservation in favour of interest—Propriety.*

Where a party to a suit puts forward the case of an out and out gift of immoveable property in his favour and neither alleges nor proves that the gift was a gift of the corpus of the property subject to a reservation in favour of the interest, it is hardly proper for the court to find that the gift was of the corpus only subject to a reservation in favour of the interest and to give judgment accordingly (10).

It is hardly right to invent a new case when the judgment comes to be delivered. (*Lord Hobhouse.*) NAWAB IBRAHIM ALI KHAN *v.* UMMAT-UL-ZOHRA.

(1896) 24 I. A. 1 = 19 A. 267 (276-7) = 7 Sar. 117.

———*Case of, in pleadings and in Indian Courts—Privy Council appeal—Contract to make gift—Change of case into—Permissibility.*

The suit was for the recovery of certain jewels mentioned in the plaint and the decree sought was delivery of the jewels or payment of their value conformably to S. 208 of C. P. Code of 1882, which deals with a suit for delivery of specific moveables on the ground of property. The plaintiff alleged that the said jewels were gifted to her by her deceased great-aunt and that she had thereby become the owner of the same; the cause of action was alleged to have arisen, when the Receiver of the estate of the deceased took possession of the said jewels.

The Courts in India found against the gift alleged. On appeal to the Privy Council, the plaintiff suggested that there was an enforceable contract by the deceased to make a gift of the said jewels to her and that she was entitled to recover on the basis of that contract. There was no trace, however, of contract, as a possible cause of action, in the pleadings,

HINDU LAW—(*Contd.*)

Gift—(*Contd.*)

COMPLETED GIFT—(*Contd.*)

the issues, the evidence, or the judgments, for in India the issue was gift, not contract.

Held that, in view of the long duration of the suit and the lack of finality in any decree that would at that stage be possible, the change of front could not be permitted, and that the plaintiff's contention must fail.

The argument now advanced is contradictory of the case made in the courts below, and involves a line of attack that the defendants had no opportunity to meet, while the litigation was in the lower courts, where appropriate evidence could have been adduced. The case is essentially one where the observation of Lord Westbury in 11 M. I. A. 7 should be strictly applied, *viz.*, "It is impossible to conclude parties by inferences of fact which are not only not consistent with the allegations that are to be found in the plaint, which constitute the case that the defendant has to meet, but which are in reality contradictory of the case made by the plaintiff." (*Sir Lawrence Jenkins.*) SRI RAJAH MALRAJU LAKSHMI VENKAYAMMA RAO *v.* SRI RAJAH VENKATADRI APPA ROW.

(1920) 13 L. W. 256 (259) = (1921) M. W. N. 77 = 23 Bom. L. R. 713 = 19 A. L. J. 97 = 33 C. L. J. 171 = 25 C. W. N. 654 = 59 I. C. 767 = 40 M. L. J. 144.

———Condition into — Importation of, subsequently—Validity. *See* HINDU LAW — GIFT—CONDITION ATTACHED TO—COMPLETED GIFT.

(1883) 11 I. A. 44 (49-50) = 6 A. 313 (321).

———Imperfect gift—Test—Evidence. *See* HINDU LAW—GIFT—IMPERFECT GIFT—COMPLETED GIFT,

(1928) 57 M. L. J. 581.

CONDITION.

———Alienation—Restraint upon—Condition of—What amounts to. *See* HINDU LAW—GIFT—ABSOLUTE ESTATE—GIFT OF—RESTRAINT ON ALIENATION.

(1872) 18 W. R. 226.

———Alienation—Restraint on, inconsistent with estate created—Condition as to—Validity of—Effect of. *See* HINDU LAW—WILL—ALIENATION—RESTRAINT UPON, ETC.

———Breach of—Possession to donor on ground of—Decree for. *See* HINDU LAW—GIFT—CONDITION—MAINTENANCE ALLOWANCE TO DONOR.

(1927) 26 L. W. 94.

———*Completed gift—Importing of condition subsequently into—Validity of.*

By a verbal transfer one *H* transferred his absolute interest in certain property to his wife and her children. No condition was imposed at the time of the verbal transfer. Subsequently *H* presented a petition in the Settlement Department alleging that his wife and her three children had been put in possession in equal shares, on condition of the wife obeying her husband and the children remaining faithful to their religion, and that a mutation of names might take place.

Held that, assuming that *H* intended by the petition to import a condition into the gift, it was inefficacious for that purpose, inasmuch as the gift having been complete at the time when the actual transfer took place, the parties could not afterwards import a condition (49-50). (*Sir Arthur Hobhouse.*) RAM SARUP *v.* MUSST. BELA.

(1883) 11 I. A. 44 = 6 A. 313 (321) = 4 Sar. 493.

———*Immoral condition—Gift subject to—Effect.*

Where the condition attached to a gift, and not the consideration for it, is immoral, the case would fall under the general rule of law that a gift to which an immoral condition is attached remains a good gift, while the condition is void (50). (*Sir Arthur Hobhouse.*) RAM SARUP *v.* MUSSUMAT BELA.

(1883) 11 I. A. 44 = 6 A. 313 (321) = 4 Sar. 493.

———*Maintenance allowance to donor—Payment of—Condition of—Breach of—Invalidity of deed in case of—Provision for—Validity—Possession to donor on ground of breach—Decree for.*

The suit was to recover possession of certain zemindari lands which had been conveyed by the 1st plaintiff to the defendants by a registered deed of gift, subject to the payment of a maintenance allowance of Rs. 2,000 a year for the benefit of the 1st plaintiff himself, of his two stepmothers, one of whom was the 2nd plaintiff, and of his wife, the third plaintiff, and subject to the condition that on any failure to pay the allowance the deed should become null and void.

The Sub-Judge found that the defendants had never paid anything to the second and third plaintiffs, and that though they might have paid something to, and incurred certain expenses, for, the 1st plaintiff, for a few years after the deed, they never paid him anything thereafter for a period of 7 years, and that there had been a clear violation of the conditions. The Appellate Court agreed with the Sub-Judge, and found further that the condition as regards the payment of Rs. 2,000 annually was never complied with and that the defendants had no justification for withholding it. They accordingly made a decree for possession with mesne profits.

Held, that the decree was the right decree to make on the findings (127). (*Sir John Wallis.*) MAHANT RAI *v.* MT. LACHHMINA.

(1927) 26 L. W. 94 = A. I. R. 1927 P. C. 123 = (1927) M. W. N. 456 = 31 C.W.N. 1087 = 39 M.L.T 155 = 101 I. C. 363 (2).

———*Precedent or subsequent—Test.*

Held, on the construction of a deed of gift executed by a Hindu, that the provisions therein in the unborn son's favour amounted to a condition subsequent. (*Sir John Wallis.*) NARSINGH RAO *v.* MAHALAKSHMI BAI.

(1928) 55 I. A. 180 = 50 A. 375 = 109 I.C. 703 = 48 C. L. J. 106 = 32 C. W. N. 1065 = 28 L. W. 171 = 26 A.L.J 897 = 30 Bom. L. R. 1331 = 5 O. W. N. 951 = A. I. R. 1928 P. C. 156 = 55 M. L. J. 42 (54-5).

———*Religion — Condition that donees should remain faithful to their—Gift subject to—Validity.*

Although a father might, on making a gift to his infant children, attach or purport to attach a condition that they should remain faithful to their religion, it would be a condition only and subject to the law of conditions (49). (*Sir Arthur Hobhouse.*) RAM SARUP *v.* MUSSUMAT BELA.

(1883) 11 I. A. 44 = 6 A. 313 (321) = 4 Sar. 493.

———*Subsequent condition—Invalidity of—Effect of, on prior disposition—Transfer of Property Act, Ss.* 28, 30.

It is a well-settled principle of law, which has now been embodied in Ss. 28 and 30 of T.P. Act, that in the case of a condition subsequent "if the ulterior disposition is not valid the prior disposition is not affected by it. (*Sir John Wallis.*) NARSINGH RAO *v.* MAHALAKSHMI BAI.

(1928) 55 I. A. 180 = 50 A. 375 = 109 I. C. 703 = 48 C. L. J. 106 = 32 C. W. N. 1065 = 28 L. W. 171 = 26 A. L. J. 897 = 30 Bom. L. R. 1331 = 5 O.W.N. 951 = A. I. R. 1928 P. C. 156 = 55 M. L. J. 42 (55).

CONFIRMATORY GIFT—FRESH GIFT.

———Distinction. *See* HINDU LAW — GIFT—FRESH GIFT.

(1919) 46 I. A. 285 (291) = 43 M. 244 (251).

HINDU LAW—(*Contd.*)

Gift—(*Contd.*)

CONSIDERATION IMAGINARY—INSERTION OF, IN DEED OF GIFT.

———*Common in India.*

In India it is common in the case of a deed intended to be a deed of gift to insert an imaginary consideration. (*Sir Arthur Wilson.*) ISMAIL MUSSAJEE MOOKEEDUM *v.* HAFIZ BOO. **(1906) 33 I. A. 86 = 33 C. 773 (785) = 10 C. W. N. 570 = 3 A. L. J. 353 = 3 C. L. J. 484 = 8 Bom. L. R. 379 = 1 M. L. T. 137 = 9 Sar. 94 = 16 M. L. J. 166.**

CONSTRUCTION OF—BENIGNANT CONSTRUCTION.

———*Real meaning of deed to be regarded—Imperfection in or incorrectness of language to be ignored.*

Another general principle applicable to transfers by gift (more liberally applied in the law of England to wills than to gifts *inter vivos*) is, that a benignant construction is to be used, and that if the real meaning of the document can be reasonably ascertained from the language used, though that language be ungrammatical or untechnical, or mistaken as to name or description, or in any other manner incorrect, provided it sufficiently indicate what was meant, that meaning shall be enforced to the extent and in the form which the law allows (65). (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE. **(1872) Sup. I. A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.**

DAUGHTER—GIFT TO.

———*Estate of inheritance conveyed under.*

A Hindu died leaving him surviving a widow, a daughter and an adopted son. Shortly before his death he executed a deed which was in these terms : "I am proprietor of one-third share of the whole 16 annas" of certain mouzahs "which I inherited from my forefathers. Whereas no son is born to me except one daughter, by name *S*, whom I have reared up like my son, and have still got in my house, and not allowed to go to her husband's house, and as on account of my dotage I have given up all hopes of my existence, consequently, in order to evade all future disputes I have made a partition in this wise : that a one-third share out of the whole 16 annas of mouzah Musli with dakhili, Rs. 1100 in cash, and Bhichuck slave with his children, I have granted to *S*, my daughter, for her maintenance, in order that she may enjoy possession of the same with her children, as proprietress, and thus pass her days."

Held, that the daughter, *S*, took an estate of inheritance in the property conveyed to her (259). (*Sir Robert P. Collier.*) MUSSUMAT BHAGBUTI DAEE *v.* CHOWDRY BHOLANATH THAKOOR. **(1875) 2 I.A. 256 = 1 C. 104 = 24 W. R. 268 = 3 Suth. 186 = 3 Sar. 528.**

———*Male heirs—Gift to daughter for her life and after her death to her—Effect of—Independent gift to male heirs—Words "male heirs" words of inheritance or of gift.*

On 1st May, 1889, *J*, a Hindu dwelling in Bombay, in consideration of the natural love and affection which he bore to "his children and grandchildren," made a voluntary settlement in their favour of property chiefly consisting of real estate. The children named as beneficiaries were four, Krishnabai, Pootlabai, Raghunath, and Kashibai, all of whom were married and had children living at the date of the deed, while Raghunath had both children and grandchildren. The settlement took the form of a conveyance of property to trustees upon trust to pay the income, after deducting Rs. 25 per month for taxes and repairs, to the settlor for life, and, after his death, then upon certain trusts expressed in the following words :—

" Upon trust out of the said rents, dividends and profits to pay one-fourth part of the net amount to Raghunath

HINDU LAW—(*Contd.*)

Gift—(*Contd.*)

DAUGHTER-GIFT TO—(*Contd.*)

during his life and from and after the decease of the said Raghunath in trust to pay the same to all the male heirs of the said Raghunath share and share alike and as to one-quarter of the said rents, dividends and profits upon trust to pay the same to Krishnabai during her life for her sole and separate use and after her death in trust for the male heirs of the said Krishnabai share and share alike."

J, the settlor, died in July, 1894. Krishnabai died in 1897, leaving six sons, all of whom were living at the date of the settlement. The dispute arose in relation to her share, the contention of the heirs of the settlor being that the limitations in favour of her male heirs after her death were contrary to Hindu Law and void, and that in consequence there was a resulting trust in favour of the settlor.

Held, that the true interpretation of the deed was that the persons who answered the description of male heirs at the date of Krishnabai's death were the persons in whose favour an independent gift was made, but that by operation of the Hindu Law there would be excluded from that class people who were not living when the deed was executed, and that the estate so conferred upon those persons was an absolute estate.

It was argued that the words " the male heirs of Krishnabai after Krishnabai's death " themselves connoted a descendible quality of estate with which it was the intention of the settlor to impress the property either in the gift to Krishnabai or to the male heirs. Their Lordships are unable to accept this view, which is permeated by the suggestion that the words when used in a Bombay settlement are primarily words of inheritance denoting the character of an estate. They do not think that the male heirs of Krishnabai took by inheritance from her. They are of opinion that the estate that Krishnabai took was defined and limited by her life-interest, and that it was not by descent from her but by virtue of a wholly independent gift that her male heirs were beneficiaries under the deed. The words " male heirs " are not words of inheritance, but are words of gift. (*Lord Buckmaster*). MADHAVRAO GANPATRAO DESAI *v.* RAGHUNATH AGASKAR. **(1927) 55 I. A. 74 = 52 B. 176 = 47 C. L. J. 198 = 30 Bom. L. R. 282 = 107 I. C. 119 = 27 L. W. 400 = I. L. T. 40 B. 86 = 26 A. L. J. 560 = 32 C. W. N. 925 = A. I. R. 1928 P. C. 33 = 54 M. L. J. 245.**

———*Mother entitled by custom to make absolute gift of husband's share in family property—Gift by, of absolute estate—Deed amounting to.*

Where a Hindu widow entitled by custom to make an absolute gift of her husband's share in family property to her daughter or daughter's son executed a deed of gift of such property to her daughter, the words of gift being followed by " I promise and agree in writing that the donee may, from the date of execution of this instrument, take proprietary possession similar to mine over the gifted property. There has been left no claim, right or dispute to me or any of my heirs," *held*, that the gift was intended to be and should be construed as an absolute gift and not merely a gift of her widow's estate (47). (*Sir Richard Couch.*) NANDI SINGH *v.* SITA RAM. **(1888) 16 I. A. 44 = 16 C. 677 (681-2) = 5 Sar. 309.**

———*Reverter to donor and his heirs on death of daughter without issue—Gift subject to condition of—Evidence.*

In 1868 the then owner of the Bettia Raj made a verbal gift of a mouzah appertaining to the Raj to his daughter on the occasion of her marriage with the appellant. The daughter died without issue, and thereupon the respondent, who succeeded to the Raj on the death of the donor, sued to recover possession of the mouzah from the appellant,

HINDU LAW—(*Contd.*)

Gift—(*Contd.*)

DAUGHTER—GIFT TO—(*Contd.*)

alleging that it was given to the deceased daughter, subject to the condition that, if she should happen to die without issue, it should revert to the Raj, and that, therefore, the mouzah had reverted to the Raj. The appellant, on the other hand, asserted that the mouzah was given to him, for the benefit of his wife and himself, and that, even if the gift was to his wife, it was not subject to the condition alleged.

In June, 1883, the donor executed an ikrarnamah, by which, after reciting that the mouzah in question had been given to his daughter by way of Kohincha gift at the time of her marriage, but that no deed had been drawn up, the donor purported to convey the mouzah to his daughter by way of Kohincha gift "with the same conditions as before," to hold possession and enjoy the income, but without power of alienation, subject, however, to the provision that, in the event of her dying without issue, the property should revert to him and after him to his heirs.

The High Court found that there was no ground for impeaching the ikrarnamah, and, on the strength of that document and the facts and circumstances of the case, held that the gift was subject to the condition alleged by the respondent.

Their Lordships affirmed the High Court, observing:—The ikrarnamah of the 15th of June, 1883, if not a fraudulent deed, is decisive of the case. The character of the old Maharajah (the donor) for honour and probity stood so high that no one ventured to suggest that there could have been any fraud on his part (322). (*Lord Macnaghten.*) SHAM SHIVENDAR SAHI *v.* JANKI KOER. **(1908) 36 I. A. 1 = 36 C. 311 = 5 M. L. T. 130 = 9 C. L. J. 517 = 11 Bom. L. R. 759 = 1 I. C. 126 = 19 M. L. J. 289.**

DEATH-BED GIFT.

———*Validity—Proof—Quantum.*

When the disposition is, as in this case, in the nature of a death-bed disposition, the Court that upholds it ought, from whomsoever it proceeded, to be satisfied that it was the free voluntary act of the party by whom it purports to have been executed, and expresses his real intentions (431). (*Sir James W. Colvile.*) GERESH CHUNDER LAHOREE *v.* MUSSUMAT BHUGGOBUTTY DEBIA. **(1870) 13 M I. A. 419 = 14 W. R. (P. C.) 7 = 2 Suth. 339 = 2 Sar. 579.**

DEED OF—NATURE OF—CASE IN PLEADINGS AND IN COURT BELOW AS TO—FINDING IN APPEAL INCONSISTENT WITH.

———*Propriety.*

In a suit brought by the plaintiff against *M*, the plaintiff's case was that a deed of gift executed by *M*, in favour of her daughter, the plaintiff's deceased wife, was a present absolute gift of the property conveyed by it to his wife. *M's* defence, which was upheld by their Lordships, was that the deed was intended to be operative so far as to convey the property after her death, and that there was, at the time of its execution, an agreement that for her life she was to have the beneficial interest, and her daughter was to hold *benami* for her. She did not allege that the deed was a fraud against the creditors, and was therefore altogether void or inoperative. The plaintiff did not either set up any such case as that the deed was fraudulent, and that therefore *M*, was estopped from disputing it.

Held, differing from the High Court, that, as between the parties to the suit, the issue did not arise as to whether the deed was fraudulent against the creditors, nor whether it was absolutely colorable and void. (*Sir Robert P. Collier.*) RAMANUGRA NARAIN *v.* MAHASUNDUR KUNWAR. **(1873) 12 B. L. R. 433 = 3 Sar. 277.**

HINDU LAW—(*Contd.*)

Gift—(*Contd.*)

DEFEASANCE—CONDITION OF—APPLICATION OF—POSTPONEMENT OF, FOR INDEFINITE PERIOD.

———*Legality of.*

If the attempt to interfere with the course of descent according to law is to be regarded as a condition of defeasance, it was applicable not merely to the case of *A*, but to the case of every male descendant who happened to leave no male issue; and its application might have been postponed for an indefinite period. Their Lordships are not aware of any authority to warrant such a provision. (*Mr. Ameer Ali.*) PURNA SASTRI BHATTACHARJI *v.* KALIDHAN RAI CHOWDHURI. **(1911) 14 C L. J. 1 = 8 A.L.J. 681 = 13 Bom. L. R. 451 = 15 C. W. N. 693 = 11 I. C. 412 = 21 M. L. J. 1119 (1124 5).**

DONEES UNDER—PERSONS IN EXISTENCE CAPABLE OF TAKING AT TIME WHEN GIFT TAKES EFFECT.

———(*See also* HINDU LAW—GIFT—UNBORN PERSONS.

———Children in embryo, who afterwards come into separate existence, included in class of, by a rule now generally adopted in jurisprudence. (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE. **(1872) Sup. I. A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth 692.**

———*Condition as to.*

The Law of Gifts during life applies to all persons in existence and capable of taking from the donor at the time when the gift is to take effect so as to fall within the principle expressed in the Dayabhaga by the phrase "relinquishment in favour of the donee who is a sentient person." The donee must be a person in existence capable of taking at the time when the gift takes effect (67). (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE. **(1872) Sup. I. A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.**

———*Rule as to—Adopted sons—Gifts to—Exception in case of—Reason for.*

The exception is based on the peculiar law applicable to the relation of an adopted child. In contemplation of law such child is begotten by the father who adopts him, or for and on behalf of whom he is adopted. Such child may be provided for as a person whom the law recognises as in existence at the death of the testator, or to whom, by way of exception, not by way of rule, it gives the capacity of inheriting or otherwise taking from the testator, as if he had existed at the time of the testator's death having been actually begotten by him (67). (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE. **(1872) Sup. I. A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.**

DONOR OUT OF POSSESSION—GIFT BY.

———*Rule as to—Principle and reason of—English law—Analogy in.*

It was contended that what is said in the books on Hindu Law about the completion of a gift by possession is founded on a public policy relating to land and analogous to the feudal rule requiring investiture or livery of seisin. But the texts relate to moveables as well as to land; and, with one not very clear exception, they relate to intended gifts which it is contemplated that the donor may take back until they are perfected. They appear to rest on a principle which has nothing to do with the feudal rules, and the European analogy to which is rather to be found in the cases relating to voluntary contracts or transfers, where, if the donor has not done all he could to perfect his contemplated gift, he cannot be compelled to do more (232-3). The reason for delivery

HINDU LAW—(*Contd.*)

Gift—(*Contd.*)

DONOR OUT OF POSSESSION—GIFT BY—(*Contd.*)

being necessary is th t the gift may not be resumed (230). (*Sir Richard Couch.*) KALI DAS MULLICK *v.* KANHYA LAL PUNDIT. **(1884) 11 I. A. 218 = 11 C. 121 (135-6) = 4 Sar. 578.**

——*Validity—Donor affirming gift—Possession of property—Donee's right to, as against party claiming adversely to donor and donee.*

Under the Hindu Law, a gift is not invalid on the ground that the donor was out of possession, and that no possession was given to the donee (229).

Where the donor was a party to a suit for possession brought by the donee and he affirmed the validity of the gift, but its validity was disputed by a person who claimed adversely to the donor and the donee, *held*, that the gift was valid, and that the donee was entitled to possession if the deed of gift conferred upon him a right to possession.

If the rule were otherwise, so long as a tresspasser prevented the true owner from taking possession, however violently or wrongfully, that owner could not make any title to a grantee (232). (*Sir Richard Couch.*) KALI DAS MULLICK *v.* KANHYA LAL PUNDIT.

(1884) 11 I. A. 218 = 11 C. 121 (135) = 4 Sar. 578

ESSENTIALS OF—INTENTION TO TRANSFER TITLE.

——*Proof of—Necessity.*

In a case in which the defendant, the widow of a predeceased brother of the plaintiff's husband, set up a gift by the plaintiff of one-half of the property to which she became entitled as the widow of the surviving member of the family, *held*, reversing the High Court, that the transactions relied upon for inferring such a gift failed to prove any intention on the part of the plaintiff to transfer title to the defendant (159-60). (*Lord Hobhouse.*) DEO KUAR *v.* MAN KUAR.

(1894) 21 I. A. 148 = 17 A. 1 (15-6) = 6 Sar. 489 = 4 M. L. J. 272.

ESTATE CONVEYED UNDER.

——Absolute estate—Words "Dakhilkar"—Use of—Effect. *See* DAKHILKAR—MEANING AND EFFECT OF.

(1889) 16 I. A. 166 (172-3) = 17 C. 122 (129).

——*Estate of inheritance—Intention clear to create—Heirs—Imperfection or inaccuracy in description of—Effect.*

If the gift confers an estate upon a man with words imperfectly describing the kind of inheritance, but shewing that it was intended that he should have an estate of inheritance, the language would be read as conferring an estate inheritable as the law directs (65). (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE.

(1872) Sup. I. A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.

——Where the intention to create by a deed of gift an estate of inheritance is clear, the circumstance that those who would take as heirs are named in wrong order, or (in other words) there is an inaccurate enumeration of them does not matter (184). (*Lord Davey.*) BASANTA KUMARI DEBI *v.* KAMIKSHYA KUMARI DEBI.

(1905) 32 I. A. 181 = 33 C. 23 (28) = 2 C. L. J. 238 = 10 C. W. N. 1 = 7 Bom. L. R. 904 = 2 A. L. J. 810 = 9 Sar. 1 = 15 M. L. J. 320.

——*Gift to a man simply without words of inheritance—Addition to, of imperfect description of it as gift of inheritance.*

If an estate were given to a man simply without express words of inheritance, it would, in the absence of a conflicting context, carry by Hindu Law (as under the present state of law it does by will in England) an estate of inheritance.

HINDU LAW—(*Contd.*)

Gift—(*Contd.*)

ESTATE CONVEYED UNDER—(*Contd.*)

If there were added to such a gift an imperfect description of it as a gift of inheritance, not excluding the inheritance imposed by the law, an estate of inheritance would pass (65). (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE.

(1872) Sup. I.A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.

——*Heirs other than those specified by law—Gift to a man and his, without power of alienation.*

If the gift were to a man and his heirs to be selected from a line other than that specified by law, expressly excluding the legal course of inheritance, as, for instance, if an estate were granted to a man and his eldest nephew, and the eldest nephew of such eldest nephew, and so forth, for ever to take as his heirs, to the exclusion of all other heirs, and without any of the persons so taking having the power to dispose of the estate during his lifetime; here, inasmuch as an inheritance so described is not legal, such a gift cannot take effect except in favour of such persons as could take under a gift to the extent to which the gift is consistent with the law. The first taker would, in this case, take for his lifetime, because the giver had at least that intention. He could not take more, because the language is inconsistent with his having any different inheritance from that which the gift attempts to confer, and that estate of inheritance which it confers is void (66). (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE.

(1872) Sup. I. A. 47 = 9 B L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.

——*Indefinite words of gift—Effect—Transfer of Property Act—Law prior to.*

Prior to the Transfer of Property Act the rule of law was that indefinite words of gift were calculated to convey all the interest of the grantor, but that it was necessary to read the whole instrument to gather the intention (228). (*Sir Richard Couch.*) KALI DAS MULLICK *v.* KANHYA LAL PUNDIT. **(1884) 11 I. A. 218 = 11 C. 121 (130-1) = 4 Sar. 578.**

——*Intention of donor as to—Evidence of—Mutation of names—Petition by donor for – Mutation pursuant to—Value of—Oral gift.*

On an issue as to whether under an oral gift of property made by a person in favour of his wife and children an absolute interest or only a life-interest was conveyed to the donees, *held*, that a petition for mutation of names filed by the donor in the Settlement Department immediately after the gift, and a mutation of names effected in pursuance thereof, afforded no evidence as to the extent of interest conferred by the transfer (48).

The petition and the mutation would be evidence of a real *bona fide* transter of some kind at the time, but not of the quantum of interest conveyed thereunder. (*Sir Arthur Hobhouse.*) RAM SARUP *v.* MUSST. BELA.

(1883) 11 I. A. 44 = 6 A 313 (319-20) = 4 Sar. 493.

——*Intention of donor as to—Evidence of—Will subsequent by him stating effect of gift—Admissibility of—Value of—Oral gift.*

The question was whether a lease or gift made orally, and for indefinite duration, was a lease for life, or a lease or gift resumable either at the pleasure of the lessor or upon notice.

There was absolutely no evidence of the intention of the donor, which was contemporaneous with the gift. Within two years after the gift, but many years before the events which led to its revocation, in answer to the circular sent

HINDU LAW—(*Contd.*)

Gift—(*Contd.*)

ESTATE CONVEYED UNDER—(*Contd.*)

out by the Government to talookdars, desiring to know who were their successors, the donor followed the not uncommon course of making what was called a will by way of pointing out to the Government who the successor was. In that will she stated that certain persons had rights, but she at the same moment asserted her own right of altering those dispositions if she pleased. Among those rights were the four villages held by the donee.

Held, that the evidence afforded by the will was not without bearing upon the donor's right to resume (136-7)

Thus we have stated on the face of a formal document put in for the purpose of informing the Government of the state of the donor's talook that the talookdar then claimed the entire right of altering the disposition of these very four villages. Such evidence is by no means conclusive, and under some circumstances it might be worthless, or even inadmissible. Under the circumstances of this case, however, a formal declaration by the donor as to the positions of herself and the donee with reference to the gift ought not to be disregarded (137). (*Sir Arthur Hobhouse.*) NAJBAN BIBI *v.* CHAND BIBI. **(1883) 10 I.A. 133 = 10 C. 238 (242 3) = 13 C. L. R. 401 = 4 Sar. 472 = R.& J's. No. 74.**

———*Life estate—Absolute estate—Indefinite words—Purpose of gift showing only gift of life estate—Effect.*

An ikrarnama executed by a Hindu widow in favour of *R*, her mother-in-law, ran as follows:—

"That the taluqs comprised in the mouzahs mentioned in the annexed schedule, which were purchased in my husband's name and which are recorded in my name in the collectorate sheristas, are under your control, with all rights appertaining thereto; and you have been performing the deb-seba, and have been entertaining religious mendicants, and have been celebrating the dole and durgutshub festivals (which were originally instituted by my deceased husband and father-in-law,) by residing in the house at *K*. In order that you may perform those religious ceremonies, celebrate the festivals satisfactorily, and may provide for your own support, by having the property under your authority and control, I put a stop to my interest (in those taluqs) and withdraw my enjoyment thereof, and I make them over to you, with this promise, that you may remove my name from the collector's sherista in respect of the taluqs named in the schedule, and you may have your name substituted for it; that you should have undisputed possession in the mofussil; that you should take the lowajima papers and the arrears of rent from the amlas and officers appointed by me; that you should appoint men who are under your control to the offices of amlas, and through them you should collect rents from the tenants in the mofussil; that you should perform the above-mentioned sebas, and should provide for your support. I have no right or claim to the taluqs. If I advance any claim at any future time, such claim should be rejected. I have nothing to do with the profits and loss of the taluks. You can not claim anything from me. I have no claim against you."

Held, on the construction of the ikrarnama, that the indefinite words of the gift must be limited by the purpose of the gift, and that it was the intention of the executant that *R* should take the property only for her life (228).

In this case the intention must be collected from the whole of the instrument. The words, "I put a stop to my interest (in those talooks), and withdraw my enjoyment thereof, and I make them over to you," must be read in connection with the words which precede them,—"In order that you may perform those religious ceremonies, celebrate the festivals satisfactorily, and may provide for your own

HINDU LAW—(*Contd.*)

Gift—(*Contd.*)

ESTATE CONVEYED UNDER—(*Contd*)

support, by having the property under your authority and control". (228). (*Sir Richard Couch.*) KALI DAS MULLICK *v.* KANHYA LAL PUNDIT. **(1884) 11 I.A. 218 = 11 C. 121 (131) = 4 Sar. 578.**

———*Words—Mokhasa—Effect.*

The term "mokhasa" is explained to be the equivalent of the more generally known term "Jagheer." Each shows that the land is to be held for the benefit of the holder. Neither defines the duration of the holding. These terms, therefore, are consistent with either theory (the theories being that the grant is an absolute grant and that it is only for the life of the grantee); and the Court must judge between them by such indications as it can get. (*Lord Hobhouse.*) SRI BRAJA KISORA DEVU GARU *v.* SRI KUNDANA DEVI PATTA MAHADEVI GARU. **(1899) 26 I A. 66 (68) = 22 M. 431 (433 4) = 7 Sar. 528 = 1 Bom. L. R. 287 = 3 C.W.N. 378 = 9 M.L.J 157.**

ESTATE TAIL—ATTEMPT TO CREATE.

———*Invalidity of.* (*Lord Buckmaster.*) MADHAVARAO GANPATRAO DESAI *v.* RAGHUNATH AGASKAR. **(1927) 55 I. A. 74 = 52 B. 176 = 47 C. L J. 198 = 30 Bom L. R. 282 = 107 I. C. 119 = 27 L. W. 400 = 1 L. T. 40 B. 86 = 26 A. L. J. 560 = 32 C. W. N. 925 = A. I. R. 1928 P. C. 33 = 54 M. L. J. 245.**

EVIDENCE OF.

———*Possession long with alleged donee—Value of.*

The defendant, the widow of a predeceased brother of the plaintiff's husband, alleged a gift by the plaintiff of one-half of the entire family property to which she became entitled as the widow of the surviving member of the family.

Held that defendant's possession of the moiety claimed by her for about 8 years prior to suit was one of the circumstances to be taken into consideration in estimating the theory of the plaintiff's wish to make a gift to her sister-in-law, a very important one doubtless, and such as might reasonably incline a Court of justice in the defendant's favour if the prior history of the case was in her favour (159). (*Lord Hobhouse.*) DEO KUAR *v.* MAN KUAR. **(1894) 21 I. A. 148 = 17 A. 1(15-6) = 6 Sar. 489 = 4 M. L. J. 272.**

FREEHOLD INTEREST—GRANT TO HINDU OF—HERITABILITY OF.

———*Words of inheritance—Necessity.*

Where the grantee of a freehold interest is a Hindu, no words of inheritance are requisite to continue his interest to his heirs (64). (*Lord Chelmsford.*) SREEMUTTY ANUNDOMOHEY DOSSEE v. DOE DEM. THE EAST INDIA CO. **(1859) 8 M. I. A. 43 = 13 Moo. P. C. 162 = 1 Suth. 383 = 4 W. R. 51.**

FRESH GIFT—CONFIRMATION OF PRIOR GIFT.

———*Test.*

Where it was contended that the words in a will amounted to a devise of a portion of the property comprised by it to *D* and accordingly that they afforded evidence that in the view of the testatrix no beneficial gift of that portion of the property had been previously made to *D*, *held* that even if the devise included the testatrix's interest in the portion of the property in question, the gift was by way of confirmation only and did not negative a prior gift thereof to *D*. (*Viscount Cave.*) VARATHA PILLAI *v.* JEEVARATHNAMMAL. **(1919) 46 I. A. 285 (291) = 43 M. 244 (251) = 24 C. W. N. 346 = 27 M. L. T. 6 = 18 A. L J. 274 = 22 Bom. L. R 444 = (1919) M. W. N. 724 = 10 L. W. 679 = 53 I. C. 901 = 38 M. L. J. 313.**

HINDU LAW—(*Contd.*)

Gift—(*Contd.*)

GIFT OVER.

———*Contingency of indefinite failure of male issue in donor's line—Gift over dependent upon—Validity of.*

A gift over dependent on the contingency of the indefinite failure of male issue in the line of the donor would be wholly invalid in view of the clear rule of law laid down in the Tagore case (1125). (*Mr. Ameer Ali.*) PURNA SASHI BHATTACHARJI *v.* KALIDHAN RAI CHOWDHURI.

(1911) 14 C. L. J. 1 = 8 A. L. J. 681 = 13 Bom. L. R. 451 = 15 C. W. N. 693 = 11 I. C. 412 = 21 M. L. J. 1119

———*Validity of—Test—Creation—Events actual—Validity as regards.*

The question is not whether the gift over was good in the event which happened afterwards but whether it was good in its creation. (*Mr. Ameer Ali.*) PURNA SASHI BHATTACHARJI *v.* KALIDHAN RAI CHOWDHURI.

(1911) 14 C. L. J. 1 = 8 A. L. J. 681 = 13 Bom. L. R. 451 = 15 C. W. N. 693 = 11 I. C. 412 = 21 M. L. J. 1119 (1125).

GOVERNMENT NOTES—GIFT OF.

———*Trust upon notes for idols—Impressing of—Proof of—Pencil writing on notes indicating trust in hands of donee—Sufficiency of.*

The question was whether four Government notes given by *M* to the defendant, *S*, were impressed with a trust for certain idols, as alleged by the plaintiffs. In support of their case the plaintiffs relied upon writing in pencil upon those notes—upon the face of three of them, and on the back of one of them—indicating that *S* took the notes in trust as shebait for the idols.

Held that it was somewhat dangerous to affix a trust of that description, whereby property was permanently alienated from useful purposes to mortmain, upon such evidence (212).

Held further that, inasmuch as it appeared that the pencil writings upon the notes were not in the handwriting of *M*, and no evidence was given that they were written by any person authorised either by him or by the defendant, *S*, or when they were written, it would not be right to reverse the decision of the High Court, which was to the effect that, assuming all the documents relied upon by the plaintiffs to be genuine, nevertheless it had not been proved with the requisite certainty that those notes were endorsed by *M* to *S* impressed with the trust alleged by the plaintiffs (212). KANAI LALL DUTT *v.* SEEEMUTTY SUDHAMONI DASSYA. **(1875) 3 Suth. 210.**

———*Trust upon notes for idols—Impressing of, by donor subsequent to gift—Validity—Donee's rights in case of.*

The question was whether four Government notes which were given by *M* to the defendant were impressed with a trust for certain idols, as alleged by the plaintiffs. The time of the gift of the notes to the defendant was the years 1852 and 1853.

In support of their case the plaintiffs relied upon a document of the date of July 1854. It was not a testamentary disposition; it was not a conveyance; it was not a deed; but it appeared to be a statement of properties more in the nature of an inventory than anything else. It was headed "Statement of properties belonging to Sudhamoni Dassya" (the defendant), and it began, "Statement of lands and houses, ghats and gardens, buildings etc., and company's paper, etc., belonging to Sudhamoni." Then there was the further statement, "when Sudhamoni Dassya dies, Baboos Radharomun, Krishna Lal, and Nilini Lal Dutt will succeed to the properties detailed below." Then followed a statement that the notes in question were on account of those idols.

HINDU LAW—(*Contd.*)

Gift—(*Contd.*)

GOVERNMENT NOTES—GIFT OF—(*Contd.*)

Held that the document, which bore date in July 1854, a considerable time after the notes had been endorsed to the defendant (the notes having been all endorsed between the dates of October, 1852 and April 1853) would not of itself have the effect of controlling those endorsements or of affixing a trust upon the notes (212).

Semble, the statement in the document that the notes in question were on account of those idols may after all be nothing more than a statement of the opinion of *M* at the time that the proper service of the idols might be properly performed out of the proceeds of the notes (211). KANAI LALL DUTT *v.* SREEMUTTY SUDHAMONI DASSYA. **(1875) 3 Suth. 210.**

HEIRS—CLASS OF—LEADING MEMBER OF—ENUMERATION OF.

———All members of class if included. *See* DEED—CONSTRUCTION OF—HEIRS. **(1875) 2 I. A. 263 (272).**

ILLEGITIMATE CHILD.

———Gift to. *See* HINDU LAW—ILLEGITIMATE CHILD—GIFT TO.

IMMOVEABLE PROPERTY SUBJECT OF—FURNITURE AND PLANT ATTACHED TO—DONEE'S RIGHT TO.

———Property itself adjudged to another. *See* HINDU LAW—GIFT—WIDOW—GIFT BY—IMMOVEABLE PROPERTY SUBJECT OF. **(1889) 16 I. A. 125 (128) = 16 C. 753 (757).**

IMPERFECT GIFT—COMPLETED GIFT—EVIDENCE.

———*Agarwalla Jains—Gift to relative on occasion of adoption and of marriage.*

Plaintiff, an Agarwalla Jain, claimed in right of his mother, *M*, to be entitled to two sums of money alleged to have been gifted to her, in accordance with the practice in the Agarwalla Jain community of making munificent presents to relatives on the occasion of adoptions and marriages, by her (*M's*) grandmother on the occasions of her adoption of a boy and of the marriage of that boy. The question for decision was whether the alleged gifts were imperfect gifts or were completed gifts.

At the time of the alleged gifts *M* was only about 15. *M's* grandmother carried on, after her husband's death, his business on her own account, and maintained account books. In her account books, there was a ledger account in the name of *M* which began in 1896 and was continued down to *M's* death in 1904. In 1901 there was an entry in the day book thus: "2,00,000, credited to *M's* account, dated 14-1-1901, given credit to you on account of Chiranji Mahadeo Prasad" (the boy adopted by *M's* grandmother); and in 1903 another entry: "Rs. 31,000 credited to *M's* account, presented on the occasion of Mahadeo Prasad's riding on horse at the time of his marriage ceremony." Those were the two alleged gifts. The account of *M* was carried on from year to year. Periodically it was credited with sums received from debtors as interest; occasionally it was debited with sums for legal expenses on payments to her father-in-law as her guardian.

The books of the grandmother's firm showed her entering those sums, not in any cash book as sums received from and deposited by *M* or on her account, but as credits under her granddaughter's name, which afterwards were divided by the grandmother's directions among *M's* children long after her death. There was no evidence that *M*, who lived up to 19 ever knew about any of the things which were done by her grandmother. Neither she nor any one on her

HINDU LAW—(*Contd.*)

Gift—(*Contd.*)

IMPERFECT GIFT—COMPLETED GIFT—EVIDENCE—(*Contd.*)

behalf gave any instructions or operated on the account at all, and whatever was done was done under the direction of the grandmother. There was no evidence that *M* ever in fact accepted the alleged gifts. Though there were loans made to debtors and credits of interest received from debtors in the accounts under *M's* name, she was charged no commission as apon an investment of her moneys, nor did she draw on the income. No accounts were rendered ; no correspondence passed.

Held that the Courts below correctly appreciated and applied the rules of law relating to imperfect gifts, and that their conclusion that neither of the sums in question was ever the subject of a completed gift at all must be affirmed. (*Viscount Sumner.*) HARIRAM *v.* MADAN GOPAL.

(1928) 33 C.W.N. 493 = 49 C. L. J. 335 = 27 A.L.J. 406 = 114 I.C. 565 = 31 Bom. L.R. 710 = A.I.R. 1929 P.C. 77 = 57 M L.J. 581.

INCOME—GIFT OF.

———*Corpus of estate when passes under.*

Where a gift, though in the form of a gift of income, was a gift unlimited in point of time, and there was no restriction in the gift, and no limitations beyond the actual beneficiaries, *held* that such a gift carried the whole estate. (*Lord Buckmaster.*) MADHAVRAO GANPATRAO DESAI *v.* RAGUNATH AGASKAR. **(1927) 55 I.A. 74 = 52 B. 176 = 47 C.L.J. 198 = 30 Bom.L.R. 282 = 107 I.C. 119 = 27 L.W. 400 = I.L.T. 40 B. 86 = 26 A.L.J. 560 = 32 C.W.N. 925 = A.I.R. 1928 P.C. 33 = 54 M.L J. 245.**

INFERENCE OF, FROM A SERIES OF TRANSACTIONS—CASE OF.

———*Consistency in the transactions relied upon—Proof of—Necessity.*

Those who allege that a gift is to be inferred from a a series of transactions should be able to show a reasonable amount of consistency in the transactions on which they rely (158). (*Lord Hobhouse.*) DEO KUAR *v.* MAN KUAR.

(1894) 21 I.A. 148 = 17 A. 1 (14) = 6 Sar. 489 = 4 M.L.J. 272.

INHERITANCE—LEGAL COURSE OF—ALTERATION OF.

———Gift resulting in—Validity. *See* HINDU LAW—INHERITANCE—LEGAL COURSE OF.

JOINT GIFT TO TWO DONEES—ONE OF THEM CAPABLE OF TAKING AND THE OTHER NOT.

———*Effect.*

In *Humphrey* v. *Tayleur* (Amb. 138) Lord Chancellor Hardwicke said, "If an estate is limited to two jointly, the one capable of taking, the other not, he who is capable shall take the whole." This principle does not depend upon any peculiarity in English law.

Where, therefore, a Hindu widow, entitled by custom to convey absolutely her husband's share in family property only to her daughter or daughter's son, executed a deed of gift conveying the same absolutely to her daughter and to her daughter's husband, to whom she was not competent to convey, and it was contended that the gift, being invalid as regards the daughter's husband, was also invalid as regards the daughter, *held* that, the gift being to the two donees jointly, the above principle was applicable to the deed of gift, and the daughter took the whole (47). (*Sir Richard Couch*). NANDI SINGH *v.* SITA RAM.

(1888) 16 I.A. 44 = 16 C. 677 (682) = 5 Sar. 309.

HINDU LAW—(*Contd.*)

Gift—(*Contd.*)

LEGAL OBLIGATION—GIFT IN DISCHARGE OF—DISTINCTION.

———Illegitimate son—Maintenance of—Assignment of ancestral property by Hindu of twice-born class for. *See* HINDU LAW—JOINT FAMILY—FATHER—ANCESTRAL PROPERTY—ILLEGITIMATE SON'S MAINTENANCE.

(1877) 4 I.A. 159 (165) = 3 C. 214 (219-20).

LIFE INTEREST—IMMOVABLE PROPERTY GIFTED BY PERSON WITH—FURNITURE AND PLANT ATTACHED TO—DONEE'S RIGHT TO.

———Property itself adjudged to another. *See* HINDU LAW—GIFT — WIDOW — GIFT BY—IMMOVABLE PROPERTY SUBJECT OF.

(1889) 16 I. A. 125 (128) = 16 C. 753 (757).

LIFETIME OF DONOR—GIFT TO TAKE EFFECT AFTER—DONEE'S RIGHTS UNDER, IN LIFETIME OF DONOR,

———Declaration of. *See* HINDU LAW—GIFT—NATURE OF.

(1873) 12 B.L.R. 433.

LIMITATION—WORDS OF—INSERTION OF, NOT IN CLAUSE EMBODYING GIFT, BUT IN CLAUSE DEALING WITH EXPIRATION THEREOF AND WITH GIFT OVER.

———*Practice of—Common in Indian documents.*

Clause 1 of the deed, which embodies the gift, contains in the actual terms of gift no words of limitation These are to be sought purely in other words in clause 1, but more clearly in clause 3, which deals with the expiration of the pensions gifted and the gift over. And this is a method of dealing with such matters not unfamiliar in Indian documents (140). (*Sir Arthur Wilson.*) NAWAB HAIDAR HUSAIN KHAN *v.* NAWAB FAGHFUR MIRZA.

(1905) 32 I.A. 135 = 27 A. 383 (390) = 2 C.L. J. 57 = 9 C.W.N. 817 = 3 A.L.J. 64 = 7 Bom. L.R. 850 = 8 O.C. 270 = 8 Sar. 826 = 15 M. L. J. 327.

MAINTENANCE.

———Gift for. *See* HINDU LAW—MAINTENANCE—GRANT FOR.

MAINTENANCE ALLOWANCE TO DONOR—PAYMENT OF—CONDITION OF.

———Breach of—Invalidity of deed in case of—Provision for—Validity—Possession to donor on ground of breach—Decree for. *See* HINDU LAW—GIFT—CONDITION—MAINTENANCE ALLOWANCE TO DONOR.

(1927) 26 L. W. 94.

NATURE OF—IMMEDIATE ABSOLUTE CONVEYANCE OF PROPERTY—LIFETIME OF DONOR—GIFT TO TAKE EFFECT AFTER.

———*Evidence—Donee's rights in latter case in lifetime of donor—Declaration of.*

M, a Hindu widow, executed two deeds conveying to her two married daughters in equal moieties, immediately and absolutely, certain nine mouzahs, of which she had the absolute power of disposing. One of her daughters died, leaving an infant son, who survived her three days. Thereupon, the plaintiff brought the suit out of which the appeal arose for the purpose of recovering possession of his deceased wife's share of one-half of the nine mouzahs so conveyed by *M*.

M's main defence to the suit was that, with a view of preventing disputes in future amongst her two daughters, she executed a deed of gift in the nature of a will, with the intention, that she should remain in possession during her life, and after her death her daughters would be entitled. She adduced evidence to the effect that at the

HINDU LAW—(*Contd.*)

Gift—(*Contd.*)

NATURE OF—IMMEDIATE ABSOLUTE CONVEYANCE OF PROPERTY—LIFETIME OF DONOR—GIFT TO TAKE EFFECT AFTER—(*Contd.*)

time of the execution of the deeds there was a verbal arrangement that they should operate only as a conveyance of the property after her death ; and that, during her life, her daughters were to retain her property in trust or, as it is sometimes called, *benami* for her.

Held, on the evidence reversing the High Court, that the defendant, *M*, had made out her case, that the suit, in so far as it prayed for present possession, was not maintainable, but that the plaintiff was entitled to a declaration that his wife had, and that he, as the heir of his wife through his infant son, had the right to a vested remainder upon the death of *M*, and that he was entitled to have his name substituted for that of his wife upon the register, (*Sir Robert P. Collier.*) RAMANUGRA NARAIN *v.* MAHASUNDUR KUNWAR.

(1873) 12 B. L. R. 433 = 3 Sar. 277.

PERSONA DESIGNATA.

———Gift to a. *See* (1) HINDU LAW—ADOPTION—ADOPTED SON—PERSON DESCRIBED AS AN—GIFT TO (2) HINDU LAW—GIFT—AURASA SON AND (3) HINDU LAW—GIFT—WIFE—LAWFUL WIFE.

PIOUS GIFT.

———*Expression usual in case of.*

"For the satisfaction of Sri" is the expression usual in cases of pious gift (38). (*Sir Richard Couch.*) MAHARAJAH MIRZA SRI ANAND *v.* PIDAPARTI SURIANARAYANA SASTRI. **(1886) 13 I. A. 32 = 9 M. 307 (314) = 4 Sar. 696.**

PREAMBLE OF DEED OF—SUBSTANTIVE DISPOSITION.

———Test. *See* HINDU LAW—GIFT—WIFE—GIFT TO—ESTATE CONVEYED—MALIK. **(1924) 47 M. L. J. 585.**

PROOF OF.

———(*See also* HINDU LAW—GIFT—EVIDENCE.)

———*Deed—Gift by.*

The defendant set up a gift in her favour of the suit property by its former owner through whom the plaintiff claimed. The Courts below concurrently found in favour of the said gift. But though they were agreed as to the gift, they were at variance on the vital question whether the gift was by deed or by word of mouth. On appeal by the plaintiff seeking to overturn the concurrent judgments of the Courts below, their Lordships felt that the case was attended with so much obscurity that, if it were unattended by previous decisions, they would have great difficulty in deciding it. On the whole, however, their judgment was in favour of the gift, and they were clear that, if the evidence proved a gift, it proved a gift by deed. They, therefore, affirmed the judgment below (126-7). (*Sir Arthur Hobhouse.*) PRINCE MIZRA JEHAN KADR BAHADUR *v.* NAWAB BADSHOO BAHOO SAHIB. **(1885) 12 I. A. 124 = 12 C. 1 (8) = 4 Sar. 630.**

———*Onus—Heir-at-law — Claim under deed of gift against—Long possession with him.*

Held, affirming the Courts below against the genuineness of a deed of gift set up by the appellant (168).

Considering that the onus was upon the plaintiff-appellant ; considering that the probabilities of the case, independently of the evidence, are rather against than in favour of the deed ; considering that the Judges of the Court below have decided against the claim of the appellant, and that for at least 12 years we have no satisfactory account of the reasons which occasioned the postponement of this appeal, we think it would not be safe to advise Her Majesty to

HINDU LAW—(*Contd.*)

Gift—(*Contd.*)

PROOF OF—(*Contd.*)

reverse this judgment (168). (*Mr. Pemberton Leigh.*) BABOO KASI PERSAD NARAIN *v.* MUSSUMAT KAWALBASI KOER. **(1851) 5 M. I A. 146 = 1 Suth. 225 = 1 Sar. 412.**

———*Oral gift set up after donor's death.*

The Court is bound to watch with the greatest care, perhaps even with suspicion, the case of a verbal gift set up after the alleged donor's death. The case is however, different where the alleged donor is shown not only to have been aware of the gift but to have taken steps to give effect to it (272). (*Sir Montague Smith.*) KAMAR-UN-NISSA BIBI *v.* HUSSAINI BIBI. **(1880) 3 A. 266 = 4 Sar. 185 = 3 Suth. 804.**

RELIGIOUS ENDOWMENT.

———Gift to. *See* HINDU LAW—RELIGIOUS ENDOWMENT.

SALE DEED—GIFT INTENDED BY—FINDING OF.

———Propriety. *See* SALE-DEED—GIFT INTENDED BY—FINDING OF.

SETTING ASIDE OF DEED OF.

———*Donor's suit for—Equitable nature of bargain—Consideration of question of—Propriety.*

The suit was by a donor against a donee to have the deed of gift declared to be illegal and null and void, and to have a decree for possession of the property given by it. The plaint alleged that the defendant, as well as his councillors and legal advisers, taking advantage of the plaintiff's old age and of his illness and disqualifications, separated him from his son's relatives and advisers, and induced him to sign the deed and have it registered, and that he was not aware of its effects and contents.

Held, that in such a suit the Court had not to decide whether the transaction was an equitable one which the the Court should enforce (160).

The defendant was not asking the Court to enforce the deed (160). (*Sir Richard Couch.*) GANGA BAKHSH *v.* JAGAT BAHADUR SINCH. **(1895) 22 I. A. 153 = 23 C. 15 (24) = 5 Sar. 643.**

———*Fraud and mis representation—Donor's suit to set aside deed on ground of, and for account of profits received by donee—Deed found to be perfectly valid. Nibandhana of even date with, by which donor was to remain in possession of portion of property for her life with reverter to donee after her death—Accounts of that portion of property on foot of—Decree for—Grant in appeal of—Propriety.*

Plaintiff executed a deed of gift of her properties in favour of the defendant, who on the same day executed a Nibhandapatra in favour of the plaintiff under which a fourth share of the properties conveyed under the deed of gift were to remain with the plaintiff during her lifetime, and, on her death, the same were to revert to the defendant. Sometime after, the plaintiff sued to set aside the deed of gift on the ground that it was obtained by the defendant by fraud and misrepresentation, and also sought for confirmation of her possession in respect of the properties comprised in the said deed of gift and for an account. The trial judge and the High Court on appeal found against the plaintiff on the question of fraud and misrepresentation and held that the deed of gift was perfectly valid and operated *in praesenti* in favour of the defendant.

In the appeal to the High Court, it was contended for the plaintiff that the Court below should have given the plaintiff a decree at least for an account in respect of the four annas share of the properties comprised in the Nibhandapatra, which was admittedly in the possession of the defendant. The High Court, however, held that upon

HINDU LAW—(*Contd.*)

Gift—(*Contd.*)

SETTING ASIDE OF DEED OF—(*Contd.*)

the plaint as it was presented. the plaintiff was not entitled to the relief claimed. On appeal, the Privy Council upheld the judgment of the High Court.

The action of the plaintiff was upon the footing that the whole of the properties comprised in the deed of gift were properties belonging to the plaintiff and that the defendant held the same as agent. It has been found that three-fourths of the said properties were not in the possession of the defendant as agent but as owner, and the only question that may possibly arise is whether in regard to the one-fourth share of the properties comprised in the deed of Nibhandapatra, the defendant did not occupy the position of an agent of the plaintiff, and as such whether he is not bound to render to the plaintiff an account. If we were to award to the plaintiff a decree calling upon the defendant to render an account in respect of the said four annas share, it would be upon a basis wholly different from that upon which the suit was founded. Further there was no specific issue directed to the said four annas share.—*Per* The High Court. (*Lord Macnaghten.*) MAHMUDA KHATUN CHOWDHURANI *v.* MAHOMED OLAHADAD KHAN PANI. **(1912) 23 I. C. 332 = 17 C. W. N. 427.**

———*Fraud of donor himself—Setting aside by him of deed on ground of—Permissibility.*

Quaere, whether a donor could be allowed to avoid her own deed on the ground of her own fraud. (*Sir Robert P. Collier.*) RAMANUGRA NARAIN *v.* MAHASUNDUR KUNWAR. **(1873) 12 B. L. R. 433 = 3 Sar. 277.**

———*Undue influence—Execution under—Donor's suit to set aside deed on ground of—Proof necessary in case of.*

The suit was by a donor against a donee to have the deed of gift declared to be illegal and null and void, and to have a decree for possession of the property given by it. The plaint alleged that the defendant, as well as his councillors and legal advisers, taking advantage of the plaintiff's old age and of his illness and disqualifications, separated him from his son's relatives and advisers, and induced him to sign the deed and have it registered, and that he was not aware of its effects and contents.

The donor was heir to a share in an ancestral estate, which was in the possession of a third party. Expecting that his right would be contested by another claimant, the donor made a gift of his right to the share to his brother's son, providing that he, the donor, should have nothing to do with the cost of getting possession. After the donee had obtained possession, the donor sued to set aside the deed. It appeared that the donor had executed the deed with full knowledge of its contents and effect, voluntarily and without any pressure. No undue influence had been exercised, nor had any unsound advice been given to him by or on behalf of the donee and no confidence had been reposed by the donor in the donee.

Held, reversing the Court below, that the deed could not be set aside on the ground that the transaction was an inequitable bargain. (*Sir Richard Couch.*) GANGA BAKHSH *v.* JAGAT BAHADUR SINGH. **(1895) 22 I. A. 153 = 23 C. 15 = 5 Sar. 643.**

SUBSTANTIVE DISPOSITION –PREAMBLE OF DEED.

———Test. *See* HINDU LAW—GIFT—WIFE—GIFT TO —ESTATE CONVEYED—MALIK. **(1924) 47 M. L. J. 585.**

TRUST.

———*Declaration of—Distinction—Proof of gift—Step taken towards* pro tanto *negation of trust.*

A declaration of trust in favour of a person retains the actual ownership in the trustee, while an endeavour to make a gift is an endeavour to divest the property and pass it away

HINDU LAW—(*Contd.*)

Gift—(*Contd.*)

TRUST—(*Contd.*)

to the donee. Every step, therefore, taken towards proof of a gift is in itself *pro tanto* a negation of a trust. (*Viscount Sumner.*) HARIRAM *v.* MADAN GOPAL.

(1928) 33 C.W.N. 493 = 49 C.L.J. 335 = 27 A.L.J. 406 = 114 I.C. 565 = 31 Bom. L R. 710 = (1929) M.W N 422 = 30 L.W 835 = A. I. R. 1929 P C. 77 = 57 M L.J. 581.

———Impressing of, upon property subject of gift. *See* HINDU LAW—GIFT—GOVERNMENT NOTES.

UNBORN PERSONS—GIFT TO.

———*See also* HINDU LAW—GIFT—DONEES UNDER.

———*Invalidity of—Rule as to.*

The rule of law that gifts cannot be made to persons unborn at the time is well settled (177). (*Sir Arthur Hobhouse.*) RAI BISHEN CHAND *v.* ASMAIDA KOER.

(1884) 11 I. A. 164 = 6 A. 560 (572) = 4 Sar. 512.

——— The well-known doctrine of Hindu law is that a gift to an object not in existence is absolutely void (63). (*Lord Macnaghten.*) BHAGABATI BARMANYA *v.* KALICHARAN SINGH. **(1911) 38 I. A. 54 = 38 C. 468 (472-3) = 15 C. W. N. 393 = 9 M L. T. 411 = 13 C. L. J. 434 = 8 A. L. J. 433 = 13 Bom. L. R. 375 = (1911) 2 M. W. N. 295 = 10 I. C. 641 = 21 M. L. J. 387.**

———(*Sir John Wallis.*) NARSINGH RAO *v.* MAHALAKSHMI BAI. **(1928) 55 I. A. 180 = 50 A. 375 = 109 I. C. 703 = 48 C. L. J. 106 = 32 C. W. N. 1065 = 28 L. W. 171 = 26 A. L. J. 897 = 30 Bom. L. R. 1331 = 5 O. W. N. 951 = A. I. R. 1928 P. C. 156 = 55 M. L. J. 42 (48).**

———*Invalidity of—Rule as to—Applicability—Description of donee importing that he may be unborn in donor's lifetime.*

Quaere, whether a gift to persons whose description does not import that they should be born in the donor's lifetime can be valid (126). (*Lord Hobhouse.*) SURENDRA KESHAV ROY *v.* DURGASUNDARI DASSEE. **(1892) 19 I. A. 108 = 19 C. 513 (530) = 6 Sar. 150.**

VALIDITY OF.

———Donor out of possession—Gift by. *See* HINDU LAW—GIFT—DONOR OUT OF POSSESSION—GIFT BY—VALIDITY. **(1884) 11 I. A. 218 (232) = 11 C. 121 (135).**

———Intention to transfer title—Proof of—Necessity. *See* HINDU LAW—GIFT—ESSENTIALS OF—INTENTION TO TRANSFER TITLE. **(1894) 21 I. A. 148 (159-60) = 17 A. 1 (15-6).**

———Maintenance allowance to donor — Payment of — Condition of—Breach of — Invalidity of deed in case of—Provision for—Validity. *See* HINDU LAW—GIFT—CONDITION—MAINTENANCE ALLOWANCE TO DONOR.

(1927) 26 L. W. 94.

WIDOW—GIFT BY.

———*Adopted son—Handing over possession of husband's estate to validly—Not a gift.*

The handing over by a Hindu widow of the possession of her husband's estate to a son whom she has validly adopted to her deceased husband is not making a gift of the estate to him. (*Sir John Edge.*) VAITHIALINGA *v.* SRIRANGATH ANNI. **(1925) 52 I. A. 322 (329) = 48 M. 883 = 6 L. R. P. C. 169 = 42 C. L. J. 563 = (1926) M. W. N. 11 = 28 Bom. L. R. 173 = 30 C. W. N. 313 = A. I. R. 1925 P. C. 249 = 92 I. C 85 = 49 M. L. J. 769.**

———*Deed of—Genuineness of—Proof—Quantum.*

The plaintiff in the suit claimed under a deed of gift alleged to have been executed by Rany *S*, the widow of the

HINDU LAW—(*Contd.*)

Gift—(*Contd.*)

WIDOW—GIFT BY—(*Contd.*)

last male owner of the suit properties; and one of the questions in the case was whether the plaintiff's deed of gift was genuine.

Considering the circumstances in which the deed was alleged to have been executed by the Rany on the day before her death, the witnesses stated to have been then present, the length of time during which the plaintiff, though often called upon, neglected to produce the deed, and the whole of the evidence in the cause, their Lordships concurred in the decisions of the Courts below that the deed was not genuine but a forgery, and consequently that the plaintiff could establish no claim under it (320). (*Lord Langdale.*) RANY SRIMUTY DIBEAH *v.* RANY KOOND LUTA.

(1847) 4 M. I. A. 292 = 7 W. R. (P. C.) 44 = 1 Suth. 182 = 1 Sar. 351.

———*Husband's estate—Gift to third party of, with concurrence of heirs—Validity—Dayabhaga law.*

Held that, under the Dayabhaga law, a deed of gift executed by a widow conveying property of her husband to a third party with the confirmation of the heirs, the mother's brother's sons of the husband, was valid, though not assented to by relatives in the male line of the deceased who were not his heirs (319-20). (*Lord Langdale.*) RANY SRIMUTY DIBEAH *v.* RANY KOOND LUTA. **(1847) 4 M. I. A. 292 = 7 W. R. (P. C.) 44 = 1 Suth. 182 = 1 Sar. 351.**

———*Immoveable property subject of—Furniture and plant attached to—Right to—Donee—Third party to whom property itself is adjudged—Right of.*

The appeal arose out of a suit relating to the title to the estate of one *K*. The respondents were the heirs of *R*, and they alleged that *K* had made a gift of the estate to *R*. If there was no such deed of gift the title of the appellant was a good one. The Courts below and their Lordships found in favour of the gift. The appellant alleged that he had been in possession of the estate rightfully under a deed of gift from *R's* widow, and that he was entitled to the income during that time. The Court below adjudicated to the appellant the ownership of some villages which it appeared that during that period he purchased out of the surplus or savings from the income. But besides the land he received a certain quantity of chattels which might be called stock and plant. The appellant contended that, as the original stock and plant must have worn out, and the appellant was not under any obligation to replace it, therefore that which he had in fact brought in to replace it belonged to him and not to the estate.

Held that, so far as there was stock and plant belonging to the villages which the Court below had adjudicated to the appellant, he was entitled to take the same; but that with regard to the other property which formed part of the estate which was adjudicated to the respondents the appellant was in the position of an ordinary tenant for life who enjoyed furniture and plant which wore out from time to time, and which he replaced, and that that which was found attached to the property which the respondents received must follow the title to that property (128). (*Lord Hobhouse.*) LACHMAN SINGH *v.* MUSSUMAT PUNA.

(1889) 16 I. A. 125 = 16 C. 753 (757) = 5 Sar. 370.

———*Proof of—Onus—Quantum — Husband's brother's wife—Gift set up by.*

The plaintiff was the widow of the last surviving male member of a joint Hindu family and was as such entitled to the entire joint family property. The defendant was the widow of a predeceased brother of the plaintiff's husband. She claimed to be entitled to a moiety of the family property, and she based her claim upon an alleged gift thereof by the plaintiff.

HINDU LAW—(*Contd.*)

Gift—(*Contd.*)

WIDOW—GIFT BY—(*Contd.*)

Held that in order to succeed upon such a case the defendant must shew that the plaintiff, knowing her rights and knowing that she was making a free gift to her sister-in-law did so make it (156). (*Lord Hobhouse.*) DEO KUAR *v.* MAN KUAR. **(1894) 21 I. A. 148 = 17 A. 1 (12) = 6 Sar. 489 = 4 M. L. J. 272.**

WIDOW—GIFT TO.

———*Estate taken under—Absolute estate or only widow's interest.*

The question in the case was whether, under a certain document called a waseeutnamah executed by a Hindu in favour of his wife, her estate was enlarged from the ordinary estate of a Hindu widow to an absolute estate. The High Court held that it conveyed only a widow's interest thereby.

Their Lordships affirmed the decision of the High Court (111-2). (*Sir Robert P. Collier.*) RAJ BAHADUR SINGH *v.* ACHUMBIT LAL. **(1879) 6 I A. 110 = 6 C. L. R. 12 = 4 Sar. 15 = Bald. 203 = 3 Suth. 598.**

———*Life-interest in property without power of alienation and authority to adopt—Deed giving.*

An anumatipatra executed by a Hindu in favour of his wife ran as follows:—"You are my wife. You have no children born. I am now very ill in body. I have no hope of life. On my death there will be no one to perform the ancestral deb-kisti (worship of the gods). etc., and offer the jolpinda (funeral cake and libations of water) of my ancestors. For the observance of all these rites, and of the jolpinda to the ancestors, as well as the preservation of the Zemindarys, lakhiraj, dewutter, etc.. I, in my sound mind, give you permission on my death to keep possession of my Zemindarys, dewutter, etc., recording your own name in the Collectorate Sherishta, to remain in enjoyment of the profits, and to defray the expenses of the deb-kisti during your lifetime, and to adopt one or two sons born in the family of true Brahmans. On your death, that adopted son will succeed to all properties; and on the said adopted son attaining his majority, you will, if you should desire it, get his name recorded in the Zemindary tahoot, and surrender the entire management to him. Now I am a debtor to mahajans (creditors). Some mehals of the Zemindary are in mortgage on account of those debts. If there should be no other means of liquidating the debts, you will either sell a small portion of the Zemindary or make conditional sale of it, as appears necessary, and liquidate the debts."

Held, on the construction of the anumatipatra, that the widow took a life-interest in the properties, and that power was given to her by it to adopt a son, but that the deed gave her no authority to alienate the estate (56). (*Sir Montague E. Smith.*) KONWUR DOORGANATH ROY *v.* RAM CHUNDER SEN. **(1876) 4 I. A. 52 = 2 C 341 (344-5) = 3 Sar. 681 = 3 Suth. 375.**

———*Management of estate—Trust for—Creation of—Absolute estate to widow to be divested on minor son coming of age—Conferring of—Test.*

A Hindu, who was suffering from corporeal illness, and who had a purpose of going to reside at Benares, executed in favour of his two wives a Hibbanamah, the material parts of which were as follows:—You, two individuals, being my wives; my sons born of you, both are minors; therefore, all my properties I give to you both by executing a deed of gift. They shall remain in my possession all my lifetime. After my death you, entering into possession of all the properties shall uphold the worship of my Deities, etc. You shall perform the ceremonies of shradh, etc., according to my means. According to this deed of gift, you shall enter your own names in the Collectorate, to the exclusion of my own name

HINDU LAW—(*Contd.*)

Gift—(*Contd.*)

WIDOW—GIFT TO—(*Contd.*)

and enjoy possession by paying the Government revenue. But you shall have no authority to make a gift or alienate by sale. When my two sons arrive at majority you shall have their names entered in the Collectorate, and your own names expunged. God forbid that one of my two sons should die, but if one should accidentally die, then the son, who may survive you, shall have all the properties entered in his name.

Held that the deed provided only a species of trust for management, and that it did not interfere with the devolution of the estate according to the ordinary law of succession under the Hindu Law. Their Lordships overruled the contention that the deed gave to the widows an absolute interest, subject to be divested in the event of their sons or either of their sons coming of age.

The learned Counsel have laid some stress upon the direction, "you shall perform the ceremonies of shradh, etc., according to my means," and have contended that that implies a charge to the person to perform the funeral ceremonies of the donor, and, therefore, must be taken to imply a change in the course of succession to his estate. Their Lordships, however, are of opinion, that the words "Shradh, etc." are somewhat wide and ambiguous, and that if the Hibbanamah be taken, as they think it ought to be taken, to be an arrangement providing for the management of everything from the date of it, during the life of the donor himself, it may be taken to refer to, certainly to include, those family religious ceremonies which the donor himself would, from time to time, if he remained in his home, and in possession of his strength and faculties, be bound to perform. They, therefore, cannot give to those words the force which, it has been contended, ought to be given to them (222-3). (*Sir James Colvile.*) RAJ LUKHEE DABEA *v.* GOKOOL CHUNDER CHOWDHRY. **(1869) 13 M. I. A. 209 = 12 W. R. (P. C.) 47 = 3 B. L. R. (P. C.) 57 = 2 Suth. 275 = 2 Sar. 518.**

———*Widow's estate taken under—Nature of—Alienation by widow—Power of—Accumulations by her—Ownership and devolution of.*

In a case in which, under a deed of gift executed by a Hindu in favour of his wife, the latter takes the estate only of a Hindu widow, one consequence, no doubt, would be that she would be unable to alienate the profits, or that at all events, whatever she purchased out of them, would be an increment to her husband's estate, and her husband's heirs would be entitled to recover possession of all such property, real and personal. But, on the other hand, she would have certain rights as a Hindu widow; for example, she would have the right under certain circumstances, if the estate were insufficient to defray the funeral expenses or her maintenance, to alienate it altogether. She certainly would have the power of selling her own estate; and it would further follow that the person who, under the deed, was to be entitled to the estate after her death, would not be possessed in any sense of a vested remainder, but merely of a contingent one. It would also follow that she would completely represent the estate, and under certain circumstances the Statute of Limitations might run against the heirs to the estate, whoever they might be (260-1). (*Sir Robert P. Collier.*) MUSSUMAT BHAGBUTTI DAEE *v.* CHOWDRY BHOLANATH THAKOOR.

(1875) 2 I. A. 256 = 1 C. 104 = 24 W. R. 168 = 3 Suth. 186 = 3 Sar. 528.

WIFE—GIFT TO.

———Absolute estate conveyed under. *See* HINDU LAW—GIFT—WIFE—GIFT TO—NATURE OF—GIFT PURE AND SIMPLE. **(1928) 55 I. A. 197 = 7 Pat. 500.**

HINDU LAW—(*Contd.*)

Gift—(*Contd.*)

WIFE—GIFT TO—(*Contd.*)

———*Estate conveyed—Life-estate—Widow's estate—Life-estate with vested remainder to adopted son.*

A Hindu died leaving him surviving a widow, a daughter and an adopted son. Shortly before his death he executed a deed which, after reciting that he was proprietor of one-third share of the whole 16 annas of certain mouzas, and after giving an estate of inheritance to his daughter in a one-third share out of the whole 16 annas of mouza Munkowli usli with dakhili, Rs. 1,100 in cash, and Bhichuck slave with his children, proceeded as follows: "the remaining 'milkiut' and 'minhai' estates, together with the amount of ready money, articles, slaves, and all household furniture I have placed in the possession of *C*, my wife, to be enjoyed during her lifetime, in order that she may hold possession of all the properties and milkiut possessed by me, the declarant, during her lifetime, and by the payment of the Government revenue, appropriate the profits derived therefrom, but that she should not by any means transfer the milkiut estates and the slaves; that after the death of my aforesaid wife the milkiut and household furniture shall devolve on *G*, my *kurta* (adopted son), and that no objection thereto raised by anyone shall be ever held valid".

On the same day a document of a very similar character and very similar in terms was also executed by *G*, the adopted son.

Held, on a construction of the instrument, together with the surrounding circumstances, that the document was in the nature of a family settlement, giving to the widow an estate for life, with a power to appropriate the profits, and to *G* (the adopted son) a vested remainder on her death (260). (*Sir Robert P. Collier.*) MUSSUMAT BHAGBUTTI DAEE *v.* CHOWDRY BHOLANATH THAKOOR.

(1875) 2 I. A. 256 = 1 C. 104 = 24 W. R. 168 = 3 Suth. 186 = 3 Sar. 528.

———*Estate conveyed—Malik—Effect of—Alienation—Power of, expressly limited—Effect—Preamble—Substantive disposition—Test.*

A deed of gift executed by a Hindu in favour of his wife began as follows:—". . . . I, the executant, have made in favour of my wife M, a gift of the whole and entire shares in the Mouzas owned and possessed by me, together with boundary limits, all adventitious and inherent right in lands and foundations, water-courses, reservoirs, ahars, pokhars, fisheries, forest rights, toddy and date palms, orchards of mango and jack-fruit trees, bamboo clumps, sair, salt sair, occupied and non-occupied houses, *and all rights appertaining thereto with the following conditions*:—" The whole balance of the document consisted in the insertion of the conditions under which the deed of gift was accomplished.

Held, that the clause set out above could not be characterised as a preamble in the deed, that the actual gift to the donee of the *malik* was in truth in that disposition, which was the substantive disposition, that, in construing the deed, it must be looked at as a whole, that the words in the clause set out above—"and all rights appertaining thereto with the following conditions" fundamentally affected the construction of the deed as a whole, and that, so construed, the deed as a whole, left no room for doubt that it did not confer the *maliki* rights without conditions, nor did it confer on the donee those rights of property and alienation which a bare disposition in favour of a person denominated as *malik* would have involved. (*Lord Shaw.*) ASHRAFI SINGH *v.* BIDYA PRASAD NARAYAN SINGH.

(1924) 20 L. W. 425 = 26 Bom. L. R. 776 = A. I. R. 1924 P. C. 191 = (1924) M. W.N. 819 = 35 M. L. T. 135 = 80 I. C. 826 = 6 Pat. L. T. 77 = 47 M. L. J. 585.

HINDU LAW—(*Contd.*)

Gift—(*Contd.*)

WIFE—GIFT TO—(*Contd.*)

———Estate conveyed—Malik—Effect of. (*Mr. Ameer Ali.*) HITENDRA SINGH *v.* RAMESHWAR SINGH BAHADUR. **(1928) 55 I. A. 227 = 3 Luck. 114 = 5 O. W. N. 502 = 9 L. W. N. 4 = 32 C. W. N. 790 = 26 A. L. J. 681 = 48 C. L. J. 23 = 28 L. W. 25 = 109 I. C. 417 = 30 Bom. L. R. 1373 = (1928) M. W. N. 863 = A. I. R. 1928 P. C. 162 = 55 M. L. J. 545.**

———*Estate conveyed—Property given to woman by her husband—Estate which under Hindu Law woman has in—Absolute estate to wife and her successors subject only to defeasance in certain event—Test—Deed—Construction.*

On 4th September, 1875, Raja *J*, a Hindu governed by the Mitakshara school, executed a deed of gift of his self-acquired property, the material terms of which are set out in the judgment of their Lordships. At the date of the deed, the Raja had a son by his senior wife, Balwant Singh, aged 34, who was then in prison undergoing a sentence of imprisonment for culpable homicide, and a daughter, M, aged 7, by his junior wife, Rani Kishori. It appeared clearly from the recitals in the deed that the Raja's intention was to disinherit his unworthy son, Balwant Singh, as regards his self-acquired property. It appeared equally clear from the body of the deed that his intention was that, if Balwant Singh had a son, that son on attaining majority should have the estate. The plaintiff was the son of Balwant Singh, but the provisions of the deed in his favour could not take effect by reason of the rule of law that a gift in favour of an unborn person is void and inoperative. The plaintiff had, therefore, to show that, on the true construction of the deed, there was an intestacy when he attained majority by reason of the failure of the gift over in his favour and that he became entitled to come in as heir of the settlor.

After reciting that the settlor had been compelled to exclude Balwant Singh from the right of representing him and from inheritance, and that for the purpose of maintaining the name and protecting the property, it was necessary that there should be some representative (literally some one to stand in his place), and that there was none but Rani Kishori, the deed went on, "I have therefore made a gift in favour of Rani Kishori of all my movable and immovable properties . . . and appoint her my successor and representative subject to the following conditions." Under Condition 1 the villages were to be " owned by the Rani Sahib just as I owned," and complete possession was to be given her. Similarly as to the 10 per cent. on the revenue of seven villages, Condition 2 provided that, after the settlor's death, " the Rani Saheb would be entitled to get it and none would be able to offer obstruction."

Condition 6 provided that if a son was born to Balwant within the next 16 years—in other words, before he attained the age of 50—such son was to take the property on his attaining majority, and the Rani was bound to retain "the proprietary possession" until he did attain majority. If, however, no son was born to Balwant before he attained the age of 50, she was not to be bound to retain the proprietary possession herself, but was expressly empowered to give or bequeath it to her daughter or her daughter's son, " *to appoint owner and representative and heir* " her daughter, or her daughter's son if she had one, and failing them to make an adoption, and in regard to all these cases she was empowered " to impose any condition or conditions which she thinks necessary in regard to manner of succession and possession of property."

Condition 7 then dealt with the birth of a son to Balwant after he had attained the age of 50, when the widow might have transferred the estate to her daughter and her

HINDU LAW—(*Contd.*)

Gift—(*Contd.*)

WIFE—GIFT TO—(*Contd.*)

daughter's son or to an adopted son under Condition 6, and provided that she or her transferee should retain the property until Balwant's son attained his majority and hand it over then. Further, it provided that, on succeeding to the property, Balwant's son should be bound to pay Rs. 100 a month to the person from whom he obtained it.

Condition 8 provided for what was to happen in case of the Rani dying before Balwant attained the age of 50 in case a son had been born to him but had not attained majority, or in case no son had been born to him. In either event the Rani's power of disposition under Condition 6 would not have come into operation, and, accordingly, the settlor himself provided that in those events the property was to " devolve on M or son if alive " who should remain in possession until a son was born to Balwant and attain majority, in which case he would take, and the person on whom the property had devolved would be entitled to receive Rs. 100 a month.

Condition 9, whilst making some provision for Balwant, recited that he personally had been excluded from the succession and had no power or authority to interfere with the property, possession and future powers of the Rani.

Held, that the provisions of the deed clearly showed that the settlor's intention was that the property should pass to the Rani and her successors under the deed to the exclusion of the settlor's heirs, unless a son was born to Balwant and attained majority, and that in that event Balwant's son was to come in and take the estate under the deed, and not as the settlor's heir on the suggested intestacy arising from the failure of the gift over to him, following the determination of the estate limited to the Rani and her successors until Balwant's son should attain majority.

Two intentions appear clearly in the deed, one to exclude Balwant altogether from inheritance, the other to bring in his son on his attaining majority. Both intentions are effectuated under the deed by holding that the Rani and her successors took an estate subject to defeasance on the happening of a certain event, the attainment of majority by a son of Balwant. On the other hand, the construction contended for on behalf of the plaintiff would defeat the settlor's intention by letting in Balwant as the settlor's heir if he was alive, as he very well might have been, when the plaintiff attained majority. For these reasons their Lordships are of opinion that the provisions in the unborn son's favour amount to a condition subsequent, and that the failure thereof does not affect the prior disposition.

Their Lordships are therefore unable to agree with the learned Judges of the High Court " that the Rani was left as a custodian of the property until its final devolution to a full owner. " The Rani and her successors were put in, not merely as custodians until the attainment of majority of Balwant's son, an event which might never happen, but also to effect the disherison of Balwant himself by leaving the property away from the settlor's natural heirs. The terms of the deed clearly show that they were given an estate which was not limited but absolute, in point of duration, and subject only to defeasance in case of Balwant having a son who attained majority or the Rani dying before the settlor. (*Sir John Wallis.*) NARSINGH RAO *v.* MAHALAKSHMI BAI. **(1928) 55 I. A. 180 = 50 A. 375 = 109 I. C. 703 = 48 C. L. J. 106 = 32 C. W. N. 1065 = 28 L W. 171 = 26 A. L. J. 897 = 30 Bom. L. R. 1331 = 5 O. W. N. 951 = A. I. R. 1928 P. C. 156 = 55 M. L. J. 42.**

———*Gift pure and simple—Gift for consideration—Estate conveyed under—Distinction—Mithila law.*

HINDU LAW—(*Contd.*)

Gift—(*Contd.*)

WIFE—GIFT TO—(*Contd.*)

Under the Mithila Law a simple and pure gift by the husband to the wife does not convey to her absolute ownership. She takes it only for her life without any right of alienation unless power of alienation is expressly conferred on her. The limitation imposed by the Mithila Law, which declares that gifts by husbands will only convey a life-interest to the wife, applies exclusively to pure and simple gifts, and not to a gift for consideration. (*Mr. Ameer Ali.*) HITENDRA SINGH *v.* RAMESHWAR SINGH BAHADOOR. **(1928) 55 I. A. 197 = 7 Pat. 500 = 9 P. L. T. 295 = 32 C. W. N. 762 = 26 A. L. J. 652 = 48 C. L. J. 83 = 28 L. W. 12 = 109 I. C. 858 = A. I. R. 1929 P. C. 112 = 55 M. L. J. 615.**

———*Gift pure and simple or gift for consideration—Gift for consideration—Estate conveyed under—Absolute estate.*

A gift deed executed by a Hindu subject to the Mithila law in favour of his wife began with describing the husband as the absolute proprietor of seven annas eight gundas of the property. It then recited that there was a decree against the husband for Rs. 41,000 odd, that it was under execution, and that the husband was unable to procure money for the payment of the decretal amount. The document then proceeded as follows :—

" As a sale (of the property) will entail loss of the said two milkiat properties on sale, belonging to me, the executant, I, of my own free will and accord, have out of the said two mouzahs on sale made a gift for consideration (hiba-bil-ewaz) of 7 annas $8\frac{3}{4}$ gundas share, etc., together with fruit-bearing and non-fruit-bearing trees, ahars, pokhars, reservoirs, tanks, tenants, all Zamindari rights, which I have in my possession up to this time, without participation of any one, to my wife Mussumat Aruragin Bahuasin on receiving from her Rs. 41,532-6-8 K, 16 m 16 in cash and having paid therewith the decretal amount due to the said decree-holder got the properties released from sale and put the said Mussumat in possession of the gift properties. The said Mussumat should have and hold possession of the gift properties and enjoy the produce thereof generation after generation, and I, the executant and my heirs and representatives neither have nor shall have any demand or dispute with respect to the gift properties or the consideration thereof, as against the said Mussumat, her heirs and representatives. Should I, the executant, my heirs and representatives make any claim or put forward any demand in respect of the gift properties or the consideration thereof the same shall be deemed null and void. "

Held, affirming the courts below, that the transfer was not a gift pure and simple but was a gift for consideration, and that the wife took the property in full right of ownership. (*Mr. Ameer Ali.*) HITENDRA SINGH *v.* RAMESHWAR SINGH BAHADOOR. **(1928) 55 I. A. 197 = 7 Pat. 500 = 9 P. L. T. 295 = 32 C. W. N. 762 = 26 A. L. J. 652 = 48 C. L. J. 83 = 28 L. W. 12 = 109 I. C. 858 = A. I. R. 1929 P.C. 112 = 55 M. L. J. 615.**

———*Immoveable property — Gift of—Property given stridhan of wife—Alienation of property—Wife's power of —Devolution of property after her death—Mode of.*

According to the Mitakshara school of Hindu law, when a husband makes a gift of immoveable property to his wife, such property is taken by her as stridhan and is descendible to her heirs and not his, and would devolve first on her daughter and her daughter's daughter and failing them on her daughter's son ; but over such property she would have no right of alienation unless the gift was coupled with an express power of alienation, or, as held in Ramachandra Rao *v.* Ramachandra Rao [(1922) I. L. R. 45 M. 320 (328)] unless there are words of sufficient amplitude to confer it upon her. (*Sir John Wallis.*) NARSINGH RAO *v.* MAHALAKSHMI BAI. **(1928) 55 I. A. 180 = 50 A. 375 = 109 I. C. 703 = 48 C. L. J. 106 = 32 C. W. N. 1065 = 28 L. W. 171 = 26 A. L. J. 897 = 30 Bom. L.R. 1331 = 5 O. W. N. 951 = A. I. R. 1928 P. C. 156 = 55 M. L. J. 42.**

———*Lawful wife—Person described as a—Gift to—Invalidity of marriage—Effect on gift of.*

The distinction between what is description only and what is the reason or motive of a gift or bequest may often be very fine, but it is a distinction which must be drawn from a consideration of the language and the surrounding circumstances. If a man makes a bequest to his "wife A.B.," believing the person named to be his lawful wife, and he has not been imposed upon by her, and falsely led to believe that he could lawfully marry her, and it afterwards appears that the marriage was not lawful, it may be that the legality of the marriage is not essential to the validity of the gift. Whether the marriage was lawful or not may be considered to make no difference in the intention of the testator (89). (*Sir Richard Couch.*) FANINDRA DEB RAIKAT *v.* RAJESWAR DASS. **(1885) 12 I. A. 72 = 11 C. 463 (484) = 4 Sar. 610.**

———*Maintenance—Absolute gift by way of—Zemindar's power to make—Hindu Law—Custom forbidding such grants—Validity of.*

There is no rule of Hindu law forbidding Zemindars to make absolute gifts to their wives by way of maintenance if they are so minded. There might be a rigid local or tribal rule forbidding such grants. (*Lord Hobhouse.*) SRI BRAJA KISORA DEVU GARU *v.* SRI KUNDANA DEVI PATTA MAHADEVI GARU. **(1899) 26 I.A. 66 = 22 M. 431 (434) = 1 Bom. L R. 287 = 3 C.W.N. 378 = 7 Sar. 528 = 9 M.L.J. 157.**

———*Maintenance — Gift by way of—Estate conveyed under —Question as to—Issue in case of, as to existence and validity of custom by which such a gift would be for life only—Propriety—Husband's power to make absolute gift admitted.*

The question was whether a gift of villages made by an Uriya zemindar to his wife by way of maintenance was absolute or for her life only. The power of the zemindar to make a complete alienation was not questioned. The terms of the grant, if any, were unknown.

The District Judge held that the presumption in cases where an Uriya zemindar gave a village to his wife was that it was a life-interest only that was given, and that that presumption had not been rebutted. On appeal, the High Court remitted an issue "whether there is a local custom for zemindars to give villages to their wives for life only, and if such custom is valid."

Held that the inquiry directed by the issue remitted was unmeaning and misleading (68-9). (*Lord Hobhouse.*) SRI BRAJA KISORA DEVU GARU *v.* SRI KUNDANA DEVI PATTA MAHADEVI GARU. **(1899) 26 I.A. 66 = 22 M. 431 (434) = 1 Bom. L.R. 287 = 3 C.W.N. 378 = 7 Sar. 528 = 9 M.L.J. 157.**

———*Maintenance—Gift by way of—Estate conveyed under—Terms of grant, if any, not known—Enjoyment of property by wife for many years alone known—Effect.*

The question was whether a gift of villages by a zemindar to his wife by way of maintenance was absolute or for her life only. The terms of the grant, if any, were unknown, and all that appeared was that the wife enjoyed the revenue for twenty-six years. It was not disputed that the husband

HINDU LAW—(*Contd.*)

Gift—(*Contd.*)

WIFE—GIFT TO—(*Contd.*)

could, if he had been so minded, have conveyed the villages absolutely.

Held that there was no general law to determine under such circumstances the amount of benefit which the husband had conferred on his wife. (*Lord Hobhouse.*) SRI BRAJA KISORA DEVI GARU *v.* SRI KUNDANA DEVI PATTA MAHADEVI GARU. **(1899) 26 I.A. 66 = 22 M. 431 (435) = 1 Bom. L R. 287 = 3 C.W.N. 378 = 7 Sar. 528 = 9 M.L.J. 157.**

———*Maintenance—Gift by way of—Life-estate only conveyed under—Custom as to—Proof of—Quantum.*

On an issue "whether there is a local custom for zemindars to give villages to their wives for life only," three witnesses were examined, who said it was the custom in Chinna Kimedi and in other specified zemindaries to give villages to zemindarnis for life, to be resumed at their deaths.

Held that the evidence was inadequate to prove a custom, (*Lord Hobhouse.*) SRI BRAJA KISORA DEVI GARU *v.* SRI KUNDANA DEVI PATTA MAHADEVI GARU. **(1899) 26 I.A. 66 (69) = 22 M. 431 (434) = 1 Bom. L. R. 287 = 7 Sar. 528 = 3 C.W.N. 378 = 9 M.L.J. 157.**

———*Maintenance—Gift by way of—Life estate only conveyed under—Evidence.*

Held, reversing the High Court, and restoring the District Judge, that a gift of villages by an Uriya zemindar to his wife by way of maintenance was not absolute but enured for her life only. (*Lord Hobhouse.*) SRI BRAJA KISORA DEVI GARU *v.* SRI KUNDANA DEVI PATTA MAHADEVI GARU. **(1899) 26 I.A. 66 = 22 M. 431 = 1 Bom. L. R. 287 = 3 C.W.N. 378 = 7 Sar. 528 = 9 M.L.J. 157.**

———Money—Gift by husband of—Immovable property purchased by wife with—Nature of—Alienation of—Wife's power of. *See* HINDU LAW—HUSBAND AND WIFE—WIFE—IMMOVABLE PROPERTY PURCHASED BY, ETC. **(1873) 19 W.R. 292.**

———*Moveable property—Gift by husband of—Nature of—Alienation of—Wife's power of.*

Moveable property given by a Hindu to his wife is her stridhan of which she is at liberty to make any disposition at pleasure (814). (*Sir Barnes Peacock.*) LUCHMUN CHUNDER GUR GOSSAIN *v.* KALI CHURN SINGH. **(1873) 2 Suth. 809 = 19 W.R. 292 = 4 Sar. 802.**

———*Nature of—Gift pure and simple—Transfer for consideration—Estate conveyed—Construction of deed of transfer.*

Held, on the construction of a hiba-bil-ewaz executed by a Mithila Brahmin governed by the Mithila Law in favour of his wife, that it was not a gift pure and simple, but was a transfer for consideration and for substantial consideration, and that by it all the rights of ownership were actually conveyed to the wife. (*Mr. Ameer Ali.*) HITENDRA SINGH *v.* RAMESHWAR SINGH BAHADUR. **(1928) 55 I.A. 197 = 7 Pat. 500 = 26 A.L.J. 652 = 48 C. L. J. 83 = 28 L.W. 12 = 32 C.W.N. 762 = 9 Pat. L T. 295 = 109 I.C. 858 = A. I. R. 1928 P.C. 112 = 55 M.L.J. 615**

———*Second marriage of husband — Property given to first wife on occasion of—Nature of—Stridhan if.*

It is not unusual for a husband, upon his being about to marry a second wife, to make a present to his first wife, and, if he does so, the property so presented becomes her stridhanam (33). (*Sir Barnes Peacock.*) MUSSAMMAT THAKRO *v.* GANGA PERSHAD. **(1887) 15 I.A. 29 = 10 A. 197 (203-4) = 5 Sar. 133.**

WILL—DISPOSITIONS BY—POWERS OF.

———Analogy between. *See* HINDU LAW—WILL—GIFT.

WILL OR.

———*See* HINDU LAW—WILL—GIFT OR.

WOMAN—GIFT TO.

———*"Santan Sreni Kramane"—Gift to sister and her—Estate conveyed.*

A grant of villages by a Hindu to his sister for her support provided: "Being in possession of the lands and paying rent according to the takut jumma, do you and the generations (Santan Sreni) born of your womb successively (Krame) enjoy the same. No other heir of yours shall have right or interest."

Held, on a construction of the grant, that the sister took an absolute estate defeasible in the event of a failure of issue living at the time of her death, in which event the estate was to revert to the donor and his heirs, and that she had, therefore, an estate which she could dispose of by will (148).

The words of the grant with the exception of the last line "No other heir of yours shall have right or interest" appear to import an absolute estate, such as would have been given had the words been "your children and grandchildren." And no inference so far arises that the donor had an English estate tail in contemplation. The only difficulty is caused by the words which follow, "No other heir of yours shall have right or interest." These negative words may be read as referring to the time of the death of the sister, and their effect is to make the absolute estate before given defeasible in the event of failure of issue living at the time of her death, in which event the estate was to revert to the donor and his heirs (147-8). (*Sir Robert Collier.*) BHOOBUN MOHINI DEBYA *v.* HURRISH CHUNDER CHOWDHRY. **(1878) 5 I.A. 138 = 4 C. 23 (28) = 2 C.L.R. 339 = 3 Sar. 815 = 3 Suth. 537.**

———*Sister—Support of—Gift of immovable property for—Estate conveyed.*

If the words of the sunnud (by which immoveable property was granted by a person to his sister), "you are my sister, I accordingly grant to you a talook for your support," had stood alone, it might have been open to question whether an absolute grant, or a grant for life only was intended (147). (*Sir Robert Collier.*) BHOOBUN MOHINI DEBYA *v.* HURRISH CHUNDER CHOWDHRY. **(1878) 5 I.A. 138 = 4 C. 23 (27-8) = 2 C.L.R. 339 = 3 Sar. 815 = 3 Suth. 537.**

———Words — Putra Poutradi Krame—Effect of. *See* WORDS—MEANING OF—PUTRA POUTRADI KRAME. **(1881) 8 I. A. 46 (62) = 7 C. 304 (315).**

WORDS IN DEED OF.

———Meaning of. *See* WORDS—MEANING OF.

Grant.

———*See* (1) GRANT, (2) HINDU LAW—GIFT, AND (3) HINDU LAW—MAINTENANCE—GRANT FOR.

Husband and Wife.

ANTE-NUPTIAL AGREEMENT.

———*See* ANTE-NUPTIAL AGREEMENT.

ANTE-NUPTIAL SETTLEMENT.

———*See* DEED—CONSTRUCTION OF—ANTE NUPTIAL SETTLEMENT.

HINDU LAW—(*Contd.*)

Husband and wife—(*Contd.*)

HUSBAND.

———*Alienation by childless—Wife's consent to—Necessity.*

By the Hindu Law, a zemindar having no issue can, without his wife's consent, alienate, by deed or will, a portion of his estate, which, in default of lenial male issue and intestacy, would vest in his wife. (*Mr. Baron Parke.*) MULRAZ LACHMIA *v.* CHALEKANY VENCATA.

(1838) 2 M.I A. 54 = 1 Sar. 154.

ONENESS OF.

———*Survival of one-half of husband in wife.*

The doctrine of Hindu law is that the husband and wife are one, and that as long as the wife survives, one-half of the husband survives (312). (*Lord Kingsdown.*) MUSAMMAT BHOOBUN MOYEE DEBIA *v.* RAM KISHORE ACHARJ CHOWDHRY. **(1865) 10 M. I. A. 279 = 3 W. R. (P. C.) 15 = 1 Suth. 574 = 2 Sar. 111.**

SAPINDAS TO EACH OTHER.

According to the Mitakshara definition of Sapinda husband and wife are sapindas to each other. (*Lord Davey.*) BAI KESSERBAI *v.* HUNSRAJ MORARJI.

(1906) 33 I. A. 176 (188) = 30 B. 431 (443) = 10 C. W. N. 802 = 4 C. L. J. 9 = 8 Bom. L. R. 446 = 3 A. L. J. 484 = 1 M. L. T. 211 = 16 M. L J. 446.

WIFE.

———*Bank deposit by husband of his money in name of, or in joint names of himself and his wife—Benami or not.*

Where a Hindu opened a deposit account for a sum belonging to him with a Bank in the names of himself and his wife "payable to either or survivor," and a question arose after his death as to the ownership of the amount, *held*, that there was no presumption, in the deposit note, of an intended advancement in favour of the wife (the survivor) and that the sum and interest were the property of the husband, and remained at his disposal at the date of his death. (*Lord Parmoor.*) GURAN DITTA *v.* RAM DITTA. **(1928) 55 I. A. 235 = 55 C. 944 = 32 C. W. N. 817 = 29 Punj. L. R. 429 = 28 L. W. 66 = 109 I. C. 723 (2) = 48 C. L. J. 119 = 5 O. W. N. 668 = I. L. T. 40 Lah. 144 = 30 Bom. L. R. 1384 = 26 A. L. J. 1215 = (1928) M. W. N. 917 = A. I. R. 1928 P. C. 172 = 55 M. L. J. 651.**

———Bequest to. *See* under HINDU LAW—WILL.

———Family of. *See* HINDU LAW—MARRIAGE—EFFECT—WIFE. **(1876) 3 I. A. 154 (191) = 1 M. 69 (81).**

———*First wife—Precedence and privileges of—Inapplicability of, to others—Subsequent wives of same class and caste—Equal footing of.*

There are, undoubtedly, authorities which show that the first wife occupies a position of honour and precedence above all others; but no just analogy can be established between the status of the first wife and that of any subsequent wife. Her title to special rank and privileges rests upon grounds peculiar to the first wife, and which can have no application to others. The reasons upon which she alone of all the wives is entitled to peculiar honour and privileges rather point to the conclusion that the wives subsequently married, if of the same caste and class, are on an equal footing (9). (*Sir Montague E. Smith.*) RAMALAKSHMI AMMAL *v.* SIVANANTHA PERUMAL SETHURAYER. **(1872) Sup. I. A. 1 = 14 M. I. A. 570 = 17 W. R. 553 = 12 B. L. R. 396 = 2 Suth. 603 = 3 Sar. 108.**

———*First wife—Precedence and privileges of—Inapplicability of, to succession of sons to their father.*

HINDU LAW—(*Contd.*)

Husband and wife—(*Contd.*)

WIFE—(*Contd.*)

The reasons on which the precedence and privileges of the first wife over her co-wives are founded are scarcely pertinent to the succession of sons to their father, which is governed by other considerations (7). (*Sir Montague E. Smith.*) PEDDA RAMAPPA NAYANIVARU *v.* BANGARU SESHAMMA NAYANIVARU. **(1880) 8 I. A. 1 = 2 M 286 (293) = 8 C. L. R. 315 = 4 Sar. 203.**

———*First wife—Third wife married after death of previous wives if in position of a.*

Quaere, whether a third wife, who was not married after the deaths of the two former wives, stands in the position of a first-married wife (7). (*Sir Montague E. Smith.*) PEDDA RAMAPPA NAYANIVARU *v.* BANGARU SESHAMMA NAYANIVARU. **(1880) 8 I. A. 1 = 2 M. 286 (293) = 8 C.L. R. 315 = 4 Sar. 203.**

———*First wife—Transfer by husband to, on occasion of his second marriage—Benami transaction or gift—Object of transfer to prevent issue of second wife from claiming shares in property.*

In a case in which it was found that a Hindu, when about to marry a second wife, stated to his first wife that he would appropriate that part of the property which he had purchased in his own name as a present to her in consideration of his being about to marry the second wife and nearly 15 years afterwards caused the property to be changed from his own name into that of his first wife, their Lordships affirmed the finding of the trial Court that mutation of names was not for the purpose of putting the property into the name of the first wife benami for the husband, but for her own benefit, and that it was therefore her stridhan (35).

The husband, when he made the transfer into the name of his first wife, did not appear to have had any creditors or any particular reason for putting the property into her name instead of allowing it to remain in his own name, unless it was for the purpose of giving her a benefit (35). Further the circumstance, appearing in the evidence, that the object of the husband in putting the property into the name of the first wife was that the issue of the second wife should have no share in it, is inconsistent with the view that the transfer was merely benami (35). (*Sir Barnes Peacock.*) MUSAMMAT THAKRO *v.* GANGA PERSHAD.

(1887) 15 I. A. 29 = 10 A. 197 = 5 Sar. 133.

———Gift to. *See* HINDU LAW—GIFT—WIFE—GIFT TO.

———Gotra of. *See* HINDU LAW—HUSBAND AND WIFE—WIFE—SAPINDA OF HUSBAND'S FAMILY.

(1880) 7 I. A. 212 (231-3) = 5 B. 110 (118).

———Immovable property gifted by husband—Stridhan of wife—Alienation of—Power of—Devolution of property after wife's death—Mode of. *See* HINDU LAW—GIFT—WIFE—GIFT TO—IMMOVEABLE PROPERTY—GIFT OF.

(1928) 55 I. A. 180 = 50 A. 375.

———Immovable property purchased by, with money given by husband—Nature of—Alienation of—Wife's power of immovable property purchased by a woman with money given to her by her husband would be equally her stridhan and would be disposable by her according to her pleasure (814). (*Sir Barnes Peacock.*) LUCHMAN CHUNDER GUR GOSSAIN *v.* KALI CHURN SINGH. **(1873) 2 Suth. 809 = 19 W. R. 292 = 4 Sar. 802.**

———Lawful wife—Gift to a person described as a—Invalidity of marriage—Effect. *See* HINDU LAW—GIFT—WIFE—GIFT TO—LAWFUL WIFE.

(1885) 12 I. A. 72 (89) = 11 C. 463 (484).

HINDU LAW--(*Contd.*)

Husband and wife—(*Contd.*)

WIFE—(*Contd.*)

———*Maintenance—Arrears of—Claim against husband for—Right to—Residence apart for long time without justification—Effect.*

Suit by Hindu wife against her husband to recover twelve years' arrears of maintenance. Admittedly, the plaintiff had left her husband's house 23 years before suit and had not lived with her husband or in his house as his wife for 23 years before his death. The main question in the case was whether she was justified in so leaving her husband's house, and in continuing to remain away for all the intervening years that had elapsed prior to suit.

Held, on the evidence reversing the High Court and restoring the Sub-Judge, that the plaintiff had voluntarily lived away from her husband without justification, and that there having been no real attempt on her part to enforce a claim for maintenance or to procure a return to her husband's house during the long series of years which had elapsed prior to suit, she was not entitled to the arrears claimed. (*Lord Carson.*) BOMMADEVARA NAGANNA NAYUDU BAHADUR *v.* BOMMADEVARA RAJYA LAKSHMIDEVI AMMA. **(1928) 28 L. W. 105 = 110 I. C. 30 = 48 C. L. J. 171 = A. I. R. 1928 P. C. 187 = 55 M. L. J. 242.**

———*Maintenance—Right to—Forfeiture of—Husband's house—Non-residence in—Effect.*

A wife cannot leave her husband's house when she chooses, and require him to provide maintenance for her elsewhere (210). (*Sir Barnes Peacock.*) RAJAH PIRTHEE SINGH *v.* RANEE RAJ KOWER. **(1873) Sup. I. A. 203 = 12 B. L. R. 238 = 20 W. R. 21 = 3 Sar. 259 = 2 Suth. 846.**

———Maintenance of—Gift by husband for. *See* HINDU LAW—GIFT—WIFE—GIFT TO—MAINTENANCE.

———*Movable property gifted by husband during married life—Immovable property purchased by wife with, after husband's death—Nature of—Stridhan if.*

A Hindu widow, who received presents of moveable property from her husband from time to time during their married life, purchased, after his death, immovable property, partly out of the property so obtained by her and partly with money which represented the sale proceeds of jewellery forming part of her stridhan. *Held* that the immoveable property so purchased by her was her stridhan. VENKATA RAMA RAO *v.* VENKATA SURIYA RAO.

(1880) 2 M. 333 = 8 C. L. R. 304 = 4 Sar. 209.

———*Purchase in name of—Benami for husband or not—Presumption—Onus of proof—Evidence.*

There can be no doubt now that a purchase in India by a native of India of property in India in the name of his wife unexplained by other proved or admitted facts is to be regarded as a benami transaction, by which the beneficial interest in the property is in the husband, although the ostensible title is in his wife. The rule of the law of England that such a purchase by a husband in England is to be assumed to be a purchase for the advancement of the wife does not apply in India.

Where, therefore, a Hindu son brought a suit for the recovery, as against his father's creditors, of a house purchased by his father in the name of his wife (plaintiff's mother) alleging that the purchase was made by the father in performance of an ante-nuptial agreement made by him to settle a house upon her, that the suit house really belonged to her, and that she was not a mere benamidar for her husband.

Held, that, if the plaintiff failed to prove the ante-nuptial agreement alleged by him, and that it was in performance of that agreement that the suit property was purchased by his father in his mother's name, the plaintiff's suit must fail.

Held further, that the plaintiff had failed to prove the ante-nuptial agreement set up by him, and that his mother had no beneficial interest in the suit property and was a mere benamidar for her husband. (*Sir John Edge.*) SURA LAKSHMIAH CHETTY *v.* KOTHANDARAMA PILLAI.

(1925) 52 I. A. 286 = 48 M. 605 = 23 A. L. J. 662 = 42 C. L. J. 8 = 27 Bom. L.R. 1076 = 29 C. W. N. 1013 = (1925) M.W.N. 717 = 3 P. L. R. 290 = 23 L. W. 138 = A. I. R. 1925 P. C. 181 = 88 I. C. 327 = 49 M. L. J. 109.

——— *Purchase in name of—Benami for husband or not—Evidence.*

Held, on the evidence in the case, that property purchased in the name of a Hindu wife, was purchased with her own funds and was her stridhanam, and that the purchase was not made by her husband with his own funds benami in the name of his wife (425). (*Sir James Colvile.*) GERESH CHUNDER LAHOREE *v.* MUSSUMAT BHUGGOBUTTY DEBIA. **(1870) 13 M.I. A. 419 = 2 Sar. 579 = 14 W. R. (P. C.) 7 = 2 Suth. 339.**

———In a case in which the question was whether a purchase by a Hindu wife of a share of her husband's ancestral estate was benami for her husband, *held* on the evidence, reversing the High Court, and restoring the decision of the Sub-Judge, who was a Hindu and would be better acquainted with the habits of Hindu ladies than the Judges of the High Court could be, and who had seen the witnesses, that the purchase was benami. (*Sir Richard Couch.*) DHARANI KANT LAHIRI CHOWDHRY *v.* KRISTO KUMARI CHOWDHRANI. **(1886) 13 I. A. 70 = 13 C. 181 = 4 Sar. 759.**

———*Sapinda of husband's family.*

On her marriage the wife enters the gotra of her husband, and it can scarcely be doubted that in some sense she becomes a sapinda of his family (231).

Authorities on the point referred to (231-3). (*Sir Montague Smith.*) LULLOOBHOY BAPOOBHOY *v.* CASSIBAI. **(1880) 7 I.A. 212 = 5 B. 110 (118) = 7 C. L. R. 445 = 4 Sar. 164 = 3 Suth. 795.**

———Stridhan of. *See* HINDU LAW — STRIDHAN — WIFE.

WIVES OTHER THAN THE FIRST OF SAME CLASS AND CASTE.

———Equal footing of. *See* HINDU LAW — HUSBAND AND WIFE—WIFE—FIRST WIFE—PRECEDENCE AND PRIVILEGES OF—INAPPLICABILITY OF, TO OTHERS.

(1872) Sup. I. A. 1 (9) = 14 M. I. A. 570.

Illegitimate child.

———*Caste of—Christian father and Hindu woman living in adultery with him—Child of.*

It is impossible to treat the illegitimate sons born of a Christian father and a Hindu woman living in adultery with him as the sons of a Sudra father (423). (*Lord Kingsdown.*) MYNA BOYEE *v.* OOTARAM.

(1861) 8 M. I. A. 400 = 2 W. R. 4 = 2 M. H. C. R. 196 = 1 Suth. 452 = 1 Sar. 797.

———Englishman—Illegitimate child of, by Hindu woman—Hindu if a. *See* HINDU—ENGLISHMAN.

(1861) 8 M. I. A. 400 (420).

———*Mokurruree pottah in favour of—Interest conveyed under—Words "generation to generation"—Effect of.*

A Hindu Zemindar having an illegitimate family by a Mahomedan lady domiciled in his house executed a mokurraree pottah in favour of *S*, one of the infant daughters of

HINDU LAW—(*Contd.*)

Illegitimate child—(*Contd.*)

that family. By the pottah, the terms of which are set out on pp. 92-3 of the report of the case in L. R. 3 I. A. 92, the zemindar granted a mouzah to *S* and her children from generation to generation, and in the pottah she was described as absolute (Moostukkil) mokurruredar.

Held, that the grant was clearly intended to create an absolute and hereditary mokurruree tenure (97).

The grant contains the essential words, "generation to generation," which in documents of the kind in question have always been considered to have that effect; and their Lordships do not find in the particular document any special terms which would distinguish it from a grant of an ordinary mokurruree istimraree tenure (97-8). (*Sir James W. Colvile.*) RANEE SONET KOWAR *v.* MIRZA HIMMUT BAHADOOR. **(1876) 3 I.A. 92 = 1 C. 391 = 25 W. R. 239 = 11 M. J. 149.**

Illegitimate son.

CHILDREN OF—CASTE OF.
CLAIM AS—PROOF OF.
FATHER'S ESTATE — SHARE IN, AS AGAINST HIS WIDOW.
INHERITANCE BY.
INHERITANCE TO.
JOINT FAMILY BETWEEN AN, AND ANOTHER ILLEGITIMATE SON OF SAME FATHER BY DIFFERENT MOTHER.
MAINTENANCE.
RIGHT BY BIRTH OF, IN PARENTAL ESTATE.
SUDRA IN MADRAS PRESIDENCY—SON OF—RIGHTS OF.
SURVIVORSHIP TO LEGITIMATE BROTHER.

CHILDREN OF—CASTE OF.

——All the parties being of the Soodra caste, it is said, that because it is shown that the father of the mother of the present plaintiff and respondent was illegitimate, therefore, the child of that father could not contract a valid marriage, and was in substance of no caste at all. No decision or authority is brought forward supporting any such proposition (158). (*Lord Justice Giffard.*) INDERUN VALUNGYPOOLY TAVER *v.* RAMASAMY PANDIA TALAVER.
(1869) 13 M. I. A. 141 = 12 W. R. (P. C.) 41 = 3 B. L. R. (P. C.) 1 = 2 Suth. 267 = 2 Sar. 498.

CLAIM AS—PROOF OF.

——*Quantum.*

Held, on the evidence in the case affirming the courts below, that the plaintiff's mother was in the exclusive and permanent keeping of the former zemindar of Vettiapuram as his mistress, and that the plaintiff was the illegitimate issue of the said zemindar by that woman. (*Sir James W. Colvile.*) MUTHUSWAMY JAGAVERA VETTAPPA NAICKER *v.* VENCATESWARA VETTAYA. **(1868) 12 M.I.A. 203 = 11 W.R. (P.C.) 6 = 2 B L R. (P. C.) 15 = 2 Suth. 175 = 2 Sar. 395.**

FATHER'S ESTATE — SHARE IN, AS AGAINST HIS WIDOW.

——*Computation of—True method of.*

The question was whether under the Mithakshara law the sole illegitimate son of a zemindar was entitled as against the zemindar's lawfully-married widow, to a one-third or one-half share in the personal or self-acquired properties of the zemindar.

Held, affirming the High Court, that the plaintiff was entitled to share equally with the widow.

The text and the commentary speak of the illegitimate son being made partaker of a moiety of a share or participating for half of a share, but there is no explicit statement

HINDU LAW—(*Contd.*)

Illegitimate son—(*Contd.*)

FATHER'S ESTATE—SHARE IN, AS AGAINST HIS WIDOW—(*Contd.*)

as to the unit in which he is to take his half share. There are two possible views—either that he is to take one-half of the other participant's share, or one-half of what the illegitimate son would have taken had he been legitimate. The true method of computation is to allot to the illegitimate son one-half of what he would have taken had he been legitimate. Where, therefore, the competition is between the illegitimate son and the widow the former, if born of a lawfully-wedded wife, would have taken the whole, by reason of his illegitimacy this would be reduced to one half; and so he and the lawfully-married widow would take in equal shares. (*Sir Lawrence Jenkins.*) KAMULAMMAL *v.* VISVANATHASWAMI NAICKER.
(1922) 50 I. A. 32 = 46 M. 167 = 32 M. L. T. 48 = 37 C. L. J. 363 = 25 Bom. L. R. 577 = 27 C. W. N. 1021 = 17 L. W. 298 = A. I. R. 1923 P. C. 8 = 71 I. C. 643 = 44 M. L. J. 465.

INHERITANCE BY.

——*Another illegitimate son—Inheritance to—Right of.*

It is contended that two illegitimate sons, neither of whom could inherit from their father, can yet inherit from one another. The contention does not command assent at first sight (182). (*Lord Hobhouse.*) GAJAPATI RADHIKA *v.* VASUDEVA SANTA SINGARO. **(1892) 19 I. A. 179 = 15 M. 503 (510) = 6 Sar. 218.**

——*Father—Inheritance to—Right of—Christian father living in adulterous intercourse with Hindu woman—Son of.*

In the case of a Hindu woman living in adultery with a Christian, the sons born of such an adulterous intercourse have no right to succeed to their father (423-4). (*Lord Kingsdown.*) MYNA BOYEE *v.* OOTARAM.
(1861) 8 M. I. A. 400 = 2 W. R. 4 = 2 M. H. C. R. 196 = 1 Suth. 452 = 1 Sar. 797.

——*Idol—Shebaitship of—Inheritance right to.*

The plaintiff claimed to be entitled to certain sevas described in the plaint as the sevas of the idol *B*. He claimed them as his ancestral property, and said that his father *D* died leaving him, according to the custom of the family, as his successor to the gaddi and rajgi, and his lawful heir to and owner of all his moveable and immoveable property, inclusive of that under claim.

It was found that the plaintiff was only an illegitimate son of *D* and that the sevas in question were not appurtenant to the raj. The plaintiff failed to prove that, even if he, as an illegitimate son, might succeed to the raj in the absence of other relatives, that rule of succession was applicable, not only to the raj, but also to the other property of *D*.

Held, that the plaintiff had failed to prove that he was the heir to the sevas. (*Sir Barnes Peacock.*) JUGGARNATH BHRAMARBAR ROY *v.* RAM GOBIND.
(1880) 3 Suth. 802 = Bald. 374 = 4 I. J. 529.

——*Mother—Inheritance to—Right of—Mother a Hindu woman living in adultery with Christian father.*

In the case of a Hindu woman living in adultery with a Christian, *Quaere*, whether the sons born of such an adulterous intercourse can inherit the property of their mother (423-4). (*Lord Kingsdown.*) MYNA BOYEE *v.* OOTARAM.
(1861) 8 M. I. A. 400 = 2 W. R. 4 = 2 M. H. C. R. 196 = 1 Suth. 452 = 1 Sar. 797.

——*Property bequeathed by father to illegitimate sons as such and meant by him to be paternal provision for them—Inheritance* inter se *as regards—Right of.*

In the case of a Hindu woman living in adultery with a Christian, *Quaere*, whether the sons born of such an adulte-

HINDU LAW—(*Contd.*)

Illegitimate son—(*Contd.*)

INHERITANCE BY—(*Contd.*)

rous intercourse have the right to inherit *inter se* as regards property which had been bequeathed by the father to his sons, as his sons, and was meant by him to be a paternal provision for his children (423-4). (*Lord Kingsdown.*) MYNA BOYEE *v.* OOTARAM. **(1861) 8 M. I. A. 400 = 2 W. R. 4 = 2 M. H. C. R. 196 = 1 Suth. 452 = 1 Sar. 797.**

———*Right of—Deed taking away—What amounts to.*

In a suit for partition brought by one of the illegitimate sons of an Englishman by two native women against his brothers, a razeenamah was entered into, which provided that there should be no sale, mortgage, lease, or security of any separate share of the property left to the five sons by their father; that, during the lifetime of *T*, one of the defendants, he should have the management of the whole estate, the plaintiff receiving a fixed income; and that after *T's* death, the plaintiff should have the management of his fifth, and the management of the other four-fifths should be entrusted to *M* or *C*, also defendants.

Held that, on the right construction of the Razeenamah, the right of inheritance which the plaintiff in the suit in which the razeenamah was entered into might have to *T* was not intended to be taken away by the razeenamah (419-20).

The provisions of the razeenamah point to management, and to management only. They affect the mode of enjoyment, not the right of property. That right does not appear to be affected by the deed otherwise than by the particular provisions against alienation—provisions which, it is to be observed, are carefully limited by the deed, and do not extend to prevent alienation by devise, for it is plain that the deed contemplates that each co-sharer might devise. It is scarcely possible to suppose that it could be intended that the right to devise should be preserved, but that the right of inheritance should be taken away (419-20). (*Lord Kingsdown.*) MYNA BOYEE *v.* OOTARAM.

(1861) 8 M. I A. 400 = 2 W. R. 4 = 2 M. H. C. R. 196 = 1 Suth. 452 = 1 Sar. 797.

———Sudra caste—Son of a Hindu of—Right of. *See* HINDU LAW—ILLEGITIMATE SON—MAINTENANCE OF—SUDRA CASTE. **(1869) 13 M. I. A. 141 (159).**

———Twice-born classes—Son of one of—Right of. *See* HINDU LAW—ILLEGITIMATE SON—MAINTENANCE OF—TWICE-BORN CLASSES.

(1899) 27 I. A. 51 (57) = 21 A. 191 (198 9).

INHERITANCE TO.

———*Law applicable—European father—Son of, by native woman.*

There is nothing to indicate the religious belief or profession of the Colonel or his family, or what were their habits or usages. His origin is unknown; being illegitimate, he belonged to no family, and all that can be collected is, that he was probably a soldier of fortune, who rose by his courage and military skill to a certain rank and distinction. It is impossible under these circumstances to affirm that any particular law is applicable to the regulation of his succession. Any questions that may arise respecting it must, therefore, be determined by the principles of natural justice. (*Lord Westbury.*) BARLOW *v.* ORDE.

(1870) 13 M. I. A. 277 (309) = 13 W. R. 41 = 5 B. L. R. 1 = 2 Suth. 324 = 2 Sar. 540 = 6 Moo P.C. (N. S.) 437 = Punj. (P. C. J.) 1870.

JOINT FAMILY BETWEEN AN, AND ANOTHER ILLEGITIMATE SON OF SAME FATHER BY DIFFERENT MOTHER.

———*Nature of—Rights of succession and of survivorship in case of.*

HINDU LAW—(*Contd.*)

Illegitimate son—(*Contd.*)

JOINT FAMILY BETWEEN AN, AND ANOTHER ILLEGITIMATE SON OF SAME FATHER BY DIFFERENT MOTHER—(*Contd.*)

Illegitimate sons of a Christian father by different Hindu mothers, constituting themselves parceners in the enjoyment of their property after the manner of a Hindu joint family, are not an united family in the ordinary sense in which that term is used in the text-writers on the Hindu law. On the death of each, his lineal heirs, representing their parent, would, by the effect of the agreement, enter into that partnership; collaterals, however, could not so enter by succession, unless the Hindu law gave, in the case under consideration, a right of inheritance also to collaterals. The parties could not by their agreement give new rights of succession to themselves or their heirs unknown to the law. The law of survivorship, which is the consequence of such a partnership amongst Hindus, would come in only on failure of the heirs (420). (*Lord Kingsdown.*) MYNA BOYEE *v.* OOTARAM. **(1861) 8 M. I. A. 400 = 2 W. R. 4 = 2 M. H. C. R. 196 = 1 Suth. 452 = 1 Sar. 797.**

MAINTENANCE.

———Ancestral property — Assignment of—Validity of, against subsequently-born legitimate son of assignor — Mithakshara law—Twice-born classes. *See* HINDU LAW—JOINT FAMILY — FATHER—ANCESTRAL PROPERTY — ILLEGITIMATE SON'S MAINTENANCE.

(1877) 4 I.A. 159 (165) = 3 C. 214 (219-20).

———*Father's estate — Maintenance out of —Right to—Birth in father's house or of concubine possessing peculiar status therein not a condition of.*

Where *A* is proved to be the natural son of his deceased father, *B*, a Hindu gentleman, and to have been recognized by *B*, as such, it is not essential to *A's* title to maintenance out of *B's* estate that he should be shown to have been born in the house of his father, or of a concubine possessing a peculiar status therein (220). (*Sir James W. Colvile.*) MUTTUSWAMI JAGAVERA YETTAPPA NAICKER *v.* VENKATESWARA YETTAYA. **(1868) 12 M. I. A. 203 = 11 W.R. (P. C.) 6 = 2 B.L.R. (P. C.) 15 = 2 Suth. 175 = 2 Sar. 395.**

———*Oudh taluk—Villages in, assigned for maintenance—Rent payable for—Family arrangement as to—Alteration of terms of, by note in order of Settlement Officer as to rent payable—Conditions.*

The plaintiff was an illegitimate son of a deceased holder of an Oudh talook, and the defendant, its holder before and at the time of the suit, was the legitimate son of the deceased holder. It was found that there was a binding family arrangement between the parties by which the plaintiff was entitled to hold an estate appertaining to the talook for his maintenance on payment to the defendant of, at most, a rent of Rs. 2 001. In proceedings for the Settlement of the talook, the plaintiff was recorded as an under-proprietor of the estate held by him. The order of the Settlement Officer, however, contained a note to the following effect:—"As *B*" (plaintiff) "is to be recorded as under-proprietor of the Sawansa estate without condition, it is desirable, for the security of the talooka, that his liability to pay the talookdary allowance at the rate of 5 per cent. besides the jumma, which may be fixed, should be noted; and as the Rajah" (defendant) "and *B* assent to this: Ordered, that the name of *B* be entered as under-proprietor of all the villages in talooka Sawansa." There was, however, no evidence that the defendant insisted upon a change of the terms on which the estate was to be held by the plaintiff, and that the plaintiff assented to it. There was also no evidence that after the order of the Settlement Officer the plaintiff made the enhanced payment of Rs. 3,650 noted in it.

HINDU LAW—(*Contd.*)

Illegitimate son—(*Contd.*)

MAINTENANCE—(*Contd.*)

Held, that the note in the order might have been intended only for the purposes of the Government, and that, in the absence of any explanation, the note could not be relied upon as altering the rights of the parties which had then existed under the family arrangement. (*Sir Montague E. Smith.*) RAJAH BIJAI BAHADUR SINGH *v.* BABOO BHYRON BUX SINGH. **(1879) 3 Suth. 690 = Bald. 335 = 6 C. L. R. 21.**

———*Sudra caste—Children in—Right of.*

In the Soodra caste illegitimate children may inherit, and have a right to maintenance. (*Lord Justice Giffard.*) INDERUN VALUNGYPOOLY TAVER *v.* RAMASAMY PANDIA TALAVER. **(1869) 13 M. I. A. 141 (159) = 12 W.R. (P. C.) 41 = 3 B.L.R. (P. C.) 1 = 2 Suth. 267 = 2 Sar. 498.**

———*Twise-born classes—Son of one of—Right of.*

The illegitimate son of one of the three regenerate or twice-born classes cannot succeed to the inheritance of his father (50-1).

Held, accordingly, that an illegitimate son of a Kshatriya could not inherit, whether his mother was a Soodra or of any other caste (49).

The right of an illegitimate child of one of the three regenerate classes to maintenance out of the estate of his father, is recognised by all the authorities on Hindu law (52). (*Sir Edward Ryan.*) CHUOTURYA RUN MURDUN SYN *v.* SAHUB PURHULAD SYN. **(1857) 7 M. I. A. 18 = 4 W. R. 132 = 1 Suth. 313 = 1 Sar. 591.**

———Had both the sons been illegitimate, their claim, unless some special custom governed the case (which is not in proof), would have been to maintenance only (506-7). (*Lord Cairns.*) SRI GAJAPATHI RADHIKA PATTA MAHA DEVI GARU *v.* SRI GAJAPATHY NILAMANI PATTA MAHA DEVI GARU. **(1870) 13 M. I. A. 497 = 14 W. R. (P. C.) 33 = 6 B. L. R. 202 = 2 Suth. 365 = 2 Sar. 601.**

———It is unquestionably the law, that the illegitimate son of a person belonging to one of the twice-born classes has a right of maintenance (165). (*Sir James W. Colvile.*) RAJAH PARICHAT *v.* ZALIM SINGH. **(1877) 4 I. A. 159 = 3 C. 214 (220) = 3 Sar. 728 = 3 Suth. 436.**

———Under the Hindu law, an illegitimate son of one of the twice-born classes takes no part of the inheritance, but is entitled to maintenance from the estate of his father (57). (*Lord Hobhouse.*) ROSHAN SINGH *v.* BALWANT SINGH. **(1899) 27 I. A. 51 = 22 A. 191 (198 9) = 4 C W. N. 353 = 2 Bom. L. R. 529 = 7 Sar. 642.**

———*Twice-born classes— Son of one of—Right of—Nature and incidents of.*

The right of an illegitimate son of one of the twice-born classes to maintenance from the estate of his father is a personal right and is not heritable. *Quære*, whether it is not also an interest in, or charge upon, the property of the putative father within the meaning of Ss 91 and 100 of the Transfer of Property Act (57). (*Lord Hobhouse.*) ROSHAN SINGH *v.* BALWANT SINGH. **(1899) 27 I. A. 51 = 22 A. 191 (198-9) = 4 C. W. N. 353 = 2 Bom. L. R. 529 = 7 Sar. 642.**

RIGHT BY BIRTH OF, IN PARENTAL ESTATE.

———Under the Mitakshara law during the lifetime of the father the law leaves the illegitimate son to take a share by his father's choice, and it cannot be said that at his birth he acquires any right to share in the estate in the same way as a legitimate son would do (132). (*Sir Richard Couch.*) RAJA JOGENDRA BHUPATI HURRI CHUNDUN MAHAPATRA *v.* NITYANUND MANSINGH. **(1890) 17 I. A. 128 = 18 C. 151 (155) = 5 Sar. 596.**

SUDRA IN MADRAS PRESIDENCY—SON OF—RIGHTS OF.

———*Texts and Commentaries relating to.*

The rights of the illegitimate son of a Sudra in the Madras Presidency rest principally on a text of Yagnavalkya as explained and developed in the Mitakshara and other authoritative commentaries (36).

Their Lordships referred also to the Saraswati Vilasa, the Dattaka Chandrika, the Dayabhaga, and the Daya Karma Sangraha (38). (*Sir Lawrence Jenkins.*) KAMALAMMAL *v.* VISVANATHASWAMI NAICKER. **(1922) 50 I. A. 32 = 46 M. 167 (172) = 32 M. L. T. 48 = 37 C. L. J. 363 = 25 Bom. L. R. 577 = 27 C. W. N. 1021 = 17 L. W. 298 = A. I. R. 1923 P. C. 8 = 71 I. C. 643 = 44 M. L. J. 465.**

SURVIVORSHIP TO LEGITIMATE BROTHER.

———*Right of—Impartible estate.*

The plaintiff sued to establish his title to an impartible raj. The plaintiff was the illegitimate son of one *U*. On the death of *U*, he was succeeded in the raj by *N*, his legitimate son. *N* died leaving no son, but leaving three widows—Ranis—and a daughter by one of them. On the death of *N*, the plaintiff claimed to be entitled by right of survivorship to succeed to the Raj. *U* and his family were Sudras; the law governing the family was the Mitakshara law; and the suit raj was the joint impartible estate of *N* and the plaintiff.

Held, affirming the High Court, that the plaintiff was entitled to succeed to the Raj by virtue of survivorship. (*Sir Richard Couch.*) RAJA JOGENDRA BHUPATI HURRI CHUNDUN MAHAPATRA *v.* NITYANUND MANSINGH. **(1890) 17 I. A. 128 = 18 C. 151 = 5 Sar. 596.**

Impartible Estate.

IMPARTIBLE ESTATE—ACCRETION TO.
IMPARTIBLE ESTATE—ACCUMULATIONS.
IMPARTIBLE ESTATE—ALIENATION OF.
IMPARTIBLE ESTATE—AMGAON ESTATE IN CENTRAL PROVINCES.
IMPARTIBLE ESTATE—ANCESTRAL OR SELF-ACQUIRED.
IMPARTIBLE ESTATE—BRITISH RULE—ESTATE EXISTING BEFORE ADVENT OF—SETTLEMENT OR RE-GRANT BY BRITISH GOVERNMENT OF.
IMPARTIBLE ESTATE—COMPROMISE REGARDING—IMPARTIBILITY OF ESTATE IF ALTERED BY.
IMPARTIBLE ESTATE—CONFISCATION AND RE-GRANT OF.
IMPARTIBLE ESTATE—CUSTOM—CREATURE OF.
IMPARTIBLE ESTATE—DARBHANGA RAJ.
IMPARTIBLE ESTATE—DEVARAKOTTA ESTATE.
IMPARTIBLE ESTATE—DHALBOOM ESTATE.
IMPARTIBLE ESTATE—DISPOSSESSION OF HOLDER OF, BY NEIGHBOUR, AND RE-INSTATEMENT SUBSEQUENTLY BY GOVERNMENT.
IMPARTIBLE ESTATE—EXECUTION SALE.
IMPARTIBLE ESTATE—HOLDER OF.
IMPARTIBLE ESTATE—HUNSAPORE RAJ.
IMPARTIBLE ESTATE—IMPARTIBILITY OF—EFFECT ON.
IMPARTIBLE ESTATE—IMPARTIBILITY OF ESTATE.
IMPARTIBLE ESTATE—INCOME OF.
IMPARTIBLE ESTATE—JOINT ANCESTRAL ESTATE.

HINDU LAW—(*Contd.*)

Impartible Estate—(*Contd.*)

IMPARTIBLE ESTATE—JOINT FAMILY WITH AN, DESCENDING ACCORDING TO RULE OF LINEAL PRIMOGENITURE WITH RIGHTS OF MAINTENANCE AND OTHER PRIVILEGES TO JUNIOR MEMBERS.

IMPARTIBLE ESTATE—JOINT FAMILY PROPERTY—ESTATE FORMING.

IMPARTIBLE ESTATE—JOINT FAMILY PROPERTY IF MAY BE.

IMPARTIBLE ESTATE—JUNIOR MEMBERS.

IMPARTIBLE ESTATE—KUNJPURA RAJ.

IMPARTIBLE ESTATE—MADRAS REG. XXV OF 1802—SANAD IN COMMON FORM UNDER—ACCEPTANCE OF.

IMPARTIBLE ESTATE—MAINTENANCE OUT OF.

IMPARTIBLE ESTATE—MATERNAL GRANDFATHER'S ESTATE.

IMPARTIBLE ESTATE—MERANGI ZEMINDARY.

IMPARTIBLE ESTATE—MILITARY JAGIR — ESTATE HELD AS.

IMPARTIBLE ESTATE—NATURE AND INCIDENTS OF.

IMPARTIBLE ESTATE—NIDADAVOLE ZEMINDARY.

IMPARTIBLE ESTATE—NUZVID ZEMINDARY.

IMPARTIBLE ESTATE—ORIGIN OF.

IMPARTIBLE ESTATE—PARLAKIMIDI ZEMINDARY.

IMPARTIBLE ESTATE—PARTIBLE ESTATE OR.

IMPARTIBLE ESTATE — PATCUM RAJ IN CHOTA NAGPUR.

IMPARTIBLE ESTATE—POLLIEM OR PALAYAM.

IMPARTIBLE ESTATE—RAJ.

IMPARTIBLE ESTATE — RAJ — RAJA — TECHNICAL NAMES OF, TO ESTATE AND TO HOLDER THEREOF —NECESSITY.

IMPARTIBLE ESTATE—RAJ BHARA.

IMPARTIBLE ESTATE—RAMNAD ZEMINDARY.

IMPARTIBLE ESTATE—REVENUE ARREARS—RESUMPTION OF ESTATE FOR—DIVISION THEREOF INTO TWO ESTATES, AND GRANT OF ONE OF THEM UNDER SANAD.

IMPARTIBLE ESTATE—SERVICE ATTACHED TO—DISCONTINUANCE OF.

IMPARTIBLE ESTATE—SETTLED AND UNSETTLED ESTATES.

IMPARTIBLE ESTATE—SHIVAGUNGA ZEMINDARY.

IMPARTIBLE ESTATE—SIVAGIRI ZEMINDARY.

IMPARTIBLE ESTATE — SOUTHERN INDIA—ZEMINDARIES LARGE IN.

IMPARTIBLE ESTATE—SUCCESSION TO.

IMPARTIBLE ESTATE—SUNNUD GRANTED BY GOVERNMENT IN RESPECT OF—EFFECT OF.

IMPARTIBLE ESTATE—SUNNUD GRANTING—SETTING ASIDE OF, ON GROUND OF FRAUD—SUIT FOR.

IMPARTIBLE ESTATE—TIPPERAH RAJ.

IMPARTIBLE ESTATE—TIRHOOT ZEMINDARY.

IMPARTIBLE ESTATE—TITLE TO—CONTEST AS TO—EVIDENCE IN CASE OF.

IMPARTIBLE ESTATE—TRANSFER OF.

IMPARTIBLE ESTATE—UDAYARPALAYAM ESTATE.

IMPARTIBLE ESTATE—USURPATION OF, BY ANOTHER MEMBER OF FAMILY WITH AID OF SUPERIOR—RECOGNITION OF USURPER BY SUPERIOR—EFFECT.

IMPARTIBLE ESTATE—WIDOW (WITH LIFE INTEREST UNDER WILL OF HUSBAND) IN POSSESSION OF—MANAGER OF ESTATE—PENSION ON RESIGNATION TO.

Impartible Estate—Accretion to.

———*See* HINDU LAW—IMPARTIBLE ESTATE—INCOME OF.

HINDU LAW—(*Contd.*)

Impartible Estate—Accumulations.

———Income of estate—Purchases therewith—Accretion to estate or not. *See* HINDU LAW—IMPARTIBLE ESTATE—INCOME OF.

Impartible Estate—Alienation of.

CUSTOM PROHIBITING.

——— Evidence of—Absence of instances of alienation—Value of. *See* HINDU LAW—CUSTOM—ALIENABILITY OF PROPERTY—CUSTOM AGAINST.

———Evidence of—Statement of last holder that a previous holder had no right to make a will—Admissibility of—Statement a self-serving one. *See* ADMISSION—SELF-SERVING STATEMENT—ADMISSIBILITY OF—HINDU LAW—IMPARTIBLE ESTATE. **(1927) 54 I. A. 289 (298) = 54 C. 995.**

———Joint ancestral estate—Alienation of—Custom prohibiting. *See* HINDU LAW—IMPARTIBLE ESTATE—JOINT FAMILY PROPERTY—ESTATE FORMING—ALIENATION OF.

———*Onus of proof of.*

It cannot be laid down that, as a matter of law, the impartibility of a raj makes it inalienable. The question of inalienability is one depending upon family custom, which requires to be proved (253). (*Sir Richard Couch.*) RAJAH UDAYA ADITYA DEB *v.* JADUB LAL ADITYA DEB. **(1881) 8 I. A. 248 = 8 C. 199 (208) = 4 Sar. 290.**

———Property, though impartible, may be alienable. (*Lord Atkinson.*) DURGADUT SINGH *v.* RAMESHWAR SINGH. **(1909) 36 I. A. 176 (183) = 36 C. 943 (952-3) = 6 M. L. T. 68 = 10 C. L. J. 223 = 13 C. W. N. 1013 = 11 Bom. L R. 901 = 6 A. L. J. 847 = 4 I. C. 2 = 19 M. L. J. 567.**

———An impartible estate is alienable, in the absence of proof of custom restricting alienation. (*Viscount Sumner.*) KUMAR BAIJNATH PRASAD SINGH *v.* KEDAR NATH GOENKA. **(1927) 30 Bom L. R. 115 = 32 C. W. N. 481 = 27 L. W. 802 = I. L. T. 40 P. 18 = 5 O. W. N. 93 = 106 I. C. 646 (2) = 47 C. L. J. 134 = 54 M. L. J. 6.**

———*Proof of—Pacheet Zemindary.*

It appears to us that the inalienability of the Zemindary (of Pacheet) has not been sufficiently established (103). (*Lord Langdale.*) ANUND LAL SING DEO *v.* MAHARAJA DHERAJ GURROOD NARAYAN DEO BAHADUR. **(1850) 5 M. I. A. 82 = 1 Suth. 221 = 1 Sar. 399.**

———*Proof of—Patcum Raj in Chota Nagpur.*

Held, on the evidence in the case affirming the courts below, that there was no custom in the impartible raj of Patcum in Chota Nagpur making it inalienable (253). (*Sir Richard Couch.*) RAJAH UDAYA ADITYA DEB *v.* JADUB LAL ADITYA DEB. **(1881) 8 I. A. 248 = 8 C. 199 (206) = 4 Sar. 290.**

———*Proof of—Baikunthpur Raj.*

It appears to have been the opinion of this Committee that such an impartible estate as this of Baikunthpur might by family custom be inalienable. There is some evidence in this case of a family custom forbidding alienation by gift and consequently by will, but their Lordships do not propose to enter into the question whether there is sufficient proof of it (88). (*Sir Richard Couch.*) FANINDRA DEB RAIKAT *v.* RAJESWAR DASS. **(1885) 12 I. A. 72 = 11 C. 463 (483) = 4 Sar. 610.**

ESTATE NOT INALIENABLE BY CUSTOM OR BY REASON OF ITS TENURE.

———*Alienation of—Validity.*

If the palayam was not inalienable either by custom or by reason of its tenure the Palayagar for the time was

HINDU LAW—(*Contd.*)

Impartible Estate—Alienation of—(*Contd.*)

ESTATE NOT INALIENABLE BY CUSTOM OR BY REASON OF ITS TENURE—(*Contd.*)

entitled to mortgage or to transfer absolutely every village in the Palayam according to his pleasure. That is the result of the decisions of the Board in cases of impartible estates in India which descend according to a custom of primogeniture. Until the law on this subject was placed by decisions of the Board beyond a doubt, there was a current of judicial decisions in the Presidency of Madras to the effect that a holder of an impartible estate which descended by a rule of primogeniture could not transfer except for his own lifetime any part of the estate unless possibly for necessity. (*Sir John Edge.*) APPAYASAMI NAICKER *v.* MIDNAPUR ZEMINDARY CO., LTD.

(1921) 48 I. A. 100 (106) = 44 M. 575 (580-1) = (1921) M. W. N. 352 = 34 C. L. J. 6 = 29 M. L. T. 383 = 14 L. W. 49 = 26 C. W. N. 106 = 60 I. C. 953 = 20 A. L. J. 393 = A. I. R. 1922 P. C. 154 = 40 M. L. J. 537.

IMPARTIBILITY OF ESTATE DOES NOT, AS A MATTER OF LAW, MAKE IT INALIENABLE.

———It cannot be laid down that, as a matter of law, the impartibility of a raj, makes it inalienable. (*Sir Richard Couch.*) RAJAH UDAYA ADITYA DEB *v.* JADUB LAL ADITYA DEB. **(1881) 8 I. A. 248 (253) = 8 C. 199 (208) = 4 Sar. 290.**

———*See also* HINDU LAW—IMPARTIBLE ESTATE—ALIENATION OF—CUSTOM PROHIBITING—ONUS OF PROOF OF.

INALIENABILITY OF ESTATE—CONDITION OF.

———*Custom of inalienability proved or nature of tenure.*

If, as their Lordships are of opinion, the eldest son, where the Mithakshara law prevails and there is the custom of primogeniture, does not become a co-sharer with his father in the estate, the inalienability of the estate depends upon custom, which must be proved, or it may be in some cases, upon the nature of the tenure (65). (*Sir Richard Couch.*) RANI SARTAJ KUARI *v.* RANI DEORAJ KUARI.

(1887) 15 I. A. 51 = 10 A. 272 (289) = 5 Sar. 139.

JOINT ANCESTRAL ESTATE—ALIENATION OF.

———Custom prohibiting. *See* HINDU LAW—IMPARTIBLE ESTATE—JOINT FAMILY PROPERTY—ESTATE FORMING—ALIENATION OF.

MADRAS—LAW IN, PRIOR TO 10 ALL. 272 AND SINCE.

———In 1873 and 1876, it was the accepted law in Madras that the holder of an impartible Zemindari who was himself a member of an undivided family, could not alienate or encumber the corpus of the estate so as to bind his co-parceners, except for justifiable especial causes. Prior to 1889, there had been a series of decisions to this effect in the Madras Courts, but in that year, following the decision of this Committee in 10 A. 272 (*Sartaj Kuari's case*), the High Court of Madras over-ruled those decisions (13 M. 197); and it has recently been held by this Committee in the Pittapur case (22 M. 383) that impartible Zemindaries in the Presidency of Madras are not inalienable in the absence of proof of some special family custom or tenure attaching to the Zemindari, and having that effect. (*Sir Andrew Scoble.*) ABDUL AZIZ KHAN *v.* APPAYASAMI NAICKER.

(1903) 31 I.A. 1 (9) = 27 M. 131 (142) = 6 Bom.L.R. 7 = 8 C.W.N. 186 = 8 Sar. 568.

MILITARY OR FEUDAL NATURE OF TENURE—INALIENABILITY BY REASON OF.

———*Evidence.*

Where for upwards of a century there had been nothing military or feudal in the tenure and the estate had been an ordinary Zemindary, *held*, that no inalienability could result from the ancient military or feudal nature of the tenure (298-9). (*Lord Warrington of Clyffe.*) PROTAP CHANDRA DEO *v.* JAGADISH CHANDRA DEO. **(1927) 54 I. A. 289 = 54 C. 995 = 25 A. L. J. 628 = 102 I. C. 599 = 20 Bom. L.R. 1136 = 1927 M. W. N. 513 = 31 C. W. N. 943 = 4 O. W. N. 650 (2) = 39 M. L. T. 1 = 46 C. L. J. 136 = 8 Pat. L. T. 623 = A. I. R. 1927 P. C. 159 = 53 M. L. J. 30.**

WILL—ALIENATION BY.

———*Validity—Party entitled to impeach alienation a consenting party to it.*

Held, in the case of the Hunsapore Raj, descendible, according to custom, to the eldest male heir, that a will by the late Rajah bequeathing the Raj to the respondent was valid inasmuch as the only person entitled to impeach the disposition by will was a consenting party to it (39). (*Sir James W. Colvile.*) BABOO BEER PERTAB SAHEE *v.* MAHARAJAH RAJENDER PERTAB SAHEE.

(1867) 12 M. I. A. 1 = 9 W R. (P.C.) 15 = 2 Suth. 114 = 2 Sar. 348.

Impartible Estate—Amgaon estate in Central Provinces.

———Not in nature of a raj or an impartible estate. (*Lord Sinha.*) MARTAND RAO *v.* MALHAR RAO.

(1927) 55 I. A. 45 = 55 C. 403 = 47 C. L. J. 150 = 107 I. C. 7 = 30 Bom. L.R. 251 = 27 L. W. 350 = 24 N. L. R. 25 = 32 C. W. N. 621 = (1928) M. W. N. 942 = A. I. R. 1928 P. C. 10 = 54 M. L. J. 397.

Impartible Estate—Ancestral or Self acquired.

———Confiscation and re-grant—Estate subject of—Nature of, in grantee's hands. *See* HINDU LAW—IMPARTIBLE ESTATE—NATURE AND INCIDENTS OF—CONFISCATION AND RE-GRANT.

———Dispossession of zemindar by neighbour and reinstatement subsequently by Government—Nature of estate in reinstated holder's hands. *See* HINDU LAW—IMPARTIBLE ESTATE—NATURE AND INCIDENTS OF—DISPOSSESSION OF ZEMINDAR, ETC. **(1921) 48 I. A. 195 (200) = 43 A. 228 (233).**

———Maternal grandfather—Estate inherited by daughter's son from. *See* HINDU LAW—DAUGHTER'S SON—MATERNAL GRANDFATHER—PROPERTY INHERITED FROM—NATURE OF, ETC. **(1882) 9 I. A. 128 (143) = 6 M. 1 (17).**

———Usurpation of estate by another member of family with aid of superior—Recognition of usurper by superior—Estate not separate property of usurper by reason of. *See* HINDU LAW—IMPARTIBLE ESTATE—NATURE AND INCIDENTS OF—USURPATION OF, ETC.

(1870) 13 M. I. A. 333.

Impartible Estate—British rule—Estate existing before advent of—Settlement or re-grant by British Government of.

———Effect of, on nature and incidents of estate—Presumption. *See* HINDU LAW—IMPARTIBLE ESTATE—NATURE AND INCIDENTS OF—BRITISH RULE.

(1927) 55 I. A. 45 = 55 C. 403.

Impartible Estate—Compromise regarding—Impartibility of estate if altered by.

———*Widow of last holder setting up will by him in her favour and reversioner—Compromise between,*

HINDU LAW—(*Contd.*)

Impartible Estate—Compromise regarding—Impartibility of estate if altered by—(*Contd.*)

After the death of the last holder of an impartible estate descendible according to the rule of primogeniture a will was set up by his widow and a suit was instituted by the reversioner contesting the genuineness of the will and an agreement was entered into by the parties which provided, *inter alia*, that the widow was to have a life-interest for her life in the estate subject to certain conditions and that the reversioner or his successor should be the absolute owner of the estate and should occupy the gaddi, and the will was subsequently admitted to probate, *held*, in a suit by the reversioner's widow claiming proprietary possession of the estate as against her husband's distant cousin in the male line and certain other members of his family, that the rights of the parties to the suit depended upon the construction of the compromise and not upon the will, and that the impartible character of the estate was not changed by the terms of the compromise.

Upon the language of the compromise it is not possible to hold that the character of the estate, as it had been handed down from father to son for generations, was changed. As an impartible estate the reversioner laid claim to it, and the compromise provided that as an impartible estate it should devolve upon him. The reversioner never admitted the validity of the will as against him, and never admitted that the widow obtained any title under the will (17-8). (*Sir John Edge.*) LEKHRAJ KUNWAR *v.* HARPAL SINGH.

(1911) 39 I. A. 10 = 34 A. 65 (70) = 9 A. L. J. 40 = 11 M. L. T. 1 = (1911) 1 M. W. N. 16 = 14 Bom. L. R. 33 = 15 C. L. J. 72 = 13 I. C. 269 = 16 C. W. N. 217.

Impartible Estate—Confiscation and re-grant of.

———*See* HINDU LAW—IMPARTIBLE ESTATE—NATURE AND INCIDENTS OF—CONFISCATION AND RE-GRANT OF ESTATE.

Impartible Estate—Custom—Creature of.

———(*Lord Dunedin.*) RAMA RAO *v.* RAJA OF PITTAPUR. **(1918) 45 I. A. 148 (154) = 41 M. 778 (783-4) = 24 M. L. T 276 = (1918) M. W. N. 922 = 23 C. W. N. 173 = 28 C. L. J. 428 = 20 Bom. L. R. 1056 = 16 A. L. J. 833 = 5 Pat. L. W. 267 = 47 I. C. 354 = 35 M.L.J. 392**

———(*Viscount Cave.*) NARAYAN SINGH *v.* JANKI KOER. **(1920) 12 L. W. 349 = 24 C. W. N. 857 = 62 I. C. 289 = 28 M. L. T. 105.**

———(*Sir John Wallis.*) KONNAMMAL *v.* ANNADANA JADAYA GOUNDER. **(1927) 55 I. A 114 = 51 M. 189 = 27 L. W. 497 = 5 O. W. N. 411 = 108 I. C. 354 = 30 Bom. L. R. 802 = 47 C. L. J. 488 = 9 Pat. L. T. 347 = 26 A. L. J. 642 = 32 C. W. N. 983 = A. I. R. 1928 P. C. 68 = 54 M. L. J. 504.**

Impartible Estate—Darbhanga Raj.

———*Babuana grant—Purchase with—Accretion to original grant if.*

Immoveable properties acquired from the income and profits of the babuana properties are to be considered as accretions to the babuana properties (289). (*Sir John Edge.*) ERKADESHWAR SINGH *v.* JANESHWARI BAHUASIN. **(1914) 41 I. A 275 = 42 C. 582 (606) = (1914) M. W. N. 807 = 16 M. L. T. 382 = 1 L. W. 863 = 18 C. W. N. 1249 = 12 A. L. J. 1217 = 17 Bom. L. R. 18 = 21 C.L.J. 9 = 25 I. C. 417 = 27 M.L J. 373.**

———Babuana grant—Words—Auras putra pautradik in—Meaning of—Females if included. *See* GRANT—BABUANA GRANT. **(1914) 41 I.A. 275 (286) = 42 C. 582 (602-3).**

HINDU LAW—(*Contd.*)

Impartible Estate—Darbhanga Raj—(*Contd.*)

———*Babuana and Sohag grants—Nature and incidents of.*

The younger sons of a Maharaj of Darbhanga are styled Babus, and by the kulachar each younger son is entitled, by way of a Babuana grant, to a portion of the raj reasat for the maintenance of himself and his male descendants in the male line, and the wife of a younger son of a Maharaja of Darbhanga gets, by way of a Sohag grant, the usufruct of a portion of the raj reasat for the maintenance of herself and her male descendants in the male line. In each case the property, village or villages, granted continues to form part of the raj reasat, from which it is never separated; it is entered in the Government revenue registers under the name of the Maharaja for the time being of Darbhanga as the proprietor, and the property so granted reverts to the Maharaja for the time being of Darbhanga on the failure of male descendants in the male line of the grantee. Babuana grants and Sohag grants differ essentially in their nature from absolute grants, and are subject to the kulachar under which they are authorised and in accordance with which they are made (279). (*Sir John Edge.*) EKRADESHWAR SINGH *v.* JANESHWARI BAHUASIN.

(1914) 41 I.A. 275 = 42 C. 582 (594 5) = (1914) M.W.N. 807 = 16 M.L T. 382 = 1 L. W. 863 = 18 C.W.N. 1249 = 12 A.L.J. 1217 = 17 Bom. L.R. 18 = 21 C.L.J. 9 = 25 I.C. 417 = 27 M.L J. 373.

———*Babuana and Sohag grants—Nature and incidents of—Succession to—Distinction.*

Except that a Babuana grant is made to a male while a Sohag grant is made to a female, there is no difference so far as the right to succession to the property is concerned between a Babuana grant and its incidents and a Sohag grant and its incidents. In the one case the grant is made for the benefit of the grantee and his male descendants in the male line, in the other case the grant is for the benefit of the grantee and her male descendants in the male line; in each case, females, widows and daughters and the descendants of daughters, are by the custom applying to such grants excluded from the succession, and on the failure of such male descendants in the male line the property granted reverts to the Maharajah of Durbhanga for the time being (285). (*Sir John Edge.*) EKRADESHWAR SINGH *v.* JANESHWARI BAHUASIN.

(1914) 41 I. A. 275 = 42 C. 582 = (1914) M. W. N. 807 = 16 M. L. T. 382 = 1 L. W. 863 = 18 C. W. N 1249 = 12 A. L. J. 1217 = 17 Bom. L. R. 18 = 21 C. L. J. 9 = 25 I. C. 417 = 27 M. L. J. 373.

———*Babuana and Sohag grants—Succession to—Widows—Exclusion of—Custom of—Applicability of, before and after partition.*

Held, that a custom had been proved in the suit family of the Darbhanga raj by which females were excluded from the succession to Babuana property and to Sohag property where the members of the branch remained joint (286).

Held further, that that custom must even without evidence that it had been applied where the members of a branch had separated in food, worship, and estate, be held to exclude the widow of a childless and separated member from a Hindu widow's interest in the Babuana and Sohag properties which had been held by her husband as his separate property (286, 289). (*Sir John Edge.*) EKRADESHWAR SINGH *v.* JANESHWARI BAHUASIN.

(1914) 41 I. A. 275 = 42 C. 582 (603, 606) = (1914) M. W. N. 807 = 16 M. L. T. 382 = 1 L. W. 863 = 18 C. W. N. 1249 = 12 A. L. J. 1217 = 17 Bom. L. R. 18 = 21 C. L. J. 9 = 25 I. C. 417 = 27 M. L. J. 373.

HINDU LAW—(*Contd.*)

Impartible Estate—Darbhanga Raj—(*Contd.*)

———*Law governing family of— Mithila law.*

The family of the Darbhanga raj are Hindus, and, except in so far as customs of the family and its branches exist and apply, the members of the family are governed by the Mithila School of Hindu Law (279). (*Str John Edge.*) EKRADESHWAR SINGH *v.* JANESHWARI BAHUASIN.

(1914) 41 I. A. 275 = 42 C. 582 (595) = (1914) M. W. N. 807 = 16 M. L. T. 382 = 1 L. W. 863 = 18 C. W. N. 1249 = 12 A. L. J. 1217 = 17 Bom. L. R. 18 = 21 C. L. J. 9 = 25 I. C. 417 = 27 M. L. J. 373.

Impartible Estate—Devarakotta Estate.

———*Madras Regulation XXV of* 1802— *Sunud under— Grant of—Effect of—Estate impartible or partible.*

Held, on the evidence reversing the High Court and restoring the District Judge, that the Devarakotta estate was impartible and descended to the eldest son of the last owner.

The result of the evidence is that at this time (1801) Ankanna was in possession of the estate by right of primogeniture as an impartible estate, and was so regarded by the Government. On 8th December, 1802, an istimrar sanad was granted under Regulation XXV of 1802 by the then Governor of Madras to Ankanna fixing the assessment of the Zemindari, and declaring it to be permanent. Ankanna thus acquired a permanent property in the land at a fixed assessment, but there was no grant of the land, and the rule of succession to it was not altered. The estate remained entire, and there is no evidence of any intention of the Government to alter the nature of the tenure. What is said by this Board in the judgment in the Hunsapore case is applicable to the present case. The estate continued to be impartible, and the rule of succession to it was not altered. (*Sir Richard Couch.*) SRIMANTU RAJA YARLAGADDA MALLIKARJUNA *v.* SRIMANTU RAJA YARLAGADDA DURGA.

(1890) 17 I. A. 134 = 13 M. 406 = 5 Sar. 547.

Impartible Estate—Dhalboom Estate.

———*Dhalboom family—Origin—Law governing—Titles of honour denoting precedence in family.*

The Dhalboom family is one of a group of families whose ancestors originally came from the north-west part of India and established themselves by conquest in that part of Bengal which is known as the Jungle Mehals. Some of these families, like the Dhalboom family, are now governed by the Mithakshara law, and others by the Dayabhaga. But there are intermarriages between them. In all the Raj descends on a single heir. These families, or, at any rate, the more important of them, keep up a sort of semi-royal state, and dignify the heir-apparent and those in immediate succession with titles of honour which denote precedence. Thus in the Dhalboom family the eldest son of the ruling Raja takes the title of Jubraj, the second that of Hikim, the third that of Bara Thakoor, the fourth that of Koer, the fifth that of Musib, and the remaining sons that of Babu. (*Lord Macnaghten.*) MOHESH CHUNDER DHAL *v.* SATRUGHAN DHAL.

(1902) 29 I. A. 62 (67) = 29 C. 343 (353) = 6 C. W. N. 459 = 4 Bom. L. R. 372 = 8 Sar. 238.

Impartible Estate—Dispossession of holder of, by neighbour and re-instatement subsequently by Government.

———Impartibility and ancestral nature of estate—Effect on. *See* HINDU LAW—IMPARTIBLE ESTATE—NATURE AND INCIDENTS OF—DISPOSSESSION OF ZEMINDAR, ETC. **(1921) 48 I. A. 195 (200) = 43 A. 228 (233).**

Impartible Estate—Execution sale.

———Purchase of estate by Government at—Grant of estate by Government to a son of former zemindar—Impartibility of estate and rule of succession applicable to it—Effect on. *See* HINDU LAW—IMPARTIBLE ESTATE—NATURE AND INCIDENTS OF — EXECUTION SALE OF ESTATE. **(1891) 18 I. A. 45 = 14 M. 237.**

HINDU LAW—(*Contd.*)

Impartible Estate—Execution sale—(*Contd.*)

———Right, title and interest of holder in joint ancestral estate—Sale of, in 1876—Purchaser's rights under. *See* EXECUTION SALE—PURCHASER AT—RIGHTS OF—LAW GOVERNING. **(1903) 31 I. A. 1 = 27 M. 131 (142-3).**

Impartible Estate—Holder of.

———Abdication in favour of eldest son or next immediate male heir—Custom of - Proof of—Tirhoot Zemindary. *See* HINDU LAW—IMPARTIBLE ESTATE—TIRHOOT ZEMINDARY, ETC **(1855) 6 M. I. A. 164 (193).**

— —Alienation by. *See* HINDU LAW—IMPARTIBLE ESTATE—ALIENATION OF.

———Covenant running with estate—Creation of—Validity against successor of. *See* HINDU LAW—IMPARTIBLE ESTATE—HOLDER OF—QUASI—SERVITUDE ON. **(1872) Sup. I. A. 34 (38-9).**

———Debts of—Income of estate in son's hands if liable for. *See* HINDU LAW—IMPARTIBLE ESTATE—POLLIEM—HOLDER OF—DEBTS OF. **(1874) 1 I.A. 268 (315).**

———*Debts of—Son getting estate by descent from his father—Liability of.*

The son's share taken by heritage from the father is liable for the payment of his father's debts. The fact of the estate being an impartible Zemindary could not affect his liability for the payment of the father's debts when it came into the hands of the son by descent from his father (144). (*Sir Barnes Peacock.*) MUTTAYAN CHETTIAR *v.* SANGILI VIRA PANDIA CHINNATAMBIAR. **(1882) 9 I. A. 128 = 6 M. 1 (17-8) = 12 C. L. R. 169 = 4 Sar. 354.**

———*Eldest son of last—Legitimacy of—Decision as to, in suit by one of younger sons to recover estate from him—Effect of, on another younger son by different wife of last holder.*

The last male holder of an impartible estate died leaving several wives and several sons. On his death a contest arose among his sons as to who should succeed to the Raj, and, with the Raj, to the possession of the property. *M*, the father of the appellant and the eldest son of the deceased, was put into possession. Thereupon a suit was instituted on behalf of *R*, an infant son of the deceased, to recover from *M* the possession of the Raj and the possession of the property that went with the Raj. *R* alleged that *M* was illegitimate. It was found in that suit that *R* was the legitimate son of the deceased, but it was also found that *M* was also a legitimate son, and it was held that, being at least in equal rank with *R*, and being the elder, *M* was entitled to succeed to the Raj in preference to *R*.

The respondent before their Lordships was a posthumous son of the deceased Raja by a different wife, and he instituted the suit out of which the appeal arose raising the question of the illegitimacy of *M* and also the question of a priority of right by reason of the superior nature of the marriage between the last holder and his mother.

Held, affirming the High Court, that the respondent's suit was not barred by *res judicata* by reason of the decision in *R's* suit (375-6).

The issues in the two suits are not precisely the same. But even if they had been precisely the same their Lordships would still have been of opinion, that the decree in the former suit is not a bar to the further prosecution of this suit. In this case all the members of the family had conflicting interests. *R's* suit was a mere suit for possession by a party claiming to have a preferable right to the party in possession, and having failed to establish that case by proving the ille-

HINDU LAW—(*Contd.*)

Impartible Estate—Holder of—(*Contd.*)

gitimacy of the other party (375-6). (*Sir James W. Colvile.*) JOGENDRO DEB ROY KUT *v.* FANINDRO DEB ROY KUT. (1871) **14 M. I. A. 367 = 11 B. L. R. (P. C.) 244 = 17 W. R. 104 = 2 Suth 517 = 3 Sar. 32.**

———Execution sale of right, title and interest in estate of —Purchaser's rights under—Joint ancestral estate—Sale of, in 1876. *See* EXECUTION SALE — PURCHASER AT—RIGHTS OF—LAW GOVERNING. (1903) **31 I. A. 1 = 27 M. 131 (142-3).**

———Income of estate—Rights over—Purchases by him with—Accretion to estate or not. *See* HINDU LAW—IMPARTIBLE ESTATE—INCOME OF.

———*Quasi-servitude on estate—Covenant running with estate—Creation of—Validity against successor of.*

The Zemindar for the time being has no power to impress upon the estate a quasi-servitude or to burden it with a covenant which would run with it into the hands of any possessor of it by any title (39).

Held, accordingly that an ikrarnamah between two former Zemindars as to the mode of determining the boundaries of their estates according as a river became fordable on the side of one or other of such estates, whatever might be its effect as between the parties thereto, was not binding upon the defendant who derived his title from a person who was a stranger to the arrangement (38-9). (*Sir Robert P. Collier.*) BABOO BISSESSURNATH *v.* MAHARAJA MOHESSUR BUX SINGH BAHADOOR. (1872) **Sup. I. A. 34 = 11 B. L. R. 265 = 18 W. R. 160 = 3 Sar. 147 = 2 Suth. 650.**

———Raja—Title of—Necessity. *See* HINDU LAW—IMPARTIBLE ESTATE—RAJ—RAJA.

———Relationship of plaintiff to deceased—Status of family of plaintiff and of deceased—Evidence of—Return made by former holder to Collector of District pursuant to requisition by Government—Authenticated copy of—Admissibility. *See* HINDU LAW—IMPARTIBLE ESTATE—POLLIEM—POLIGAR—RELATIONSHIP TO DECEASED. (1861) **9 M. I. A. 66 (91-2).**

Impartible Estate—Hunsapore Raj.

———*Junior members—Maintenance of—Babuana allowances for—Liability of holder to provide.*

The Rajah in possession of the Raj of Hunsapore is subject to the burden of providing Babuana allowances to the junior members of the family for maintenance. (*Sir James Colvile.*) BABOO BEER PERTAB SAHEE *v.* MAHARAJAH RAJENDER PERTAB SAHEE. (1867) **12 M. I. A. 1 (18) = 9 W. R. 15 = 2 Suth. 114 = 2 Sar. 348.**

———Origin and history of. (*Sir James W. Colvile.*) BABOO BEER PERTAB SAHEE *v.* MAHARAJAH RAJENDRA PERTAB SAHEE. (1867) **12 M. I. A. 1 (19 20) = 9 W. R. 15 = 2 Suth. 114 = 2 Sar. 348.**

Impartible Estate—Impartibility of—Effect on.

———Self-acquisition in hands of member of joint family —Estate becoming—Effect of. *See* HINDU LAW—IMPARTIBLE ESTATE—NATURE AND INCIDENTS OF—SELF-ACQUISITION, ETC. (1881) **8 I. A. 99 (116) = 3 M. 290 (308).**

———*See also* cases under HINDU LAW—IMPARTIBLE ESTATE—NATURE AND INCIDENTS OF.

Impartible Estate—Impartibility of Estate.

———[*See also* HINDU LAW (1) IMPARTIBLE ESTATE—PARTIBLE ESTATE OR, (2) INHERITANCE—PRIMOGENITURE, AND (3) JOINT FAMILY—PARTITION—PARTIBLE PROPERTY]

HINDU LAW—(*Contd.*)

Inrpartible Estate—Impartibility of Estate—(*Ctd.*)

ADMISSION BY ISTIMRAR ZEMINDAR AGAINST.

———What amounts to. *See* HINDU LAW—IMPARTIBLE ESTATE—SHIVAGUNGA ZEMINDARY—PARTIBILITY OF. (1881) **8 I. A. 99 (110-1) = 3 M. 290 (303).**

CUSTOM OF.

———*Ancient and invariable custom—Claim to—Maintainability—Lapse of time necessary for.*

It may well be doubted whether an estate of which the origin dates back only to 1796 could claim at the time of the Thirty Years' Settlement in 1863 that it was governed by an *ancient* and *invariable* custom. (*Lord Sinha.*) MARTAND RAO *v* MALHAR RAO. **(1927) 55 I. A. 45 = 55 C. 403 = 24 N. L. R. 25 = 32 C. W. N. 621 = 30 Bom. L. R. 251 = 27 L. W. 350 = 107 I. C. 7 = 47 C. L. J. 150 = (1928) M. W. N. 942 = A. I. R. 1928 P. C. 10 = 54 M. L. J. 397.**

———*Ancient and invariable nature of—Necessity for—Proof of—Evidence required for.*

A custom of the impartibility of an estate modifying the ordinary law of succession must be ancient and invariable and must be established to be so by clear and unambiguous evidence. To use the words of Lord Justice James in 13 M. I. A. 542 at 549, "The custom must be proved by something like what we should call in this country immemorial usage. It is a thing which cannot be predicated of a simple and single estate, the title to which dates from comparatively a short period of time back." (*Lord Sinha.*) MARTAND RAO *v.* MALHAR RAO. **(1927) 55 I. A. 45 = 55 C. 403 = 24 N. L. R. 25 = 32 C. W. N. 621 = 30 Bom. L. R 251 = 27 L. W. 350 = 107 I. C. 7 = 47 C. L. J. 150 = (1928) M. W. N. 942 = A. I. R. 1928 P. C. 10 = 54 M. L. J. 397 (401).**

———*Family custom—Proof of—Amgaon estate.*

Held, on the evidence, that by the time of the Settlement no custom had grown up in the Amgaon family that the estate should be held as an impartible estate subject to the rule of single succession. (*Lord Sinha.*) MARTAND RAO *v.* MALHAR RAO. **(1927) 55 I. A. 45 = 55 C. 403 = 24 N. L. R. 25 = 32 C. W. N. 621 = 30 Bom. L. R. 251 = (1928) M. W. N. 942 = A. I. R. 1928 P. C. 10 = 54 M. L. J. 397.**

———*Proof of—Necessity—King, chief or semi-independent chief—Estate of—Custom in case of.*

It is true that an estate only becomes impartible by custom, and that the custom has in each case to be proved. But it is a custom which is usually found to exist where the estate belongs to a king or independent chief, or even a semi-independent chief of sufficient importance. (*Lord Phillimore.*) SAHDEO NARAIN DEO *v.* KUSUM KUMARI. (1922) **50 I. A. 58 (68) = 2 P 230 = 32 M L. T. 121 = A. I. R. 1923 P. C. 21 = 4 Pat. L. T. 217 = 37 C. L. J 369 = 18 L. W. 597 = (1923) M. W. N. 377 = 27 C. W. N. 901 = 25 Bom. L. R. 560 = 71 I. C. 769 = 44 M. L. J. 476.**

———*Territorial custom—Proof of—Amgaon estate.*

Held, that neither by the terms of the grant, nor by territorial custom, any more than by its inherent nature, could the Zemindari of Amgaon be considered an impartible estate. (*Lord Sinha*) MARTAND RAO *v.* MALHAR RAO. **(1927) 55 I. A. 45 = 55 C. 403 = 24 N. L. R. 25 = 32 C. W. N. 621 = 30 Bom. L. R. 251 = 27 L. W. 350 = 107 I. C. 7 = 47 C. L. J. 150 = (1928) M.W.N. 942 = A. I. R. 1928 P. C. 10 = 54 M.L.J. 397.**

EVIDENCE OF.

———*Family belief for half a century.*

Though the question (whether the Shivagunga Zemindary is a partible or an impartible Zemindary) must be decided

HINDU LAW—(*Contd.*)

Impartible Estate—Impartibility of Estate—(*Contd.*)

EVIDENCE—(*Contd.*)

upon its merits, it is impossible to disregard what has passed, whether in this suit or in others. For half a century this Zemindary has been under the harrow of litigation ; for many years between the elder and younger branch of the Padamattur Tevar family, and again for many years between separate scions of the younger branch. During this long period of discussion and examination, up to the settlement of issues in this suit, every body has concurred, whether by statement, admission, or assumption, in ascribing to the Zemindary an impartible character (110). (*Sir Arthur Hobhouse.*) MUTHU VADUGANADHA TEVAR *v.* DORASINGA TEVAR. (1881) 8 I. A. 99 = 3 M. 290 (303) = 4 Sar. 239.

———*Family tradition—Non-division of estate in spite of occasions for division—Estate in possession of family of trespassers during period.*

The question was whether the Shivagunga Zemindary was a partible or an impartible estate.

The estate was in the possession of the elder branch of the family for thirty years, and during that time three descents had occured. There were co-parceners in that branch who would have taken shares if the Zemindary had been considered as partible ; but in fact it was always taken entire by the eldest male representative. The elder branch were, however, ultimately held to be in wrongful possession, and were therefore usurpers.

Held that, all the same, their dealing with the estate while they had it was evidence of the family traditions and of their practical operation (111). (*Sir Arthur Hobhouse.*) MUTHU VADUGANADHA TEVAR *v.* DORASINGA TEVAR. (1881) 8 I. A. 99 = 3 M. 290 (303-4) = 4 Sar. 239.

———Gaddinashin—Custom of—Evidence of—Value of. *See* HINDU LAW—INHERITANCE—PRIMOGENITURE—CUSTOM OF—GADDINASHIN.

———*Non-division for a long time.*

The circumstance that a Zemindary had been held entire for a very long period would seem to indicate that the ordinary rules of succession had not been applied to it, and gives great countenance to the supposition that a custom of indivisibility existed (475). (*Mr. Baron Parke.*) RAJAH DEEDAR HOSSEIN *v.* RANEE ZUHOOR-OON-NISSA. (1841) 2 M.I.A. 441 = 2 Suth. 993 = 1 Sar. 217.

———The fact that an estate had never been divided during 6 or 7 generations alone cannot control the operation of the ordinary rule of Hindu Law, or deprive the parties, if members of a joint and undivided family, of the right to demand a partition when they are so minded. (*Sir James W. Colvile.*) THAKUR DURRIAO SINGH *v.* THAKUR DARI SINGH. (1873) 1 I. A. 1 (8) = 13 B. L. R. 165 = 3 Sar. 301 = F. & J's. No. 25 (Oudh).

———*See* HINDU LAW—IMPARTIBILITY OF ESTATE—CUSTOM OF—EVIDENCE OF—FAMILY TRADITION—NON-DIVISION, ETC. (1881) 8 I. A. 99 (111) = 3 M. 290 (303-4).

———The High Court think that the absence of partition for many generations is as consistent with partibility as with primogeniture, unless it is shown that partition was claimed and refused. Of course if that was shown it would be very cogent evidence in favour of primogeniture. And it is possible that a divisible estate may remain undivided for a long time. But their Lordships do not think it probable that any great number of generations would pass without persons entitled to insist upon a partition taking steps to enforce it. And the fact that though, during those generations, there were occasions for a partition, yet no partition took place in fact, to put it at the lowest, lays a

HINDU LAW—(*Contd.*)

Impartible Estate — Impartibility of Estate — (*Contd.*)

EVIDENCE—(*Contd.*)

ground for the favourable reception of evidence in favour of primogeniture, or, to put it higher, makes it probable that primogeniture is the real custom of the family. (*Lord Hobhouse.*) THAKUR NITR PAL SINGH *v.* THAKUR JAI PAL SINGH. (1896) 23 I. A. 147 = 19 A. 1 (8-9) = 7 Sar. 49.

———*Official reports—Facts stated in—Opinions expressed in—History of estate given in.*

Though official reports are valuable and in many cases the best evidence of *facts* stated therein, *opinions* therein expressed should not be treated as conclusive in respect of matters requiring judicial determination however eminent the authors of such reports may be. So far as the reports contain a historical narrative of the Zemindaries referred to therein, they are of great value, and probably the best available history thereof under the circumstances. (*Lord Sinha.*) MARTAND RAO *v.* MALHAR RAO. (1927) 55 I. A. 45 = 55 C 403 = 24 N. L. R. 25 = 32 C. W. N. 621 = 30 Bom. L. R. 251 = 107 I. C. 7 = 47 C. L J. 150 = (1928) M W. N. 942 = A. I. R. 1928 P. C. 10 = 54 M. L. J. 397.

PRESUMPTION—ONUS OF PROOF.

———The proof lies upon the party seeking to except any property from that principle of partition known to the Hindu Law.

Held that the appellant not having brought forward proof that the suit property was within those exceptions, the general rule of partition must prevail. (*The Lord Chancellor.*) LUXIMON ROW SADASEW *v.* MULLAR ROW BAJEE. (1831) 5 W. R. 67 = 1 Suth. 1 = 2 Knapp 60 = 1 Norton's L. C. 169 = 1 Sar. 19.

———It has been contended that the suit *raj* is an indivisible *raj*, and that the appellant is, as heir, entitled to succeed to the whole. Now both the Courts below were of opinion that the evidence produced wholly failed to establish the position that this *raj* was indivisible, the onus of proof under the circumstances clearly lying upon the appellant. The course of possession and enjoyment is most distinctly opposed to such a claim. The property had been held jointly, or in co-parcenary, and the person through whom the appellant makes his claim had himself, upon a former occasion, set up a title to the property, entirely inconsistent with the judgment of the Court. Nay, even the appellant himself, at the commencement of these proceedings, filed a document, in conjunction with the respondent, setting forth a joint claim (351). (*Dr. Lushington.*) GHIRDHAREE SINGH *v.* KOOLAHUL SINGH. (1841) 2 M. I A. 344 = 6 W. R. P. C. 1 = 1 Suth. 98 = 1 Sar. 200.

———By the general law prevailing in Tirhoot, and indeed generally under the Hindu law, estates are divisible amongst the sons, when there are more than one son ; they do not descend to the eldest son, but are divisible amongst all (187). (*Mr. Pemberton Leigh.*) BABOO GUNESH DUTT SINGH *v.* MAHARAJA MOHESHUR SINGH. (1855) 6 M. I. A. 164 = 2 Suth. 20 = 1 Sar. 521.

———The general rule of the Hindu Law of Inheritance is partibility. The succession of a single heir, as in the case of a Raj, is the exception (537). (*Lord Kingsdown.*) SECRETARY OF STATE IN COUNCIL OF INDIA *v.* KAMACHEE BOYE SAHABA. (1859) 7 M. I. A. 476 = 13 Moo. P. C. 22 = 7 W. R. (Eng.) 722 = 4 W. R. P. C. 42 = 1 Suth. 373 = 1 Sar 684.

The onus of proving the exceptional case that a Zemindary is impartible in its nature lies upon the party setting up

HINDU LAW—(*Contd.*)

Impartible Estate—Impartibility of Estate—(*Contd.*)

PRESUMPTION—ONUS OF PROOF—(*Contd.*)

the same (55). (*Mr. Shand.*) ZEMINDAR OF MERANGI *v.* SRI RAJAH SATRUCHARLA RAMABHADRA RAZU.

(1891) 18 I. A. 45 = 14 M. 237 (246) = 5 Sar. 645.

———When there is a dispute with respect to an estate being impartible or otherwise, the *onus* lies on the party who alleges the existence of a custom different from the ordinary law of inheritance according to which custom the estate is to be held by a single member and, as such, not liable to partition. In order to establish that any estate is impartible, it must be proved that it is from its nature impartible and descendible to a single person, or that it is impartible and descendible by virtue of a special custom. (*Lord Sinha.*) MARTAND RAO *v.* MALHAR RAO.

(1927) 55 I. A. 45 = 55 C. 403 = 24 N. L. R. 25 = 32 C. W. N. 621 = 30 Bom. L. R. 251 = 27 L. W. 350 = 107 I. C. 7 = 47 C. L. J. 150 = (1928) M. W. N. 942 = A. I. R. 1928 P. C. 10 = 54 M. L. J. 397.

QUESTION AS TO.

———*Mixed law and fact.*

The question of partibility of an estate is a mixed question of law and fact (110). (*Sir Arthur Hobhouse.*) MUTTU VADUGANADHA TEVAR *v.* DORASINGA TEVAR.

(1881) 8 I. A. 99 = 3 M. 290 (302) = 4 Sar. 239.

RAJ—RAJA—TECHNICAL NAMES OF, TO ESTATE AND TO HOLDER THEREOF.

———Necessity—Absence of. *See* HINDU LAW—IMPARTIBLE ESTATE—RAJ—RAJA.

Impartible Estate—Income of.

———*Acquisitions with—Incorporation with estate of—Intention as to—Evidence.*

All the estate possessed by the last male holder of an impartible estate other than the impartible raj was derived from the income of the raj itself which income in the end produced very considerable property. There were certain villages, mortgages, usufructuary and otherwise, sums due on bonds and decrees, Government promissory notes to the extent of two lakhs, and other moveable and immoveable properties. The whole of the evidence on the question whether they were intended to be treated as accretions or not was as follows :—

" Some new properties were acquired out of the savings of Serampur gadi. When there were savings in my hand I " (the manager of the estate) "used to send the money to the raja and take receipts from him. The money was utilised by the raja by giving loans and purchasing other properties. On some occasions the raja used to lend the money himself and these sums are not entered in our books. When the loan was given through us, then we used to keep accounts of such money. I can't give the sums that passed through our hands or their probable amount. The moneys that passed through our hands were invested in loan and also in purchasing Zamindaries. The incomes of Zamindaries purchased were also entered in our books. It was treated as part of the income of the estate. Loans with interest repaid were also entered in our books, That money was also treated as part of the estate. All this was done at the instance of the raja. Loans advanced by the raja personally and not through our hands, and those that were not entered in the estate account at the time of the advance, the money when repaid used sometimes to come to our hands and sometimes paid to the raja direct. Those that came to our hands were entered in our book. What was so entered into the estate account was considered as estate money with the raja's consent. I can't say if the raja

HINDU LAW—(*Contd.*)

Impartible Estate—Income of—(*Contd.*)

purchased any landed estate out of the money advanced by him personally."

Held, reversing the Courts below, that the evidence was wholly insufficient to affect the property in question with the character of impartibility. (*Lord Buckmaster.*) JAGADAMBA KUMARI *v.* NARAIN SINGH.

(1922) 50 I. A. 1 (7 8) = 2 P. 319 = 32 M. L. T. 157 = 25 Bom. L. R. 676 = (1923) M. W. N. 460 = 18 L. W. 555 = 28 C. W. N. 98 = 37 C. L. J. 287 = 4 Pat. L. T. 319 = A I. R. 1923 P. C. 59 = 77 I. C. 1041 = 44 M. L. J. 503.

——— *Moveable property if can ever be treated as an accretion to estate.*

Quaere, whether it be possible in any circumstances to treat movable property as an accretion to a landed estate of this character (namely, an impartible estate). (*Lord Buckmaster.*) JAGADAMBA KUMARI *v.* NARAIN SINGH.

(1922) 50 I. A. 1 (8-9) = 2 P. 319 = 32 M. L T. 157 = 25 Bom. L. R. 676 = (1923) M. W. N. 460 = 18 L. W. 555 = 28 C. W. N. 98 = 37 C. L. J. 287 = 4 Pat. L. T. 319 = A. I. R. 1923 P. C. 59 = 77 I. C. 1041 = 44 M. L. J. 503.

———*Nature of, in holder's hands — Joint family property—Income from ordinary—Nature of— Distinction.*

The income of an impartible estate when received is the absolute property of the owner of the estate. It differs in no way from property that he might have gained by his own effort, or that had come to him in circumstances entirely dissociated from the ownership of the raj. It is a strong assumption to make that the income of the property of this nature is so affected by the source from which it came that it still retains its original character.

It is possible that the confusion that the produce of the impartible estate naturally belongs to and forms an accretion to the original property is due to the consideration of the position with regard to an ordinary joint family estate. In such a case the income, equally with the corpus, forms part of the family property, and if the owner mixes his own moneys with the moneys of the family—as, for example, by putting the whole into one account at the bank, or by treating them in his accounts as indistinguishable—his own earnings share with the property with which they are mingled the character of joint family property ; but no such considerations necessarily apply to the income from impartible property. (*Lord Buckmaster.*) JAGADAMBA KUMARI *v.* NARAIN SINGH. (1922) 50 I. A. 1 (7) = 2 P. 319 = 32 M. L. T. 157 = 25 Bom. L. R. 676 = (1923) M. W. N. 460 = 18 L. W. 555 = 28 C. W. N. 98 = 37 C. L. J. 287 = 4 Pat. L. T. 319 = 77 I. C. 1041 = A. I. R. 1923 P. C. 59 = 44 M. L. J. 503.

———*Purchases with—Accretion to estate or not — Court of Wards in management of estate—Purchases by, on behalf of ward.*

The property in dispute was bought for *P* by the Court of Wards out of savings of the Zemindary and must be considered as *P's* savings. (*Lord Robertson.*) SRIMATI RANI PARBATI KUMARI DEBI *v.* JAGADIS CHUNDER DHABAL.

(1902) 29 I. A. 82 (98) = 29 C. 433 (453) = 6 C. W. N. 490 = 4 Bom. L. R. 365 = 8 Sar. 205.

———*Purchases with—Incorporation with estate of—Intention as to—Evidence.*

All that the respondents can point to as indicating *P's.* (the Zemindar's) intention to deal with property purchased out of savings of the Zemindary as part of the Raj is that the rents were collected by the same servant, and the collection papers kept with the papers of the Raj. These meagre

HINDU LAW—(*Contd.*)

Impartible Estate—Income of—(*Contd.*)

facts afford no adequate ground for holding that the Raja intended to incorporate the property so purchased with the ancestral estate for the purposes of succession (98). (*Lord Robertson.*) SRIMATI KANI PARBATI KUMARI DEBI *v.* JAGADIS CHUNDER DHABAL. **(1902) 29 I. A. 82 = 29 C. 433 (453) = 6 C. W. N. 490 = 4 Bom. L.R. 365 = 8 Sar. 205.**

Impartible Estate—Joint ancestral estate.

———*See* HINDU LAW—IMPARTIBLE ESTATE — JOINT FAMILY PROPERTY—ESTATE FORMING.

Impartible Estate—Joint family with an, descending according to rule of lineal primogeniture with rights of maintenance and other privileges to junior members.

———*If can be established in modern times.*

A joint family with an impartible estate descending according to a rule of lineal primogeniture with rights of maintenance and other privileges for the junior members cannot be established in modern times (89). (*Sir John Edge.*) PALANI AMMAL *v.* MUTHUVENKATACHALA MONIAGAR **(1924) 52 I. A. 83 = 48 M. 254 = 6 P. L. T. 133 = 21 L. W. 439 = (1925) M. W. N 330 = 27 Bom. L. R. 735 = 3 P. L. R. 126 = 23 A. L. J. 746 = 29 C.W.N. 846 = 6 L.R.P.C. 143 = A. I. R 1925 P. C. 49 = 87 I. C. 333 = 48 M. L. J. 83.**

Impartible Estate—Joint Family Property—Estate forming.

ADVERSE POSSESSION OF, BARRING RIGHT OF SUCCESSION OF JUNIOR BRANCH.
ALIENATION OF.
CO-PARCENARY IN.
EXECUTION SALE OF "RIGHT, TITLE AND INTEREST" OF HOLDER IN—PURCHASER'S RIGHTS UNDER.
MAINTENANCE TO JUNIOR MEMBERS OUT OF.
PARTITION OF.
RIGHT BY BIRTH UNDER MITHAKSHARA LAW IN.
SEPARATE PROPERTY OF LAST HOLDER OR — EVIDENCE.
SEPARATION AS REGARDS.
SUCCESSION TO.
SURVIVORSHIP.

ADVERSE POSSESSION OF, BARRING RIGHT OF SUCCESSION OF JUNIOR BRANCH.

———Proof of. *See* HINDU LAW—IMPARTIBLE ESTATE—JOINT FAMILY PROPERTY—ESTATE FORMING — SUCCESSION TO—JUNIOR BRANCH'S RIGHT OF.
(1897) 24 I.A. 118 (127) = 20 M. 256 (268).

ALIENATION OF.

———*Gift—Alienation by way of—Validity of—Custom prohibiting—Onus of proof of.*

The holder of an impartible estate, the succession to which was governed by the rule of primogeniture, made a gift of a number of villages, forming part of the estate, to his junior wife. The family was governed by the law of the Mithakshara. His son sued to set aside the gift on the ground that it had not been made for necessary purposes.

The courts below held that the plaintiff and his father, the defendant, being members of a joint Hindu family, and the suit estate being joint ancestral property, and the law of the Mithakshara being applicable, the holder of the estate could not make a gift of property appertaining to the estate except for necessary purposes, and that the gift in question not having been made for such purposes was void and must be set aside. The Courts below thought that the onus was upon the defendant to prove that by custom the estate

HINDU LAW—(*Contd.*)

Impartible Estate—Joint Family Property—Estate forming—(*Contd.*)

ALIENATION OF—(*Contd.*)

was alienable, and held that the custom had not been proved.

Held, reversing the courts below, that the onus, was on the plaintiff of proving a custom of inalienability, and that, as he had failed to prove such a custom, the gift ought not to have been declared invalid (65-6). (*Sir Richard Couch.*) RANI SARTAJ KUARI *v.* RANI DEORAJ KUARI.
(1887) 15 I. A. 51 = 10 A. 272 (289) = 5 Sar. 139.

———*Restraint upon—Mithakshara law rule as to—Applicability of.*

The reason for the restraint upon alienation under the law of the Mithakshara is inconsistent with the custom of impartibility and succession according to primogeniture. The inability of the father to make an alienation arises from the proprietary right of the sons (63). The property in the paternal or ancestral estate acquired by birth under the Mithakshara law is so connected with the right to a partition, that it does not exist where there is no right to it. By the custom or usage the eldest son succeeds to the whole estate on the death of the father, as he would if the property were held in severalty. It is difficult to reconcile this mode of succession with the rights of a joint family, and to hold that there is a joint ownership, which is a restraint upon alienation (64). If, as their Lordships are of opinion, the eldest son, where the Mithakshara law prevails and there is the custom of primogeniture, does not become a co-sharer with his father in the estate, the inalienability of the estate depends upon custom, which must be proved, or, it may be in some cases, upon the nature of the tenure (65). (*Sir Richard Couch.*) RANI SARTAJ KUARI *v.* RANI DEORAJ KUARI. **(1887) 15 I. A. 51 = 10 A. 272 (289) = 5 Sar. 139.**

———*Will—Alienation by, depriving son of all interest in estate—Validity—Estate not inalienable by custom or by reason of its tenure.*

The Impartible Estate of Pittapur was admitted to be not inalienable by virtue of any special family custom or tenure attaching to the Zemindari.

Held, that it was within the power of the holder of the estate to alienate it by his will so as to deprive his son of all interest in the estate. (*Sir Richard Couch.*) SRI RAJA RAO VENKATA SURYA MAHIPATI RAMA KRISHNA RAO BAHADUR *v.* COURT OF WARDS.
(1899) 26 I.A. 83 (90) = 22 M. 383 (391) = 7 Sar. 481 = 3 C. W. N. 415 = 1 Bom. L. R. 277.

———The junior members of a joint Hindu family owning an ancestral impartible estate descendible according to the rule of primogeniture have no co-parcenary rights in the impartible estate, and no rights in that estate which entitle them to a partition of the impartible estate. They cannot prevent the holder from alienating that impartible estate in such a way as to determine any contingent interest they have in it under the custom of the family. Their contingent interest under the custom is liable to be defeated by an alienation of the estate by the holder, even if the family remains joint (201). (*Sir John Edge.*) THAKURANI TARA KUMARI *v.* CHATTURBHUJ NARAYAN SINGH.
(1915) 42 I. A. 192 = 42 C. 1179 (1195) = 19 C. W N 1115 = 18 M.L.T. 228 = 2 L.W. 843 = (1915) M.W. N 717 = 13 A. L J 1034 = 30 I. C. 833 = 17 Bom. L.R. 1012 = 22 C. L. J. 498 = 29 M. L J. 371.

———Will—Alienation by—Custom against—Evidence of—Statement by last holder, the validity of whose disposition was in question, that a previous holder had no right to make a will—Admissibility of—Statement made by way

HINDU LAW—(*Contd.*)

Impartible Estate — Joint Family Property— Estate forming—(*Contd.*)

ALIENATION OF—(*Contd.*)

of pleading in procee lings in which last holder was contesting will of his predeces-or. *See* ADMISSION—SELF-SERVING STATEMENT—ADMISSIBILITY OF—HINDU LAW—IMPARTIBLE ESTATE. **(1927) 54 I.A. 289 (296)= 54 C. 995.**

———*Will—Alienation by—Custom prohibiting—Proof of—Onus—Quantum.*

It was recognised in the Sartaj Kuari case aud the first Pittapur case that the general rule that the holder of an impartible estate can alienate it by will, although the family is undivided, might be displaced by proof of a family custom restricting alienation, the onus of proving such custom being cast upon the person who alleges it (297-8)

Held that the appellant who set up such a custom had failed to establish it (298). (*Lord Warrington of Clyffe.*) PROTAP CHANDRA DEO *v.* JAGADISH CHANDRA DEO.

(1927) 54 I. A. 289 = 54 C. 995 = 25 A.L.J. 628 = 102 I.C. 599 = 20 Bom. L.R. 1136 = (1927) M.W.N. 513 = 31 C.W.N. 943 = 4 O.W.N. 650 (2) = 39 M.L.T. 1 = 46 C.L.J. 136 = 8 Pat. L.T. 623 = A. I. R. 1927 P. C. 159 = 53 M.L.J. 30.

———*Will—Alienation by—Validity.*

The last holder of the Dhalbhum Raj made a will, whereby he appointed the respondent executor, and bequeathed the estate to him and declared him to be the next Raja. The family was a joint and undivided one, governed by the Mithakshara School of Hindu law. The estate was ancestral, and succession to it was governed by a family custom according to the rule of lineal primogeniture. The Raj was impartible. Admittedly, if the will of the last holder was inoperative, the appellant, according to the rule of lineal primogeniture, would be the next heir, and would as such be entitled to succeed to the estate.

Held, following the decisions of the Board in the Sartaj Kuari and the first Pittapur cases, that the will was valid, and conferred a valid title to the estate on the respondent (297).

The Sartaj Kuari and the first Pittapur cases are not inconsistent with those on the right of succession (297). (*Lord Warrington of Clyffe.*) PROTAP CHANDRA DEO *v.* JAGDISH CHANDRA DEO.

(1927) 54 I. A. 289 = 54 C. 995 = 25 A.L.J. 628 = 102 I.C. 599 = 20 Bom. L.R. 1136 = (1927) M. W. N. 513 = 31 C.W.N. 943 = 4 O.W.N. 650 (2) = 39 M.L.T. 1 = 46 C.L.J. 136 = 8 Pat. L. T. 623 = A.I.R. 1927 P.C. 159 = 53 M.L.J. 30.

CO-PARCENARY IN.

———Survivorship cannot obtain in a Raj enjoyed and inherited by one sole member of a family from its very nature, and there can be no community of interest (541). (*Lord Chelmsford.*) NEELKISTO DEB BURMONO *v.* BEERCHUNDER THAKOOR. **(1869) 12 M.I.A. 523 = 12 W.R. (P.C.) 21 = 3 B.L.R (P.C.) 13 = 2 Suth. 243 = 2 Sar. 523.**

———The property in the paternal or ancestral estate acquired by birth under the Mithakshara law is so connected with the right to a partition, that it does not exist where there is no right to it. By the custom or usage the eldest son succeeds to the whole estate on the death of the father, as he would if the property were held in severalty. It is difficult to reconcile this mode of succession with the rights of a joint family, and to hold that there is a joint ownership, which is a restraint upon alienation (64). The eldest son

HINDU LAW—(*Contd.*)

Impartible Estate—Joint Family Property—Estate forming—(*Contd.*)

CO-PARCENARY IN—(*Contd.*)

where the Mithakshara law prevails and there is the custom of primogeniture, does not become a co-sharer with his father in the estate (65). (*Sir Richard Couch.*) RANI SARTAJ KUARI *v.* RANI DEORAJ KUARI.

(1887) 15 I.A. 51 = 10 A. 272 (289) = 5 Sar. 139.

———The junior members of a joint Hindu family owning an ancestral impartible estate descendible according to the rule of primogeniture have no co-parcenary rights in the impartible estate, and no rights in that estate which entitle them to a partition of the impartible estate. They cannot prevent the holder from alienating that impartible estate in such a way as to determine any contingent interest they have in it under the custom of the family. Their contingent interest under the custom is liable to be defeated by an alienation of the estate by the holder, even if the family remains joint (201). (*Sir John Edge.*) THAKURANI TARA KUMARI *v.* CHATHURBHUJ NARAYAN SINGH.

(1915) 42 I.A. 192 = 42 C. 1179 (1195) = 19 C.W.N. 1115 = 18 M.L.T. 228 = 2 L.W. 843 = (1915) M.W.N. 717 = 13 A.L.J. 1034 = 17 Bom. L.R. 1012 = 22 C.L.J. 498 = 30 I.C. 833 = 29 M.L.J. 371.

———The decisions in the Madras Courts prior to the case of Sartaj Kuari embodied the theory that there was joint property in an impartible Zemindari, which only fell short of co-parcenary because, by custom, partition was inadmissible. But by that decision and by the decision in the Pittapur case it has now been definitely settled that in impartible properties there is no co-parcenary (152-3). An impartible Zemindary is the creature of custom, and it is of its essence that no co-parcenary exists (154). (*Lord Dunedin*). RAMA RAO *v.* RAJA OF PITTAPUR.

(1918) 45 I.A. 148 = 41 M. 778 (783-4) = 24 M.L.T. 276 = (1918) M.W.N. 922 = 23 C.W.N. 173 = 28 C. L. J. 428 = 20 Bom. L.R. 1056 = 16 A. L. J. 833 = 5 Pat. L.W. 267 = 47 I.C. 354 = 35 M.L.J. 392.

———An impartible Zemindary is the creature of custom, and it is of its essence that co-parcenary in it does not exist.

In a case in which the claim of the appellant to the Bettiah Raj was founded upon the view that his branch of the family was joint with the family of the late Raja and accordingly became entitled, upon the death of the late Raja without male issue, to succeed by the rule of co-parcenary to the estate, *held* that, even on the appellant's view of the facts, he could not succeed in the appeal. (*Viscount Cave.*) NARAYAN SINGH *v.* JANKI KOER.

(1920) 12 L.W. 349 = 24 C.W.N. 857 = 28 M.L.T. 105 = 62 I.C. 289.

EXECUTION SALE OF "RIGHT, TITLE AND INTEREST" OF HOLDER IN—PURCHASER'S RIGHTS UNDER.

———Sale in 1876. *See* EXECUTION SALE—PURCHASER AT—RIGHTS OF—LAW GOVERNING.

(1903) 31 I. A. 1 = 27 M. 131 (142-3).

MAINTENANCE TO JUNIOR MEMBERS OUT OF.

———*See* HINDU LAW—IMPARTIBLE ESTATE—JUNIOR MEMBERS—MAINTENANCE OF.

PARTITION OF.

———*See* HINDU LAW—IMPARTIBLE ESTATE—JOINT FAMILY PROPERTY — ESTATE FORMING—CO-PARCENARY IN.

HINDU LAW—(*Contd.*)

Impartible Estate—Joint Family Property—Estate forming—(*Contd.*)

RIGHT BY BIRTH UNDER MITHAKSHARA LAW IN.

———The property in the paternal or ancestral estate acquired by birth under the Mithakshara law is so connected with the right to a partition, that it does not exist where there is no right to it. By the custom or usage the eldest son succeeds to the whole estate on the death of the father, as he would if the property were held in severalty. It is difficult to reconcile this mode of succession with the rights of a joint family, and to hold that there is a joint ownership, which is a restraint upon alienation (64). (*Sir Richard Couch.*) RANI SARTAJ KUARI *v.* RANI DEORAJ KUARI. **(1887) 15 I A. 51 = 10 A. 272 (289) = 5 Sar. 139.**

SEPARATE PROPERTY OF LAST HOLDER OR—EVIDENCE.

———*Statement of former holder of estate on official requisition—Admissibility of—Value of.*

Where the question was whether, though the family of the plaintiff and the appellant's husband, the last holder of an impartible estate, was undivided, the estate was in fact the separate property of the appellant's husband, and the evidence concerning the original grant of the estate, and the terms on which it was held, was extremely scanty, *held* that the statement of a former holder of the estate, made on an official requisition at a time when he had no interest in giving, nor apparent motive for giving, any but a true account of the history of the estate and of the custom of his family, was in every way worthy of credit (339). (*Sir James W. Colvile*). STREE RAJAH YANUMALA VENKAYAMAH *v.* STREE RAJAH YANUMALA BOOCHIA VENKONDORA. **(1870) 13 M.I.A. 333 = 2 Suth. 302 = 2 Sar. 546 = 13 W. R. 21.**

SEPARATION AS REGARDS.

———*Agreement effecting—Agreement by holder renouncing on behalf of himself and his descendants all interest in the estate in favour of junior member if an — Effect of, on future rights of succession on foot of estate being separate property.*

Muthu Vaduga was the Zemindar of Padamattur in 1829. He was joint in estate with his younger brothers, Muttuswami and Chinnasami. In 1829 the uncle of the three brothers was the Zemindar of the impartible Zemindary of Shivaganga, of which Padamattur was a Sub-tenure and he died leaving no male issue, but a wife, Parvata, then pregnant. On the death of the uncle, the Shivaganga Zemindary was claimed by Muttu Vaduga, and was given over to him by Government when Parvata was delivered of a daughter. In anticipation of that event a family arrangement took place which was embodied in an agreement of 1829 passed by Muthu Vaduga to his second brother Muthusami.

The agreement provided that, in the event of Parvata being delivered of a daughter, Muthu Vaduga and his off spring should have no interest in the palayappat of Padamattur, but that Muthuswami alone should be the Zemindar and rule and enjoy the same, allowing at the same time, as per former arrangement, to the youngest brother Chinnasami the village that had been assigned to him before. The agreement also provided that Muthuswami should have no concern with any debt contracted by Muthu Vaduga during the time he was Zemindar of Padamattur, and that the latter should himself be responsible for the same.

Padamattur was, in pursuance of that agreement, enjoyed by Muthuswami during his lifetime, and by his only son Dorai Pandian, after his death. Shivaganga was similarly enjoyed by Muthu Vaduga, and his son and grandson. As a result of a litigation commenced by Parvata and her daughter, Shivaganga, however, passed from the line of Muthu Vaduga.

HINDU LAW—(*Contd.*)

Impartible Estate—Joint Family Property—Estate forming—(*Contd.*)

SEPARATION AS REGARDS—(*Contd.*)

Dorai Pandian died leaving a widow, but no issue. Thereupon the last son of Muthu Vaduga sued for the recovery of the Zemindary of Padamattur, on the ground that it was joint family property of the deceased and of the desendants of Muthu Vaduga, and that he (plaintiff) was therefore entitled to succeed to that estate in preference to the widow of Dorai Pandian. The question for decision was whether, by reason of the transaction in 1829, the particular property of Padamattur ceased to be the joint property of the three brothers, and so upon the death of Dorai Pandian became subject to the rule of succession affirmed in the *Shivaganga Case*.

Held, that the effect of the agreement of 1829 was to make Padamattur the property of the two instead of the three brothers, with, of course, all its incidents of impartibility and peculiar course of descent, and to do so as effectually as if in the course of an ordinary partition between Muthu Vaduga, on the one hand, and the two younger brothers, on the other, a particular property had fallen to the lot of the two (75), and that, consequently, as between the descendants of Muthu Vaduga and Dorai Pandian, Padamattur was the separate property of the latter, and devolved, on his death without issue, to his widow, notwithstanding the undivided *status* of the family, under the rule of succession affirmed in the *Shivaganga Case* (77).

Of course, the renunciation by Muthu Vaduga would not deprive his descendants of such future rights of succession as they might afterwards have in that property (Padamattur), treating it as separate property *quoad* them,—such a right of succession, for instance, as might accrue to them in the present case on the death of the widow of Dorai Pandian (74). (*Sir James W. Colvile.*) PERIASAMI *v.* PERIASAMI. **(1878) 5 I. A. 61 = 1 M. 312 (322, 329) = 2 C. L. R. 81 = 3 Suth. 508 = 3 Sar. 795.**

———*Agreement effecting—What amounts to.*

The question for decision in the suit was whether the suit Zemindary was separate property in the hands of its holder at the time of his death and devolved thereafter upon his widow, the defendant in the suit, or whether it was joint family property and plaintiff was entitled to the same to the exclusion of the widow. The decision depended upon the construction of a Sunnud or Samakhia entered into in 1809 between the paternal uncles of *A*, the father of the last holder of the estate, and a minor at the time. The arrangement was not one which was then for the first time come to, but one which had been come to by the uncles in conjunction with their father, who at that time constituted the head of the family.

Held, in view of the terms of the Sunnud and of the subsequent conduct and acts of the parties, that the Subordinate Judge was right in his construction of it, and that the document amounted to an agreement by which the joint family estate was divided among the several members of the joint family, and that the Zemindary in dispute fell to the lot of *A*, as his separate property. *Held*, accordingly that the defendant was entitled to the Zemindary. (*Sir Barnes Peacock.*) VADREVU RANGANAYAKAMMA *v.* VADREVU BULLI RAMAIYA. **(1879) 3 Suth. 680 = Bald. 321 = 5 C. L. R. 439.**

———*Annuity paid to junior member out of estate—Stoppage of, owing to his misconduct at time of Indian Mutiny — Effect of.*

P and the plaintiff were the two sons of the holder of an impartible estate, the succession to which was governed by

HINDU LAW—(*Contd.*)

Impartible Estate—Joint Family Property—Estate forming—(*Contd.*)

SEPARATION AS REGARDS—(*Contd.*)

the rule of primogeniture. On the death of their father, *P*, the elder son, succeeded to the estate, and plaintiff, as a younger brother, became entitled, according to the usage of the family, to maintenance. For sometime after the death of his father the plaintiff received an annuity of Rs. 1,000 out of the estate of the Raj. The family was joint and undivided down to the time of the Indian Mutiny; but, in consequence of the plaintiff's misconduct during the disturbances, the payment of his annuity was withheld with the sanction and under the direction of Government. Further, in a suit brought, after *P's*, death, against the manager of the Court of Wards to enforce payment of the annuity during the minority of *P's* son the last male holder of the estate, it was held that there had been that which, adverting to the nature of the property, was equivalent to an attachment thereof, and the suit was dismissed. There was not, however, any adjudication of forfeiture under Act XXV of 1857, nor was any proceeding ever taken under that Act with reference to the estate itself.

Held, that the stoppage of the annuity, and the proceedings in respect thereof, did not amount to a confiscation of the estate, and did not in any manner alter the status of the plaintiff as a member of the joint family (153-4). (*Sir Barnes Peacock*). RAJAH RUP SINGH *v.* RANI BAISNI. **(1884) 11 I. A. 149 = 7 A. 1 (10-1) = A. W. N. (1884) 246 = 4 Sar. 533.**

———*Arrangement not effecting, and providing merely for mode of enjoyment of family property.*

Where one of two brothers, who had jointly inherited a Zemindari, allowed the other to succeed to the Estate and become Zemindar and executed in his favour two documents called "Pharikat Sunnuds" which ran as follows:—

"As we have both equally divided and taken all the cash, etc., to which both of us are entitled, I bind myself not to claim anything from you at any time, I shall reside in the village which you were pleased to give me for my maintenance, and act according to your wishes."

"I or my heirs shall not at any time make any claims against you or your heirs in respect of property, moveable or immoveable, or in respect of any transaction. As our father put you in possession of the Zemindari, I or my heirs shall not make any claim against you or your heirs in respect of the said Zemindari." *Held*, that, even if the estate was impartible, the arrangement embodied in the documents had not the effect of taking the Zemindari out of the category of joint or common family property so as to make it descendible otherwise than according to the rules of law applicable to such property and that it was nothing more in substance than an arrangement for the mode of enjoyment of the family property which did not alter the course of descent. The arrangement was quite consistent with the continuance of the legal character of the property (123). (*Lord Davey.*) SRI RAJA VIRAVARA THODRAMMAL RAJYA LAKSHMI DEVI GARU *v.* SRI RAJA VIRAVARA THODRAMMAL SURYA NARAYANA DHATRASU BAHADUR GARU. **(1897) 24 I. A. 118 = 20 M. 256 (264-5) = 7 Sar. 185.**

———*Concurrent findings as to—Privy Council's interference with.*

Now, the facts upon which this alleged separation is based have been concurrently found by the two courts below, and are no longer the subject of dispute. The argument properly open to the appellant is not upon the facts themselves, but that these facts, when accepted, do establish separation (5).

The Courts below having concurrently found against the alleged separation and there having been no mis-application

HINDU LAW—(*Contd.*)

Impartible Estate—Joint Family Property—Estate forming—(*Contd.*)

SEPARATION AS REGARDS—(*Contd.*)

of the principles of law which regulated the question, their Lordships held that the appellant was concluded by the said findings of fact (6). (*Lord Buckmaster.*) JAGADAMBA KUMARI *v.* NARAIN SINGH. **(1922) 50 I. A. 1 = 2 P. 319 = 32 M. L. T. 157 = 77 I. C. 1041 = 25 Bom. L. R. 676 = (1923) M. W. N. 460 = 18 L. W. 555 = 28 C. W. N. 98 = 37 C. L. J. 287 = 4 Pat. L. T. 319 = A. I. R. 1923 P. C. 59 = 44 M. L. J. 503.**

———*Intention to sever—Intimation unequivocal of—Separation by—Rule as to—Applicability of—Evidence of separation in that way must be strong.*

The rule of Hindu law that it is competent to a member of a joint family to separate himself from the family by a clear and unequivocal intimation of his intention to sever applies equally to an impartible estate belonging to a joint family; but as in that case the person separating forfeits his chance of inheriting the whole of the estate by survivorship, it requires strong evidence to establish such separation.

Where all that appeared was that a village appertaining to an impartible estate was granted to a junior member of the family for maintenance, that the junior member himself did not go to reside at that village, but that after his death, his son, the plaintiff, went there, when the then holder of the estate was a minor and the estate was under the management of the Court of Wards, the effect of which change of residence necessarily effected a separation in food and mess, *held* that there was no separation of the joint family. (*Lord Buckmaster.*) JAGADAMBA KUMARI *v.* NARAIN SINGH. **(1922) 50 I. A. 1 (5-6) = 2 P. 319 = 32 M. L. T. 157 = 25 Bom. L. R. 676 = 18 L. W. 555 = (1923) M. W. N. 460 = 28 C. W. N. 98 = 37 C. L. J. 287 = 4 Pat. L. T. 319 = 77 I. C. 1041 = A. I. R. 1923 (P. C.) 59 = 44 M. L. J. 503.**

———*Joint worship—Absence of—Evidence of—Value of, in Southern India.*

In Southern India evidence as to the absence of joint worship is of very little weight. There is practically no joint family worship. (*Sir John Wallis.*) KONNAMMAL *v.* ANNADANA JADAYA GOUNDAR. **(1927) 55 I. A. 114 = 51 M. 189 = 27 L. W. 497 = 5 O. W. N. 411 = 108 I. C. 354 = 30 Bom. L. R. 802 = 47 C. L. J. 488 = 9 Pat. L. T. 347 = 26 A. L. J. 642 = 32 C. W. N. 983 = A. I. R. 1928 P. C. 68 = 54 M. L. J. 504.**

———*Onus of proof of.*

It being established in the present case that this impartible estate was at one time the joint property of a family consisting of the descendants of the common ancestor of the defendant and the last holder it is in their Lordships' opinion incumbent on the plaintiff to adduce satisfactory grounds for holding that the joint ownership of the defendants' branch in this estate was determined so that it became the separate property of the last holder's branch. (*Sir John Wallis.*) KONNAMMAL *v.* ANNADANA JADAYA GOUNDAR. **(1927) 55 I. A. 114 = 51 M. 189 = 27 L. W. 497 = 5 O. W. N. 411 = 108 I. C. 354 = 30 Bom. L. R. 802 = 47 C. L. J. 488 = 9 Pat. L. T. 347 = 26 A. L. J. 642 = 32 C. W. N. 983 = A. I. R. 1928 P. C. 68 = 54 M. L. J. 504.**

———*Partible property—Partition of—Effect of.*

Once it is established—as it must now be taken to be—that for the purposes of succession an impartible estate may be joint family property, it is difficult to see upon what principle the fact that the members of the joint family or of any branch of the family have exercised their right of partition over their partible property should be held to divest them

HINDU LAW—(*Contd.*)

Impartible Estate — Joint Family Property—Estate forming—(*Contd.*)

SEPARATION AS REGARDS—(*Contd.*)

of their interest in the impartible estate over which they have no right of partition. It certainly cannot be put upon the ground of surrender or renunciation, for there is nothing in the fact of these partitions of their partible property to suggest any intention of renouncing their rights of succession to the impartible estate, nor do they receive any consideration for such renunciation. Further, to lay down that members of a joint family could not partition their partible property without losing their rights of succession in the impartible estate would impose on these families a restriction on the free right to partition which has been so fully recognised by the decisions of this Board in recent years. (*Sir John Wallis.*) KONNAMMAL *v.* ANNADANA JADAYA GOUNDER. **(1927) 55 I. A. 114 = 51 M. 189 = 27 L. W. 497 = 5 O. W. N. 411 = 108 I. C. 354 = 30 Bom. L. R. 802 = 47 C. L. J. 488 = 9 Pat. L.T. 347 = 26 A. L. J. 642 = 32 C. W. N. 983 = A. I. R. 1928 P. C. 68 = 54 M. L. J. 504.**

———Partition of impartible estate itself if necessary. *See* HINDU LAW—IMPARTIBLE ESTATE—JOINT FAMILY PROPERTY—ESTATE FORMING—SEPARATION AS REGARDS—PROOF OF. **(1915) 42 I. A. 192 (201) = 42 C. 1179 (1194-5).**

———*Partition of impartible estate and of other property —Junior members' suit for—Decree in, dismissing suit as regards former and directing partition of latter—Effect of.*

In a suit for partition brought by a junior member of a family against his elder brother, the Court found that a considerable portion of the suit property, the zemindari estate of Challapalli was impartible, dismissed the suit with regard to it, and granted a decree for the partition of certain property, not forming part of the zemindary estate.

Held, that the family did not become a divided one in consequence of the proceedings in the said suit and that, as regards the impartible estate, the junior members retained such right and interest in respect of maintenance as belonged to the junior members of a raj or other impartible estate descendible to a single heir (156-7).

It is true that in the prior suit a decree was made for the partition of a portion of the family property, but it was a very inconsiderable portion, and had no relation whatever to the Zemindary estate, which was held to be impartible. (*Sir Henry De Villiers.*) RAJA YARLAGADDA MALLIKARJUNA PRASAD NAYUDU *v.* RAJA YARLAGADDA DURGA PRASAD NAYUDU. **(1900) 27 I. A. 151 = 24 M. 147 (153) = 5 C. W. N. 74 = 2 Bom. L. R. 945 = 7 Sar. 761 = 10 M. L. J. 294.**

——— *Partition of other property and giving up by junior member of claim to share in impartible estate as co-parcener —Deed evidencing—Effect of.*

In 1831, *B*, the then holder of the talooka of Gungore died, and *G*, his eldest son, became entitled to it. On 31-1-1832, two documents, called deeds of partition, were executed and filed in the collectorate on the 9th of March, following. One was executed by the father of the appellant and his uncle *S*, and was, so far as was material, as follows :—

" Whereas the said *B*, proprietor and Zemindar, departed this life leaving him surviving his eldest son *G*, and us the declarants, his heirs ; consequently we, the declarants, of our own free will and accord, in accordance with the testament of our brother and father deceased, who while alive constituted the said *G*, conformably with family custom the proprietor and his successor, do hereby ingenuously declare as follows :—

HINDU LAW—(*Contd.*)

Impartible Estate — Joint Family Property—Estate forming—(*Contd.*)

SEPARATION AS REGARDS—(*Contd.*)

" Talooka Gungore, an ancestral estate, has been, in accordance with family custom, from time immemorial, held by one person, the eldest son, and the registered proprietor, from generation to generation ; and in case the registered proprietor dies without issue, the younger brother of the deceased or his eldest son becomes the rightful proprietor of talooka Gungore. The said *G*, is competent to present a petition and have his name enrolled as proprietor in the Collectorate Records by the removal of the name of *B*, deceased, in respect of the entire talooka aforesaid ; and, after payment of the Government revenue, to appropriate the produce thereof without allotting any shares, and any other participating therein. We the declarants have not, nor shall have, any claim, right, or demand in respect thereof. If ever we or our heirs hereafter, contrary to this deed, prefer any claim for co-partnership or shares in talooka Gungore aforesaid before the authorities for the time being, such claim shall be null and void, and of no effect."

The rest of that document related to other property, called *P*, as to which it was admitted that the three declarants were entitled to equal shares.

The other document was executed by *G*, and was, so far as was material, as follows :—

" Whereas *B*, my father, departed this life ; and whereas my late father, in accordance with the family custom which prevails with regard to talooka Gungore for the eldest son to succeed to the proprietorship after the death of the registered proprietor, constituted me the declarant in his lifetime the proprietor and his successor to the whole estate aforesaid and all properties ; accordingly, that is to say, in accordance with the will of the father and the family custom, talooka Gungore, the ancestral estate, has been in my possession without any other participating or having shares therein."

The rest related to the rights of the other declarants to the properties other than Gungore.

Held that the partition which took place in 1832 of the other property could not be held to have affected the character or the mode of descent of talooka Gungore (272).

The partition then made was clearly intended to be confined to the property which was then admitted to be partible ; and the clear intention of the parties was to leave the Talooka in the condition in which they found it. There is nothing in the transaction which evinces any intention on the part of the junior members of the family to part with or transfer any right or contingent right of property, which they might have ; they only admitted that they had no claim to share in Talooka Gungore as co-parceners (271-2).

Held further that a deed of 1852 by which a suit brought by one of the junior members against the holder of the estate was compromised had only the same effect (273). (*Sir James W. Colvile.*) CHOWDHRY CHINTAMUN SINGH *v.* MUSSAMMAT NOWLUKHO KONWARI.

(1875) 2 I. A. 263 = 1 C. 153 (161-2) = 24 W. R. 255 = 3 Sar. 537 = 3 Suth. 204.

———*Possibility of—Modes of.*

In regard to an impartible estate it is clear that where an impartible Zemindary has been acquired by the last holder or his branch as a self-acquisition, the other undivided members of his family take no interest in it and it descends as the separate property of the acquirer. That was what happened in the *Shivaganga case* (1863) 9 M. I. A. 539. On the other hand, it is also well settled that as regards an impartible estate which was or had to be considered joint

HINDU LAW—(*Contd.*)

Impartible Estate—Joint Family Property—Estate forming—(*Contd.*)

SEPARATION AS REGARDS—(*Contd.*)

family property, a member of the joint family might become separate with regard to it so as to lose his right to succeed to it by survivorship. That is what happened in *Periasami* v. *Periasami* (1878) L. R. 5 I. A. 61 = I. L. R. 1 M. 312 (P. C.), where a member of the joint family, believing himself to be next in succession to the larger Zemindari of Shivagunga, joined in a settlement under which he was held to have renounced all claims to the lesser Zemindari. Or, again, an impartible Zemindari might by consent be settled on a particular branch of the family as their separate property as in *Rangamayakamma* v. *Ramaiya* (1879) 5 C. L. R. 439. (*Sir John Wallis.*) KONNAMMAL *v.* ANNADANA JADAYA GOUNDER. **(1927) 55 I. A. 114 = 51 M. 189 = 27 L. W. 497 = 5 O. W. N. 411 = 108 I. C. 354 = 30 Bom. L. R. 802 = 47 C. L. J. 488 = 9 Pat. L. T. 347 = 26 A. L. J. 642 = 32 C. W. N. 983 = A. I. R. 1928 P. C. 68 = 54 M. L. J. 504.**

———*Proof of—Estate itself if must be partitioned.*

R, the holder of an impartible estate descendible by family custom by the rule of primogeniture but otherwise governed by the law of the Mithakshara, granted to his brother, *B*, a mokurruri patta of a part of the estate for the maintenance of *B* and his descendants. Subsequently *B* built a pucca house to the westward of the family house, established a tulsi pinda there, and removed his family to his pucca house, and lived there separately from *R*. As a fact *B* built a wall between his pucca house and the family house of *R* and established a separate thakurbari in his house. The houses were quite separate houses. After the grant a daughter of *B's* son was married and the expenses of the marriage were defrayed by *B*, the amount being raised by a mortgage of the lands which he held under the mokkurruri patta.

Held, reversing the High Court, that the evidence clearly proved that there had been complete separation between *R* and *B* in worship, in food, and in estate, and that there had been complete separation between them (201).

The High Court erred in thinking that there could have been no complete separation of the joint family, as the impartible estate itself had not been partitioned between *R* and *B*. *B* and his son had no co-parcenary rights in the impartible estate, and no rights in that estate which entitled them or either of them to a partition of the impartible estate (201). (*Sir John Edge.*) THAKKURANI TARA KUMARI *v.* CHATURBHUJ NARAYAN SINGH. **(1915) 42 I. A. 192 = 42 C. 1179 (1194-5) = 19 C. W. N. 1115 = 18 M. L. T. 228 = 2 L. W. 843 = (1915) M. W. N. 717 = 13 A. L. J. 1034 = 17 Bom. L. R. 1012 = 22 C. L. J. 498 = 30 I. C. 833 = 29 M. L. J. 371.**

———*Proof of—Quantum.*

In a case in which the succession to an impartible estate was in dispute, both the courts below held that the family of which the last male holder was a member was a joint family and that there had been nothing equivalent to partition. Their Lordships agreed with that finding. (*Lord Dunedin.*) BAIJNATH PRASAD SINGH *v.* TEJ BALI SINGH. **(1921) 48 I. A. 195 (200) = 43 A. 228 (233) = 23 Bom. L. R. 654 = 3 U. P. L. R. (P.C.) 35 = 29 M. L. T. 358 = (1921) M. W. N. 300 = 19 A. L. J. 317 = 2 P. L. T. 257 = 33 C. L. J. 388 = 60 I. C. 534 = 40 M. L. J. 387.**

———*Proof of—Quantum.*

The suit related to the succession to an impartible estate in the Madras Presidency. The first plaintiff, the mother

HINDU LAW—(*Contd.*)

Impartible Estate — Joint Family Property—Estate forming—(*Contd.*)

SEPARATION AS REGARDS—(*Contd.*)

of the last holder, claimed the estate as the nearest heir to his separate property, while the defendant, who was a distant male agnate, claimed to succeed to it as joint family property. The estate was shown to have been once the joint family property of the defendant's branch and the last holder's branch. The question was whether the first plaintiff had adduced satisfactory evidence to establish that the joint ownership of the defendants' branch in the suit estate had been determined so that it had become the separate property of the last holder's branch. The evidence was to the effect that the members of the defendant's branch continued to live in the old family residence on a hill in houses closely adjoining the so-called palace of the jagirdar (holder of the estate), while the jagirdar ceased to reside in the hills and acquired a new residence more to his taste in the plains; that the position of the junior members was in no way altered; that they went on living as they did before, and continued to enjoy the privilege of cultivating the land free of the plough tax and poll tax levied on the other inhabitants, a privilege which in the primitive conditions obtaining in those hills was equivalent to maintenance; and that they also on such occasions as marriages, as members of the Jagirdar's family, received contributions from the inhabitants of the same kind as those received by the jagirdar himself.

Held, that the evidence was of a trivial and inconclusive kind and was insufficient to establish separation as regards the suit estate between the last holder's branch and the defendant's branch. (*Sir John Wallis.*) KONNAMMAL *v.* ANNADANA JADAYA GOUNDAR. **(1927) 55 I.A. 114 = 51 M. 189 = 27 L. W. 497 = 5 O. W. N. 411 = 108 I. C. 354 = 30 Bom. L.R. 802 = 47 C. L. J. 488 = 9 Pat. L. T. 347 = 26 A. L. J. 642 = 32 C. W. N. 983 = A.I.R. 1928 P.C. 68 = 54 M. L. J. 504.**

———*Separate food—Evidence of—Value of, in Southern India.*

In Southern India evidence as to separate food is of very little weight. It is not the practice for the junior branches of the family to live with the owner of an impartible estate and no inference as to separation can be drawn from separate living. (*Sir John Wallis.*) KONNAMMAL *v.* ANNADANA JADAYA GOUNDAR. **(1927) 55 I.A. 114 = 51 M. 189 = 27 L. W. 497 = 5 O.W.N. 411 = 108 I. C. 354 = 30 Bom. L. R. 802 = 47 C. L.J. 488 = 9 Pat. L. T. 347 = 26 A. L. J. 642 = 32 C. W. N. 983 = A.I.R. 1928 P.C. 68 = 54 M. L. J. 504.**

———*Separate living—Effect of.*

There are undoubtedly strong reasons for concluding that *G* (the last holder of the Shivagunga Zemindary) and his brother, after the acquisition by the former of the Zemindary, lived very much as if they were separate. But this circumstance is not necessarily inconsistent with the theory of non-division (between them), if, as was likely, the family and undivided property was very inconsiderable in comparison with the separately enjoyed Zemindary (605-6), (*Lord Justice Turner.*) KATAMA NATCHIAR *v.* THE RAJAH OF SHIVAGUNGA. **(1863) 9 M.I.A. 539 = = 2 Sar. 25 = 2 W. R. (P. C.) 31 = 1 Suth. 520.**

———*Succession—Separation altering course of.*

As between the appellant (the widow of the last holder of the Zemindari of Belgaum the succession to which was in question) and the respondent (who claimed the Zemindari as against the appellant on the footing that it was joint ancestral estate and that he and his brother, added as a defendant to the suit, were the nearest heirs of the late Zemindar)

HINDU LAW—(*Contd.*)

Impartible Estate—Joint Family Property—Estate forming—(*Contd.*)

SEPARATION AS REGARDS—(*Contd.*)

the question whether the Zemindari is partible or not is of no importance. Even if impartible it may still be part of the common family property and descendible as such, in which case the widow's estate of the appellant would be excluded. The real question, therefore is, whether it has ceased to be part of the joint property of the family of the first Zemindar, or (in other words) whether there has been an effectual partition so as to alter the course of descent (122). (*Lord Davey.*) RAJA VIRAVARA THODHRAMMAL RAJYA LAKSHMI DEVI GARU *v.* SRI VIRAVARA THODHRAMMAL SURYA NARAYANA DHATRAZU BAHADUR GARU. **(1897) 24 I.A. 118 (122) = 20 M. 256 (264) = 7 Sar. 185.**

———*Succession - Separation for purposes of—Intention of junior members to give up their chance of succession—Proof of—Necessity.*

In order to establish that an impartible estate has ceased to be joint family property for the purposes of succession, it is necessary to prove an intention expressed or implied on behalf of the junior members of the family to give up their chance of succession to the impartible estate. (*Sir John Wallis.*) KONNAMMAL *v.* ANNADANA JADAYA GOUNDAR. **(1927) 55 I. A. 114 = 51 M. 189 = 27 L. W. 497 = 5 O. W. N. 411 = 108 I. C. 354 = 30 Bom. L. R 802 = 47 C. L. J, 488 = 9 Pat. L. T. 347 = 26 A. L. J. 642 = 32 C. W. N. 983 = A. I. R. 1928 P. C. 68 = 54 M. L. J. 504.**

SUCCESSION TO.

———Agreement or arrangement affecting right of. *See* under HINDU LAW — IMPARTIBLE ESTATE — JOINT FAMILY PROPERTY—ESTATE FORMING—SEPARATION AS REGARDS.

———*Daughter—Uncle—Preference.*

On the death of *D*, the next male member of the joint family, his uncle, would, under the law of the Mithakshara, be entitled to succeed to the ancestral estate, though impartible, in preference to the daughter of the last holder. Hence, to make out the daughter's title to the whole estate, it must be shown both that by custom it was impartible, and descended according to the law of primogeniture ; and also that either by special family custom, or by the operation of the law of the Dayabhaga, as the law which should govern the case, she, on the death of her father, was entitled to succeed to it, in preference to her great-uncle (924). MUSSAMAT SHEO SOONDOREE *v.* PIRTHEE SINGH. **(1873) 2 Suth. 922 = 21 W. R. 89.**

———*Female—Preferencc of, to qualified male member—Custom of—Onus of proof of.*

A female cannot inherit an impartible ancestral estate belonging to a joint Hindu family, governed by the Mithakshara law, when there are any male members of the family who are qualified to succeed as heirs. This is a rule of law not dependent on custom, and a custom modifying the law must be a custom to admit females, not a custom to exclude them (154). (*Sir Barnes Peacock.*) RAJAH RUP SINGH *v.* RANI BAISNI. **(1884) 11 I. A. 149 = 7 A. 1 (10-1) = A. W. N. (1884) 246 = 4 Sar. 533.**

———*Junior Branch's right of—Bar of, by adverse possession—Proof of.*

The last male holder of the Zemindari of Belgaum (alleged by his widow to be impartible) died in 1888 without leaving any issue and intestate. In 1889, the respondent, a collateral relation of the deceased, brought a suit for the recovery of the Zemindari from the appellant, the widow of the deceased, who was placed in possession of the Zemindari by

HINDU LAW—(*Contd.*)

Impartible Estate—Joint Family property—Estate forming—(*Contd.*)

SUCCESSION TO—(*Contd.*)

the Government. The respondent claimed the Zemindari on the ground that it was part of the joint property of his and the late Zemindar's family, and that he was entitled to the same to the exclusion of the widow. The widow pleaded, *inter alia*, that the Zemindari was separated estate in the hands of her husband, and that the suit was barred by limitation. With regard to the plea of limitation the judgment of the High Court was to the following effect :—

(1) That it was incumbent upon the appellant to show that her husband's, and his father's and grandfather's enjoyment of the Zemindary was not the enjoyment of a mere co-parcener, but was inconsistent with the rights asserted by the respondent ;

(2) That in their opinion the elder branch of the family did not assume the position of strangers to the rest of the family, but admitted the rights of the younger branch so far as their rights were compatible with the supposition that the Zemindari was impartible ;

and (3) that the appellant had failed to show that her husband had by long possession acquired a title such as would by Hindu law descend to his widow, and had in fact proved no more than that her husband held the property as an impartible estate, and had not shown that there was any allegation of division or self-acquisition, and that, therefore, the plea of limitation failed (119-20).

Their Lordships agreed that the suit was not barred by limitation (127).

As between the appellant and the respondent, the suit is not one for partition. The claim of the latter is not to hold jointly with the appellant, but to succeed adversely to her as one of the right heirs on the death of the late Zemindar. There has been no denial of the title of the respondent's ancestor and his family, or exclusion of them from the estate (127). (*Lord Davey*). SRI RAJA VIRAVARA THODRAMMAL RAJYA LAKHMI DEVI GARU *v.* SRI RAJA VIRAVARA THODRAMMAL SURYA NARAYANA DHATRAZU BAHADUR GARU. **(1897) 24 I. A. 118 = 20 M. 256 (268) = 7 Sar. 185.**

———*Relinquishment by holder of all interest in estate on behalf of himself and his offspring—Effect of—Reversion, if any, left in him—Devolution of that reversion on his descendants in direct line.*

In a case in which the holder of an impartible estate relinquished by deed in favour of his younger brother all interest in the estate on behalf of himself and his offspring, *held*, *Quaere*, whether, consistently with the ruling in the Tagore case, it could be assumed that a certain reversion remained in the executant of the deed ; and whether, assuming that it did remain, that reversion did not descend to his descendants in the direct line according to the law of primogeniture (73). (*Sir James Colvile*). PERIASAMI *v.* PERIASAMI. **(1878) 5 I. A. 61 = 1 M. 312 (328) = 2 C. L. R 81 = 3 Suth. 508 = 3 Sar. 795.**

———*Senior branch—Eldest member of—Younger brothers of father of, nearer in degree to common ancestor—Preference.*

On the death of the last male holder of an ancestral joint family impartible estate, his widow possessed the estate and continued in possession till her death. The question then arose as to the succession to the estate, the rival claimants being the plaintiff, who was the direct senior lineal descendant of the common ancestor, the person who, by the law of primogeniture as applied in England, would succeed, and the defendants, who were younger brothers of plaintiff's father and were thus one degree nearer to the common ancestor than the plaintiff.

HINDU LAW—(*Contd.*)

Impartible Estate—Joint Family property—Estate forming—(*Contd.*)

SUCCESSION TO—(*Contd.*)

Held, that the succession fell to be designated according to the ordinary rule of the Mitakshara law and, that the plaintiff being the person who in a joint family would, being the eldest of the senior branch, be the head of the family, was the person designated in the impartible raj to occupy the gaddi in preference to the defendants.

There are under the Mitakshara law only two possible lines of devolution and the only test to be applied is : Was there community or was there separation ? The arguments of the defendants would involve there being two tests, (1) Was the property joint or separate ? and (2) If it was joint, was it an impartible raj ? If this were right, there would have been no inquiry in the Shivaganga case whether the raj was self-acquired property or not. It would have been enough to take the admission that it was an impartible raj. (*Lord Dunedin*). BAIJNATH PRASHAD SINGH *v.* TEJ BALI SINGH.

(1921) 48 I. A. 195 = 43 A. 228 = 23 Bom. L. R. 654 = 3 U. P. L. R. (P. C.) 35 = 29 M.L.T. 358 = (1921) M.W.N. 300 = 19 A.L.J. 317 = 2 P. L. T. 257 = 33 C. L. J. 388 = 60 I. C. 534 = 40 M. L. J. 387.

———*Senior branch—Right of, on failure of junior line—Loss of—Evidence of—Setting aside of an ancestor of senior branch in favour of his younger brother and his line if by itself.*

The fact that an ancestor of the senior branch was set aside in favour of his younger brother and his line is not of itself sufficient to show that the senior line thereby lost their rights as members of the joint family to succeed to the estate on failure of the younger brother's line (*Sir John Wallis.*) KONAMMAL *v.* ANNADANA JADAYA GOUNDAR.

(1927) 55 I. A. 114 = 51 M. 189 = 27 L. W. 497 = 5 O. W. N. 411 = 108 I. C. 354 = 30 Bom. L. R. 802 = 47 C. L. J. 488 = 9 Pat. L. T. 347 = 26 A. L. J. 642 = 32 C. W. N. 983 = A. I. R. 1928 P. C. 68 = 54 M. L. J. 504.

———*Separate property—Mithakshara rule of succession to—Applicability of, by reason of very fact of impartibility of estate.*

It has been argued that the estate in question in this case being impartible, must, from its very nature, be taken to be separate estate, and consequently that, according to the decision in the "Shivagunga case," the succession to it is determinable by the law which regulates the succession to a separate estate, whether the family be divided or undivided (336-7).

The authority invoked, however, affords no ground for this argument. The decision in the "Shivagunga case" will be found to proceed solely and expressly on the finding of the Court, that the Zemindary in question was proved to be the self-acquired and separate property of Gowary Vallaba Tevar. It assumes that if this had not been so, the decision would have been the other way (337). It is therefore, clear, that the mere impartibility of the estate is not sufficient to make the succession to it follow the course of succession of separate estate (339). (*Sir James W. Colvile.*) STREE RAJAH YANUMULLA VENKAYAMAH *v.* STREE RAJAH YANAMULLA BOOCHIA VENKONDORA.

(1870) 13 M.I.A. 333 = 13 W.R. 21 = 2 Suth. 302 = 2 Sar. 546.

———The case in 13 M.I.A. 333 is a complete answer to the contention that even while the family remained a joint and undivided family in the full sense of the term, an impartible estate would from its very nature of being impartible have been treated as separate property, and thereby governed by the law of the Mitakshara as to separate succession (270). (*Sir James W. Colvile*). CHOWDHRY CHINTAMUN SINGH *v.* MUSST. NOWLUKHO KONWARI.

(1875) 2 I.A. 263 = 1 C. 153 (159-61) = 24 W.R 255 = 3 Sar. 537 = 3 Suth. 204.

———Separation altering course of. *See* HINDU LAW—IMPARTIBLE ESTATE—JOINT FAMILY PROPERTY—ESTATE FORMING—SEPARATION AS REGARDS—SUCCESSION. **(1897) 24 I.A. 118 (122) = 20 M. 256 (264).**

———Separation for purposes of—Intention of junior member to give up chance of succession—Proof of—Necessity. *See* HINDU LAW—IMPARTIBLE ESTATE—JOINT FAMILY PROPERTY—ESTATE FORMING—SEPARATION AS REGARDS—SUCCESSION.

(1927) 55 I.A. 114 = 51 M. 189.

———*Shivagunga case—Rule in—Applicability of.*

The rule of succession laid down in the Shivagunga case (11 M.I.A. 529) is confined to the case where the impartible estate was the separate property of the last holder thereof, though he himself was at the time of his death a member of an undivided family. It would be inapplicable to the case of a joint ancestral estate. (*Sir James W. Colvile*). RAJAH SURANENI VENKATA GOPALA NARASIMHA ROW *v.* RAJAH SURANENI LAKSHMA VENKAMA ROW.

(1869) 13 M I.A. 113 (139-40) = 12 W.R. (P.C.) 40 = 3 B.L.R. (P.C.) 41 = 2 Suth. 265 = 2 Sar. 496.

———*Widow—Brother—Preference.*

In families observing the Mithakshara law, the brother, and not the widow of a childless man, takes a joint ancestral impartible estate. (*Lord Robertson.*) SRIMATI RANI PARBATI KUMARI DEBI *v.* JAGADIS CHUNDER DHABAI.

(1902) 29 I.A. 82 (96) = 29 C. 433 (452) = 6 C.W N. 490 = 4 Bom. L. R. 365 = 8 Sar. 205.

———Widow—Divided agnatic heir—Reference.

(1916) 43 I. A. 269 (281-2) = 38 A. 552 (567-8).

———*Widow—Nephew undivided—Preference.*

If the Zemindar, at the time of death, and his nephews were members of an undivided Hindu family, and the zemindary, though impartible, was part of the common family property, one of the nephews was entitled to succeed to it on the death of his uncle to the exclusion of his widows (589). (*Lord Justice Turner.*) KATAMA NATCHIAR *v.* RAJA OF SHIVAGUNGA.

(1863) 9 M. I. A. 539 = 2 W. R. (P. C.) 31 = 1 Suth. 520 = 2 Sar. 25.

———By the Hindu law, *L*, if the legitimate male heir of the great ancestor, would have taken the Raj on the death of his uncle, *T*, to the exclusion of the widow of *T*, the property being assumed to be ancestral, and the family undivided. In the Shivaganga case, it was admitted that this would have been the course of descent according to the Mithakshara, if the property had been ancestral. The reason why in that case this Committee preferred the title of the daughter to that of the nephew of the last possessor, was, that the Shivagunga Raj was the separate acquisition of the deceased, and, therefore, passed according to the canon which regulates the descent of separate property, and not according to that which determines the succession to the joint or ancestral property of an undivided family (533-4). (*Sir Edward V. Williams.*) JOWALA BUKSH *v.* DHARUM SINGH. **(1866) 10 M. I. A. 511 = 2 Sar. 189.**

———*Widow—Preference of, to collateral male heir—Custom of—Evidence of—Descent to two widows jointly on death of husband if.*

Raj Bhara was admittedly an impartible raj held by only one member of the family at a time, and that one the eldest.

HINDU LAW—(*Contd.*)

Impartible Estate—Joint Family property—Estate forming—(*Contd.*)

SUCCESSION TO—(*Contd.*)

And the question was whether the Mithakshara law of succession had been so far modified by custom, with respect to that raj, as that failing lineal descendants of a deceased Rajah, his widow was entitled to succeed to the raj in preference to a collateral male heir who was also the eldest male member of the joint family.

Held that it was rather remarkable that the Courts below should have considered that a descent to two widows jointly upon the death of their husband was evidence of the custom of descent in question (161). (*Sir Barnes Peacock.*) RAJAH RUP SINGH v. RANI BAISNI.

(1884) 11 I. A. 149 = 7 A. 1 (17 8) = A. W. N. (1884) 246 = 4 Sar. 533.

———*Widow—Preference of, to collateral male heir—Custom of—Proof of.*

Held that there was no sufficient evidence that, in the raj of Ruh Ruh, a custom existed by which a widow succeeded by inheritance to the estate of her husband in preference to collateral heirs on his dying without issue (162-3). (*Sir Barnes Peacock.*) RAJAH RUP SINGH *v.* RANI BAISNI.

(1884) 11 I. A. 149 = 7 A. 1 (19) = A.W.N. (1884) 246 = 4 Sar. 533.

———*Widow—Uncle paternal—Preference.*

M, the last male holder of an impartible estate descendible according to the law of primogeniture, and his uncle (father's brother), were members of a joint Hindu family governed by the Mithakshara law.

On the death without issue of *M*, *held* that his uncle was, in the absence of any special custom to the contrary, entitled to succeed to the ancestral estate in preference to his widow (154, 163). (*Sir Barnes Peacock.*) RAJAH RUP SINGH *v.* RANI BAISNI. **(1884) 11 I. A. 149 = 7 A. 1 (10, 19) = A. W. N. (1884) 246 = 4 Sar. 533.**

———*Widow or daughter—Collateral male heir nearest—Preference.*

Where the family, to which ancestral property held by a family custom of primogeniture belongs, is governed by the law of the Mitakshara, that law in the event of a holder dying without male issue would, if the family be undivided, give the succession to the next collateral male heir in preference to the widow or daughters of the last possessor (269).

The case in 13 M. I. A. 333 is a complete answer to the argument that even while the family remained a joint and undivided family in the full sense of the term, an impartible estate would from its very nature of being impartible have been treated as separate property, and thereby governed by the law of the Mithakshara as to separate succession (270). (*Sir James W. Colvile.*) CHOWDHRY CHINTAMUN SINGH *v.* MUSSAMUT NOWLUKHO KONWARI.

(1875) 2 I. A. 263 = 1 C. 153 (159-61) = 24 W. R. 255 = 3 Sar. 537 = 3 Suth. 204.

SURVIVORSHIP.

————*Custom of—Proof of—Necessity—Right in absence of.*

Title by survivorship, where it varies from the ordinary title by heirship, cannot, in the absence of custom, furnish the rule to ascertain the heir to a property which is solely owned and enjoyed, and which passes by inheritance to a sole heir (541). (*Lord Chelmsford.*) NEELKISTO DEB BURMONO *v.* BEERCHUNDER THAKOOR.

(1869) 12 M. I. A. 523 = 12 W. R. (P. C.) 21 = 3 B. L. R. (P. C.) 13 = 2 Suth. 243 = 2 Sar. 523.

———*Devolution by, from one line to another—Senior line—Nearest co-parcener of—Co-parcener nearest in blood—Preference.*

HINDU LAW—(*Contd.*)

Impartible Estate—Joint Family property—Estate forming—(*Contd.*)

SURVIVORSHIP—(*Contd.*)

It is settled in accordance with a ruling of this Board that when impartible property passes by survivorship from one line to another it devolves, not on the co-parcener nearest in blood, but on the nearest co-parcener of the senior line (265). (*Lord Macnaghten.*) KACHI KALIYANA RENGAPPA KALAKKA THOLA UDAYAR *v.* KACHI YUVA RENGAPPA KALAKKA THOLA UDAYAR.

(1905) 32 I.A. 261 = 28 M. 508 (512) = 2 C. L. J. 131 = 10 C. W. N. 95 = 1 M. L. T. 12 = 2 A. L. J. 845 = 7 Bom. L. R. 907 = 8 Sar. 855 = 15 M. L. J. 312.

———Illegitimate son—Survivorship to legitimate brother—Right of. *See* HINDU LAW—ILLEGITIMATE SON—SURVIVORSHIP TO LEGITIMATE BROTHER.

(1890) 17 I. A. 128 = 18 C. 151.

———*Rule of—Applicability.*

If an impartible raj is the family property of a joint undivided family, succession to it will be regulated according to the rule which obtains in an undivided joint family, so far as the selection of the person entitled to succeed is concerned, *i. e.*, the person will be designated by survivorship, although then, according to the custom of impartibility, he will hold the raj without the others sharing it (205). (*Lord Dunedin.*) BAIJNATH PRASHAD SINGH *v.* TEJ BALI SINGH.

(1921) 48 I. A. 195 = 43 A. 228 = 23 Bom. L. R. 654 = 3 U. P. L. R. (P. C) 35 = 29 M. L. T. 358 = (1921) M. W. N. 300 = 19 A. L. J. 317 = 2 P. L. T. 257 = 33 C. L. J. 388 = 60 I. C. 534 = 40 M. L. J. 387.

———*Rule of—Applicability of.*

As to the rule of succession applicable to impartible estates where no special custom is proved, the customary law of succession is to be found in the Mithakshara, which is the general customary law in this part of India, "with such qualifications only as flow from the impartible nature of the subject," and consequently in applying this law the impartible estate, though in the sole enjoyment of the holder, is to be regarded for the purposes of succession as the joint property of the holder and his family and as passing by survivorship, unless it is shown to be the separate property of the holder, or his branch, in which case it is descendible according to the rules of the Mithakshara. (*Sir John Wallis.*) KONNAMMAL *v.* ANNADANA JADAYA GOUNDER.

(1927) 55 I. A. 114 = 51 M. 189 = 27 L. W. 497 = 5 O. W. N. 411 = 108 I. C. 354 = 30 Bom. L. R. 802 = 47 C. L. J. 488 = 9 Pat. L. T. 347 = 26 A. L. J. 642 = 32 C. W. N. 983 = A. I. R. 1928 P. C. 68 = 54 M. L. J. 504.

Impartible Estate - Joint family property if may be.

———The normal state of every Hindu family is joint. Presumably every such family is joint in food, worship and estate. In the absence of proof of division, such is the legal presumption; but the members of the family may sever in all or any of these three things. The family in which a title to a kingdom exists in one member follows this general law but it follows it in part only, for the succession to a kingdom is an exception to it from the very nature of the thing. The family may have property distinct from that to which a sole heirship belongs, and may continue joint. Still when a Raj is enjoyed and inherited by one sole member of a family, it would be to introduce into the law, by judicial construction, a fiction, involving also a contradiction to call this separate ownership, though coming by inheritance, at once sole and joint ownership, and so to constitute a joint ownership with

HINDU LAW –(*Contd.*)

Impartible Estate—Joint Family property if may be—(*Contd.*)

out the common incidents of co-parcenership (540-1). (*Lord Chelmsford.*) NEELKISTO DEB BURMONO *v.* BEERCHUNDER THAKOOR. **(1869) 12 M. I. A. 523 = 12 W. R. (P. C.) 21 = 3 B. L. R. (P. C.) 13 = 2 Suth. 243 = 2 Sar. 523.**

———*See also* HINDU LAW — IMPARTIBLE ESTATE—JOINT FAMILY PROPERTY—ESTATE FORMING—SUCCESSION TO—SEPARATE PROPERTY—MITHAKSHARA RULE OF, ETC. **(1870) 13 M. I. A. 333 (339) and (1875) 2 I. A. 263 (270) = 1 C. 153 (159-61).**

———On the death of Oiya Thevar, the then Zemindar of Padamattur, the estate descended to Muthu Vaduga, the eldest of his sons. Whether Oiya Thevar was a member of a joint family or a divided member, the estate of Padamattur must be taken to have descended to Muthu Vaduga, as ancestral estate. He would therefore necessarily be joint in that estate, so far as was consistent with its impartible character, with his two younger brothers, the latter taking such rights and interests in respect of maintenance and possible rights of succession as belong to the junior members of a joint Hindu family in the case of a raj or other impartible estate descendible to a single heir. Hence the estate, though impartible, was in a sense the joint property of the joint family of the three brothers (70). (*Sir James W. Colvile.*) PERIASAMI *v.* PERIASAMI.

(1878) 5 I. A. 61 = 1 M. 312 (325) = 2 C. L. R. 81 = 3 Suth. 508 = 3 Sar. 795.

———The impartibility of property does not destroy its nature as joint family property, or render it the separate estate of the last holder, so as to destroy the right of another member of the joint family to succeed to it upon his death in preference to those who would be his heirs if the property were separate (159-60). (*Sir Barnes Peacock.*) TEKAIT DOORGA PERSAD SINGH *v.* TEKAITNI DOORGA KONWARI. **(1878) 5 I. A. 149 = 4 C. 190 (201) = 3 C. L. R. 31 = 3 Sar. 827 = 3 Suth. 540.**

———An ancestral estate, even though impartible, is not the separate or self-acquired estate of the single member upon whom it devolves, so long as the family continues joint (154-5). (*Sir Barnes Peacock.*) RAJAH RUP SINGH *v* RANI BAISNI. **(1884) 11 I. A. 149 = 7 A. 1 (11) = A. W. N. (1884) 246 = 4 Sar. 533.**

———The zemindary, even if impartible, may still be part of the common family property (of the joint family). (*Lord Davey.*) SRI RAJA VIRAVARA THODHRAMMAL RAJYA LAKSHMI DEVI GARU *v.* SRI VIRAVARA THODRAMMAL SURYANARAYANA DHATRAZU BAHADUR GARU.

(1897) 24 I. A. 118 (122) = 20 M. 256 (264) = 7 Sar. 185.

———The fact that a raj is impartible does not make it separate or self-acquired property. A raj, though impartible, may in fact be self-acquired or it may be family property of a joint undivided family (205). (*Lord Dunedin.*) BAIJNATH PRASHAD SINGH *v.* TEJ BALI SINGH.

(1921) 48 I. A. 195 = 43 A. 228 = 23 Bom. L. R. 654 = 3 U. P. L. R. (P. C.) 35 = 29 M. L. T. 358 = (1921) M. W. N. 300 = 19 A. L. J. 317 = 2 P. L. T. 257 = 33 C. L. J. 388 = 60 I. C. 534 = 40 M. L. J. 387.

———(*Sir John Wallis.*) KONNAMMAL *v.* ANNADANA JADAYA GOUNDER. **(1927) 55 I. A. 114 = 51 M. 189 = 27 L. W. 497 = 5 O. W. N. 411 = 108 I. C. 354 = 30 Bom. L. R. 802 = 47 C. L. J. 488 = 9 Pat. L. T. 347 = 26 A. L. J. 642 = 32 C. W. N. 983 = A. I. R. 1928 P. C. 68 = 54 M. L. J. 504.**

HINDU LAW—(*Contd.*)

Impartible Estate—Junior members.

JOINT ANCESTRAL ESTATE.

——— For cases. *See* under HINDU LAW—IMPARTIBLE ESTATE—JOINT FAMILY PROPERTY—ESTATE FORMING.

MAINTENANCE OF.

———*Amount of, fixed by agreement — Reduction of—Grounds.*

K, the great grand father of the appellant and the grandfather of the respondent, bequeathed the whole of his zemindary to his eldest son, leaving a certain fixed stipend to each of his other children. The settlement upon the younger children was admitted to have been originally a fair one; but it was urged for the appellant that, in consequence of events which had subsequently occurred, there ought to be a reduction in the stipends originally fixed.

Held, that to be entitled to the relief prayed for the appellant should have made out clearly that the value of the zemindary had been reduced, and had been reduced not by any default of his own or of those through whom he claimed, but by an act of God.

The appellant, however, adduced no such proof, nor was there even an allegation by him to that effect. There was nothing but the vague, indefinite assertion, that by degrees the value of the zemindary had been reduced by a sale of some portion of it; but whether that sale had been occasioned by bad seasons, or by neglect of the person, or by any other cause, was nowhere alleged. It was not even alleged to have taken place in consequence of bad seasons.

Held further, that there were really no materials upon which the appellant could be given the relief prayed for. (*Mr. Thomas Erskine.*) MAHARAJAH GREES CHUND ROY *v.* SHUMBHOO CHUND ROY.

(1835) 5 W. R. (P. C.) 98 = 1 Suth. 24 = 1 Sar. 63.

———*Amount to be allowed for—Discretion of High Court as to—Privy Council's interference with.*

With respect to the question raised touching the amount of the Babooana allowance (allowance to junior members of the Hunsapore Raj), their Lordships see no sufficient ground for interfering with the discretion exercised on that point by the High Court (40). (*Sir James Colvile.*) BABOO BEER PERTAB SAHEE *v.* MAHARAJAH RAJENDER PERTAB SAHEE. **(1867) 12 M. I. A. 1 = 9 W. R. (P. C.) 15 = 2 Suth. 114 = 2 Sar. 348.**

———*Arrears of—Right to—Forfeiture of—Partition of impartible estate—Suit prior unsuccessful but* bona fide *by junior members for—Effect.*

The junior members of the family of the holder of a joint ancestral impartible estate sued the latter for partition of the impartible estate and of certain properties not forming part thereof. That suit was dismissed as regards the impartible estate. They thereupon sued the holder for arrears of maintenance for 12 years prior to suit.

It was found that, though the prior suit for partition was dismissed as regards the impartible estate, the junior members acted in perfectly good faith in instituting the same. The defendant did not allege in his defence, nor was there any evidence, that he was in any way prejudiced by the form of the previous suit.

Held, that it was impossible to hold that the younger brothers of the defendant had forfeited their undoubted right to arrears of maintenance merely because they were in the first instance advised to institute a wrong suit, and did not claim their maintenance as it fell due.

Semble, if the defendant had been misled by the prior suit into the belief that the claim for maintenance was abandoned and had in consequence not set aside any portion of his annual income, he would have had a good defence to

HINDU LAW—(*Contd.*)

Impartible Estate—Junior members—(*Contd.*)

MAINTENANCE OF—(*Contd.*)

the present action. (*Sir Henry De Villiers.*) RAJA YARLAGADDA MALLIKARJUNA PRASADA NAYUDU *v.* RAJA YARLAGADDA DURGA PRASAD NAYUDU.

(1900) 27 I. A. 151 (160-1) = 24 M. 147 (154-7) = 5 C. W. N. 74 = 2 Bom. L. R. 945 = 7 Sar. 761 = 10 M. L. J. 294.

———*Co-parcenary—Claim based on, and not on custom or relationship—Maintainability—Adopted son of last holder—Claim by, against person holding estate under will of holder.*

The plaintiff, the son of an adopted son of the last male holder of a zemindari, which was by custom impartible and governed by the rule of primogeniture, sued the defendant, a devisee of the zemindari and other lands under the will of the last holder, for maintenance. The plaintiff's claim was rested, not on any custom affecting the suit zemindari which enjoined the making of grants of maintenance to any persons, nor on any relationship between him and the defendant, but on the fact that the zemindari, though impartible, was joint family property, and that he (plaintiff), as a junior member of the family of the last holder, had, under the general law, a right by birth to maintenance out of the zemindari, which right followed the property into the hands of a third party.

Held, affirming the High Court, that the plaintiff's claim was unsustainable.

An impartible zemindari is the creature of custom, and it is of its essence that no co-parcenary exists. This being so, the basis of the claim is gone, inasmuch as it is founded on the consideration that the plaintiff is a person who, if the zemindari were not impartible, would be entitled as of right to maintenance. The right to maintenance, so far as founded on or inseparable from the right of co-parcenary, begins where co-parcenary begins and ceases where co-parcenary ceases. (*Lord Dunedin.*) RAMA RAO *v*, RAJA OF PITTAPUR. **(1918) 45 I. A. 148 = 41 M. 778 = 24 M. L.T. 276 = (1918) M. W. N. 922 = 23 C. W. N. 173 = 28 C.L.J. 428 = 20 Bom. L. R. 1056 = 16 A L. J. 833 = 5 Pat. L. W. 267 = 47 I. C. 354 = 35 M. L. J. 392.**

———*Cousin—Custom entitling—Onus of proof of.*

In a suit by the plaintiff, the cousin of the 1st defendant, the Maharajah of Jeypore, for maintenance out of the impartible estate held by the defendant, the plaintiff rested his case upon the contention that, according to the general Hindu Law, he, as the son of a brother of the late Maharajah, was entitled to maintenance out of the estate. The defendant, in his written statement, proceeded more or less upon the same basis, but alleged a special custom which deprived the plaintiff of that which was treated as being his *prima facie* right. The issue framed in the case with regard to the custom alleged cast the onus of proving the same on the defendant. *Held* by their Lordships that the burden should have been put upon the plaintiff to prove the custom entitling him to maintenance, and not upon the defendant to prove a custom negativing the ordinary law.

Their Lordships accordingly recast the issue and sent it down for a finding. (*Viscount Cave.*) MAHARAJAH OF JEYPORE *v.* VIKRAMA DEO GARU.

(1919) 17 A. L. J. 1011 = 24 C. W. N. 226 = 10 L. W. 436 = 27 M. L T. 137 = (1919) M.W.N. 824 = 31 C. L. J. 91 = 52 I. C. 333 = 21 Bom. L. R. 930 = 37 M. L. J. 188.

———Darbhanga Raj—Junior members in—Babuana and Sohag grants to. *See* **HINDU LAW—IMPARTIBLE ESTATE—DARBHANGA RAJ.**

HINDU LAW—(*Contd.*)

Impartible Estate—Junior members—(*Contd.*)

MAINTENANCE OF—(*Contd.*)

———*Deed allotting properties for—Effect of—Permanent settlement of portion of estate owing to semi-hostile assertion by junior member of right to such settlement—Deed if an.*

An instrument, by which the holder of an impartible estate, gave certain properties to a junior member of his family, in lieu of the yearly sum of Rs. 210, formerly received by the latter for maintenance, took the form of a letter written by the junior member to the holder of the estate. It ran thus :—

"I shall get Rs. 210 annually for my food and other expenses. You should therefore cause it to be paid to me directly from the Sarkar—(1) land of the village of *R*; (2) old mango grove at Bhampur; (3) Mowha Grove of Rampur; (4) the house situate on the road in which I live. I shall be receiving as above and I will serve the Raj and will go wherever ordered. My descendants and I will enjoy it. In case there shall be no descendant from me it will lapse to the Raj. I will not give it to any one. I will not act against your pleasure".

Held, that the instrument was simply an agreement by the head of the family to devote certain portions of the family property to the maintenance of a junior member, that is, an alienation *pro tanto* of an impartible estate which every head of such a family not restrained from alienation by a family custom was entitled to make though the estate be impartible, and that the court below erred in treating the instrument as an example of the semi-hostile assertion by the younger members of a family of a right to a provision out of the family as a permanent settlement, in the shape of a portion of the estate. (*Lord Atkinson.*) RAO KISHORE SINGH *v.* MUSAMMAT GAHENABAI.

(1919) 12 L. W. 730 (738) = 15 N. L. R. 176 = 17 A. L. J. 1077 = 26 M. L. T. 494 = 24 C.W.N. 601 = 22 Bom. L. R. 507 = 53 I. C. 630 = 37 M. L. J. 562.

———*Grant for—Estate taken under—Absolute heritable estate.*

In consequence of arrears of revenue due to Government by the Zemindar of Nidadavole, who owed various other debts to other persons, and, among them, arrears of maintenance to a younger branch, an arrangement was come to by which a portion of the estate should be given to the Nuzvid Zemindar "in the event of his satisfying the other creditors", the Government relinquishing their claim. In order to carry out such arrangement the estate was purchased by the Government in revenue sale and a portion of the estate was given to the Nuzvid Zemindar and an adjustment was made through the mediation of Government with the other creditors by which the Tengallamudi Mutta was assigned in satisfaction of the claims of the younger branch upon the zemindar of Nidadavole for past and future maintenance. Some time after this adjustment, the Nuzvid Zemindar granted the estate of Chevendra in perpetuity to the same branch for a similar purpose, and a partition was effected among the different members of the younger branch with the privity of the Zemindars of Nuzvid and Nidadavole by which each of the two estates was allotted to the several members.

Held, (1) that the grant of Tengallamudi was a grant by Government, and (2) that the said grant was not resumable but created an heritable estate in the grantees. (*Sir Andrew Scoble.*) RAJA RAJA JEE BAHADUR GARU *v.* RAJA PARTHASARADHI APPA ROW. **(1902) 30 I. A. 14 = 26 M. 202 = 8 C. W. N. 105 = 8 Sar. 419 = 13 M. L. J. 125.**

———*Grant for—Male descendant of grantee within meaning of—Adopted son under adoption by grantee's widow, if a.*

HINDU LAW—(*Contd.*)

Impartible Estate—Junior members—(*Contd.*)

MAINTENANCE OF—(*Contd.*)

By the family custom of a Hindu Rajput family in the Bombay Presidency land granted out of the impartible family estate to younger sons for jivai or maintenance reverted to the estate upon a failure of the grantee's male descendants, widows being excluded from inheriting. The holder of such a jivai grant died in October 1903, leaving a widow, but no male issue. His widow remained in possession, and in March 1904, adopted a son to her deceased husband. In a suit by the estate-holder for the recovery of the village, the subject of the grant, on the ground that on the death of the last holder of the grant without male issue it reverted to him, *held*, reversing the High Court, that the grant did not revert to the estate-holder, but was inherited by the adopted son.

The contention that the grant reverts to the grantor's estate immediately the *jivaidar* dies is unsustainable. Admittedly a posthumous son would prevent the reversion. If the widow happened to be *enciente* the reversion naturally would remain in suspense until the birth of the child, to see whether it was a male or a female. Here the adoption was made within the period of natural gestation ; and the property was at the time of the adoption in the possession of the widow and still is in the possession of the adopted son. (*Mr. Ameer Ali.*) PRATAPSING SHIVSING *v.* AGARSINGJI RAISINGJI. **(1918) 46 I. A. 97 = 43 B. 778 (794) = 17 A. L. J. 522 = (1919) M. W. N. 313 = 21 Bom. L. R. 496 = 24 C. W. N. 57 = 10 L. W. 339 = 27 M. L. T. 47 = 50 I. C. 457 = 36 M. L J. 511.**

———*Grant for—Male line of grantee — Grant made to enure for benefit of—Natural-born issue of grantees—Custom confining line to—Proof of—Quantum.*

Where, in the case of a hereditary grant for maintenance or jivai subject to the limitation that it shall be descendible in the direct male line, or in other words, that it shall enure so long as the grantee's male line lasts, a custom is alleged confining the line to natural-born issue alone, it must be proved affirmatively and conclusively, and not derived from implications.

Held that the plaintiff, who set up such a custom, had failed to establish it. (*Mr. Ameer Ali.*) PRATAPSING SHIVSING *v.* AGARSINGJI RAISINGJI.

(1918) 46 I. A. 97 (106) = 43 B. 778 (791-2) = 17 A.L.J.522 = (1919) M. W. N. 313 = 24 C.W.N. 57 = 21 Bom. L. R. 496 = 10 L. W. 339 = 27 M. L. T. 47 = 50 I.C. 457 = 36 M.L.J. 511.

———*Grant for—Male line of grantee within meaning of—Existence of—Law applicable for determining—Hindu Law—Custom varying—Proof of—Necessity.*

When a hereditary grant for maintenance or jivai is made by a Hindu subject to the limitation that it shall be descendible in the direct male line, or, in other words, that it shall enure so long as the grantee's male line lasts, the existence of the line must be determined by the rules and provisions of the Hindu law, unless there be any custom varying those rules. The limitation itself is a variation of the Hindu law. (*Mr. Ameer Ali.*) PRATAPSINGH SHIVSINGH *v.* AGARSINGJI RAISINGJI.

(1918) 46 I. A. 97 (106) = 43 B. 778 (791) = 17 A L.J. 522 = (1919) M. W. N. 313 = 21 Bom. L.R. 496 = 24 C. W. N. 57 = 10 L. W. 339 = 27 M. L. T. 47 = 50 I. C. 457 = 36 M L. J. 511.

———*Grant for—Practice of.*

These grants by way of maintenance are in the ordinary course of what is done by a person in the enjoyment of a Raj, or impartible estate, in favour of the junior members of the family ; who, but for the impartibility of the estate, would be co-parceners with him (340). (*Sir James W. Colvile.*) STREE RAJAH YANUMULA VENKAYAMAH *v.* STREE RAJAH YANUMULA BOOCHIA VENKONDORA.

(1870) 13 M I A. 333 = 13 W. R. 21 = 2 Suth. 302 = 2 Sar. 546.

———*Grant in lieu of—Estate conveyed under—Presumption—Resumption on death of grantee—Right of—Right in default of resumption.*

A grant of villages by a Zemindar to his nephew expressly made "in lieu of maintenance," is *prima facie* resumable on the death of the grantor. Where the grant contains no words purporting to grant a perpetual interest, *Quaere*, whether the grantee's family will take the benefit of it if not resumed. (*Lord Davey.*) MAHARANI BENI PERSHAD KOERI *v.* DUDH NATH ROY.

(1899) 26 I. A. 216 (220) = 27 C. 156 (161) = 4 C. W. N. 274 = 7 Sar. 580.

———*Grant of allowance for—Duration of — Allowance for maintenance of* A, *his younger brothers three in all, "and the rest of your family"—Issue of brothers if entitled to the allowance.*

An agreement made between *P*, the then Zemindar of Pedda Kimidy, and *J*, the eldest son of *P's* younger brother, recited that there were disputes between the elder and younger branches of the family, and was in the following terms :—P agrees "to give (you)"—that is, *J*—" presently Rs. 10,000 so that neither you nor your younger brothers nor the members of your family may make any demand in future in respect of the household articles, jewels, etc., or anything, or in respect of the debts incurred by your deceased father." The next paragraph of the agreement was as follows:—"To give (you) through the Collector every month Rs. 300 on account of the maintenance of yourself, your younger brothers three in all, and the rest of your family. As we hereby agreed that you, your younger brothers and the other members of the family shall have no concern whatever henceforward in the said Zemindary or any other thing, you should enjoy the said towji "—that is allowance.

J and his two younger brothers died, and the plaintiff was the son of the youngest of them, apparently the only issue of the three.

In a suit brought by the plaintiff against the defendant, the son of *P* and the Zemindar for the time being of Pedda Kimidy, the question was whether the plaintiff was entitled to be paid out of the revenues of the Zemindary the allowance of Rs. 300 granted by the said agreement. The defendant contended that the payment of Rs. 300 a month was only to endure for the life of *J*, or at the most for the lives of three brothers.

Held, affirming the High Court, that the issue of the three brothers were intended to have the benefit of the provision for maintenance, and that the plaintiff, as the issue of one of the brothers, was entitled to be paid the amount of the same.

Either of the constructions put forward by the defendant is directly at variance with the terms of the agreement It cannot be reasonably suggested who is to be included in the expression "the rest of your family," unless the issue of the three brothers are to be included. (*Lord Hobhouse.*) SRI SRI SRI LAKSHMI NARAYANA ANANGA GARU *v.* SRI MADHAWA DEO GARU. **(1892) 20 I. A. 9 = 16 M. 268 = 6 Sar. 270.**

———*Grant of villages appertaining to estate for—Estate conveyed—Grantee to hold possession and support his dependants and relations from generation to generation.*

HINDU LAW—(*Contd.*)

Impartible Estate—Junior members (*Contd.*)

MAINTENANCE OF—(*Contd.*)

By a sunnud, in the nature of a deed of maintenance, certain villages and lands were granted by a Zemindar in possession, to *J*, to hold "possession of the villages, and lands, etc., and support his dependants and relations from generation to generation." *J* was a member of the grantor's family.

Held, on a construction of the instrument, that *J* took an absolute estate in the property assigned to him, and could alienate it beyond the term of his own life.

The reference to maintenance was merely for the purpose of showing the consideration for the instrument, or the transaction. The instrument does not evince an intention that from son to son, the property granted should remain in the family ; with the head of the family for the time being, in order to enable him to afford the maintenance. Giving the land to a member of the family to whom it was given, had the same effect, and was an act of the same character as giving a sum of money to him absolutely, in lieu of any claim for maintenance burdened with the duty upon his part of maintaining those who ought to be maintained.

If that had been done, the money would have been absolutely the property of the person to whom it was given, and would have well discharged the duty incumbent upon the person who should have paid the same. The words "continue to hold and enjoy possession to us uninterruptedly from generation to generation" render this construction sufficiently certain. Every part of that portion of the deed appears to refer to the enjoyment of the land, and not the identity, or the persons, or the continuance of the persons of those who were to be maintained. (*Lord Justice Knight Bruce.*) RAJAH NURSING DEB *v.* KOYLASNATH ROY.
(1862) 9 M.I.A. 55 = 1 Sar. 842.

———Hansapore Raj—Junior members—Maintenance of—Babooana allowances for—Liability of holder to provide. *See* HINDU LAW—IMPARTIBLE ESTATE—HUNSAPORE RAJ—JUNIOR MEMBERS. **(1867) 12 M. I. A. 1 (18).**

———*Next heir to estate but for will of last holder—Claim by, against person holding estate under the will—When not maintainable.*

Held that the appellant, who would as the next heir have been entitled to a joint ancestral impartible estate, if it had not been validly bequeathed by the last holder by will in favour of the respondent, was not entitled to maintenance from the estate, because (1) the maintenance of appellant and his family had already been provided for by a khorposh grant of certain villages to his predecessors, which villages were still in his possession ; (2) he had failed to establish a right to maintenance by custom or relationship or in any other way (300). (*Lord Warrington of Clyffe.*) PROTAP CHANDRA DEO *v.* JAGADISH CHANDRA DEO.
(1927) 54 I.A. 289 = 54 C. 995 = 25 A. L. J. 628 = 102 I. C. 599 = 20 Bom L. R. 1136 = (1927) M. W. N. 513 = 31 C.W.N. 943 = 39 M L.T. 1 = 4 O.W.N. 650 (2) = 46 C L.J. 136 = 8 Pat. L T. 623 = A. I. R. 1927 P. C. 159 = 27 L. W. 119 = 53 M. L. J. 30.

———Patcum Raj in Chota Nagpur—Younger sons of Raja in—Maintenance grants to—Duration of—Custom of. *See* HINDU LAW—IMPARTIBLE ESTATE—PATCUM RAJ IN, ETC. **(1881) 8 I. A. 248 (249) = 8 C. 199 (202).**

———*Revenue due on villages granted for—Covenant by grantor to pay—Personal covenant or charge on estate.*

The talukdar of certain villages granted to a junior member of the family certain specific villages in lieu of maintenance, it being agreed between the parties that the talukdar should pay the whole revenue and that the grantee

HINDU LAW—(*Contd.*)

Impartible Estate—Junior members—(*Contd.*)

MAINTENANCE OF—(*Contd.*)

should enjoy the villages given to him revenue-free.

Held, on a construction of the arrangement that the talukdar undertook a personal liability to pay the revenue of the villages granted under it, and that it was not intended to charge the remainder of the taluka with such obligation (163). (*Mr. Ameer Ali.*) SUNDARLAL *v.* RAMJILAL. **(1920) 47 I A. 149 = 47 C. 932 (949-50) = 24 C W N. 929 = 16 N L.R. 114 = (1920) M W N 447 = 28 M.L.T 319 = 12 L. W. 311 = 57 I C. 156 = 2 U.P.L R. (P.C) 19.**

———*Revenue and cesses due on villages allotted for—Enhancement of—Liability for—Compromise — Construction.*

Plaintiff and defendant were members of a joint Hindu family, plaintiff being the head of the family and the proprietor of a taluka, and defendant being the representative of a junior branch. Disputes between the defendant and the plaintiff's father as to the former's claim upon the taluk were settled by a compromise which awarded 11 villages forming part of the taluk to the defendant and provided that the plaintiff's father was to pay out of his own pocket the Government revenue in respect of those villages, and that the defendant was to have no concern with the same. That compromise was embodied in a decree of court. The terms of the arrangement were entered in an administration paper, or *wajib-ul-arz*, of the talook before the settlement of 1867, in the record whereof they were also entered. And they were referred to in a sanad granted to the talookdar.

Held that, on the right of construction of the compromise, the talook vested in the plaintiff, subject to the right of the defendant to hold possession of the 11 villages on the terms specified in the *wajib-ul-arz* of 1867 ; and that, as between the plaintiff and the defendant, the plaintiff was liable for the Government jamma, and the defendant for the local rates and cesses levied on such villages or on the talook in respect of them.

All the judgments below proceed on the principle that the dispute between the parties is of the ordinary kind which occurs when the head of a family and a junior member cannot agree on the proper amount of maintenance. Courts have no jurisdiction to disturb compromises or settled arrangements of a permanent character on the ground that they were originally based on claims for maintenance. The principle adopted by the learned Judges below has no warrant in law unless it can be shown that the defendant's interest in the villages was of the variable character which belongs to an ordinary allowance for maintenance. To attribute that character to it is to misread the history of the case. (*Lord Hobhouse.*) LOKNATH *v.* BISSESSARNATH. **(1899) 26 I. A. 268 (279-80) = 27 C. 103 (115-6) = 7 Sar. 569.**

———*Right to—Basis of—Custom—Near relationship—Limits to.*

Apart from custom and from certain near relationships to the holder the junior members of the family of a Zemindar entitled to an impartible zemindari have no right to maintenance out of it, and there is no invariable custom by which any member of the family beyond the first generation from the last holder can claim maintenance as of right. (*Viscount Cave.*) MAHARAJA OF JEYPORE *v.* VIKRAMA DEO GARU. **(1919) 17 A. L. J. 1011 = 24 C. W. N. 226 = 10 L. W. 436 = 27 M. L. T. 137 = (1919) M. W. N. 824 = 31 C. L. J. 91 = 21 Bom. L. R. 930 = 52 I. C. 333 = 37 M. L. J. 188.**

———*Right of—Custom recognising—Proof of—Necessity—First generation from last holder—Generations below that—Distinction.*

HINDU LAW—(*Contd.*)

Impartible Estate—Junior members—(*Contd.*)

MAINTENANCE OF—(*Contd.*)

Just as the impartibility of an estate is the creature of custom, so custom may and does affirm a right to maintenance in certain members of the family. The failure to prove a special custom would not by itself be fatal in the case of some claims. When a custom or usage, whether in regard to a tenure or a contract or a family right, is repeatedly brought to the notice of the Courts of a country, the Courts may hold that custom or usage to be introduced into the law without the necessity of proof in each individual case. Their Lordships do not doubt that the right of sons to maintenance in an impartible zemindari has been so often recognised that it would not be necessary to prove the custom in each case. But their Lordships can find no invariable or certain custom that any below the first generation from the last Raja can claim maintenance as of right (154-5). (*Lord Dunedin.*) RAMA RAO *v.* RAJA OF PITTAPUR.

(1918) 45 I. A. 148 = 41 M. 778 (785) = 24 M. L. T. 276 = (1918) M. W. N. 922 = 23 C. W. N. 173 = 28 C. L. J. 428 = 20 Bom. L. R. 1056 = 16 A. L. J. 833 = 5 Pat. L. W. 267 = 47 I. C. 354 = 35 M. L. J. 392.

———Tirhoot zemindari—Junior members in—*Baboo* allowances to—Grants by way of—Absolute grants to them—Incidents of—Distinction. *See* HINDU LAW—IMPARTIBLE ESTATE—TIRHOOT ZEMINDARY—JUNIOR MEMBERS IN.

(1855) 6 M. I. A. 164 (197).

———*Wrongful withholding of—Inference of—Circumstances justifying.*

The junior members of the family of the holder of a joint ancestral impartible estate sued the latter for partition of the impartible estate and of other properties not forming part thereof. That suit was dismissed as regards the impartible estate. They subsequently instituted the suit out of which the appeal arose for, *inter alia*, the recovery of arrears of maintenance for twelve years prior to suit.

The District Judge awarded arrears of maintenance for 12 years prior to suit on the ground that, although no demand had been made, maintenance must be deemed to have been withheld by the defendant, the holder of the estate, in view of his attitude in the prior suit and since, including his attitude in the several stages of the suit out of which the appeal arose.

Held, reversing the *H. C.*, and restoring the District Judge, that the District Judge was right in inferring from the circumstances a wrongful withholding (159-61). (*Sir Henry De Villiers.*) RAJA YARLAGADDA MALLIKARJUNA PRASADA NAYUDU *v.* RAJA YARLAGADDA DURGA PRASADA NAYUDU.

(1900) 27 I. A. 151 = 24 M. 147 (154-7) = 5 C. W. N. 74 = 2 Bom. L. R. 945 = 7 Sar. 761 = 10 M. L. J. 294.

RAJ DESCENDIBLE BY CUSTOM TO ELDEST MALE HEIR.

———Inchoate rights of inheritance in. *See* HINDU LAW—IMPARTIBLE ESTATE—RAJ—DESCENT OF, TO ELDEST MALE HEIR.

(1867) 12 M. I. A. 1 (39).

SUCCESSION TO JOINT ANCESTRAL ESTATE—RIGHT OF—BAR OF, BY ADVERSE POSSESSION.

———Proof of. *See* HINDU LAW—IMPARTIBLE ESTATE—JOINT FAMILY PROPERTY—ESTATE FORMING—SUCCESSION TO—JUNIOR BRANCH'S RIGHT OF.

(1897) 24 I. A. 118 (127) = 20 M. 256 (268).

Impartible Estate of Kunjpura Raj.

———Origin of. (*Mr. Ameer Ali*). IBRAHIM ALI KHAN *v.* MAHAMMED AHSAN ULLAH KHAN.

(1912) 39 I. A. 85 = (89-90) 14 Bom. L. R. 271 = 9 A. L. J. 390 = 15 C. L. J. 352 = 16 C. W. N. 625 = 13 I. C. 695 = 22 M. L. J. 478.

HINDU LAW—(*Contd.*)

Impartible Estate—Madras Reg. XXV of 1802—Sanad in common form under—Acceptance of.

———Effect. *See* HINDU LAW—IMPARTIBLE ESTATE—NATURE AND INCIDENTS OF—MADRAS REG. XXV OF 1802.

Impartible Estate—Maintenance out of.

GRANT FOR.

———*Collateral relation—Grant to—Resumption on death of grantee without issue—Right of—Proof of.*

The appellant, the owner of an impartible talook, sued to resume a mouzah, which at one time formed part of the talook, on the death of the last owner of the mouzah, *B*, without natural issue. The appellants' case was that the suit mouzah had been granted, some hundred years before, to an ancester of *B*, a collateral relation, for maintenance, and that he was entitled to resume it upon the death of the tenant without issue. The defendants in the suit were the widows of *B*.

Held, that the appellant had not established the right set up by him (82). (*Sir Robert P. Collier.*) RAO BAHADUR SINGH *v.* MUSST. JAWAHI KUAR.

(1884) 11 I. A. 75 = 10 C. 887 (890) = 4 Sar. 540.

———Junior members—Grant to. *See* HINDU LAW—IMPARTIBLE ESTATE—JUNIOR MEMBERS—MAINTENANCE OF.

———*Restraint on alienation contrary to Hindu Law—Grant imposing—Grant in favour of non-existing persons on a condition which may never arise—Validity of.*

Where the mainfest purpose of a deed executed by the holder of a Raj estate in favour of four named persons was to fasten upon the grantor, and his successors in the Raj, a perpetual duty of giving, in some way or other, the means of maintenance to all the descendants of those four persons, and, though the deed did not directly impose that obligation, yet it provided that, on the failure of the then Rajah, at any further time, to maintain those descendants, the latter were to have immediate right to four of his villages, which thenceforth were not to appertain to his Kingdom, *held* that the grant of the four villages might be regarded either as a present assignment to persons not then in existence, subject to a suspensive condition, which might prevent its taking effect at all, or for generations to come, or as a contract, not a mere personal contract, but a covenant running with the Raj estate, and binding its possessor to give the villages to those persons in the event specified, and that, being a provision in favour of non-existing persons, it was, in either view, invalid. *Held further*, that if it prevented the owner from alienating his estate discharged of such future interest, before the emergence of the condition, and that event might possibly never occur, it imposed a restraint upon alienation which was contrary to the principles of Hindu Law (155-6) (*Lord Watson.*) CHUNDI CHURN BARNA *v.* RANI SIDHESWARI DEBI.

(1888) 15 I. A. 149 = 16 C. 71 (79 80) = 5 Sar. 231.

———*Illegitimate son of deceased Zemindar—Maintenance of—Property liable for—Zemindary itself—Private properties of deceased and of then holder.*

In a suit by the illegitimate son of a former Zemindar against the appellant, the present Zemindar, for maintenance out of the income of the zemindary the Zillah Judge, on first appeal, decreed the amount of maintenance to be paid annually by the appellant from the villages forming the private property of the appellants' family. That decree was sustained by the High Court on special appeal, apparently on the view that the decision of the Zillah Judge involved a finding of fact that the appallant was possessed of private property. The High Court refrained from deciding

HINDU LAW—(*Contd.*)

Impartible Estate—Maintenance out of—(*Contd.*)

the question, whether maintenance could in such a case be charged on a zemindary.

Being of opinion that the decree of the Zillah Judge directing the payment of the maintenance from the private property of the appellant was not warranted by the pleadings and evidence before him, their Lordships remitted the cause to the High Court with directions to determine whether the decree should be varied by directing the maintenance to be paid out of the income of the zemindary, or whether it should direct any further inquiry in order to ascertain whether there was any other property upon which it could be charged (221-3).

The plaintiff may have a right to be maintained out of private property which descended from his father to the appellant; yet he may have none to be maintained out of private property which the appellant has acquired in any other way (222). (*Sir James W. Colvile.*) MUTHUSAWMY JAGAVIRA YETTAPPA NAICKER *v.* VENKATESWARA YETTAPPA. **(1868) 12 M.I.A. 203 = 11 W.R. 6 = 2 B. L. R. (P. C.) 15 = 2 Suth. 175 = 2 Sar. 395.**

———Junior members—Maintenance of. *See* HINDU LAW—IMPARTIBLE ESTATE—JUNIOR MEMBERS OF—MAINTENANCE OF.

Impartible Estate—Maternal grandfather's estate.

———Daughter's son inheriting—Alienation by—Restrictions on—Ancestral property—Restrictions applicable to—Applicability of. *See* HINDU LAW—DAUGHTER'S SON—MATERNAL GRANDFATHER — PROPERTY INHERITED FROM—ALIENATION OF. **(1882) 9 I.A. 128 (143) = 6 M. 1 (17).**

———Inheritance by daughter's son of—Devolution of, on his death—Son of that daughter's son—Son of another daughter of original zemindar—Preference. *See* HINDU LAW—DAUGHTER'S SON—MATERNAL GRANDFATHER—IMPARTIBLE ESTATE, ETC.

(1896) 23 I.A. 128 = 19 M. 451.

———Inheritance by daughter's son of—Nature of estate in his hands—Self-acquisition if. *See* HINDU LAW—DAUHTER'S SON—MATERNAL GRANDFATHER—PROPERTY INHERITED FROM—NATURE OF, ETC.

(1882) 9 I.A. 128 (143) = 6 M. 1 (17).

———Inheritance by daughter's son of—Survivorship as regards—Right of—Son of another daughter of original zemindar if has. *See* HINDU LAW—DAUGHTER'S SON—MATERNAL GRANDFATHER—IMPARTIBLE ESTATE, ETC.

(1896) 23 I.A. 128 = 19 M. 451.

———Inheritance to—Right of—Preference as between sons of several daughters. *See* HINDU LAW—DAUGHTER'S SON—MATERNAL GRANDFATHER—IMPARTIBLE ESTATE OF. **(1881) 8 I.A. 99 (109) = 3 M. 290 (300).**

Impartible Estate—Merangi zemindari.

———Partible or impartible—Evidence. *See* HINDU LAW—IMPARTIBLE ESTATE—NATURE AND INCIDENTS OF—EXECUTION SALE OF ESTATE

(1891) 18 I.A. 45 = 14 M. 237.

Impartible Estate—Military Jagir—Estate held as.

———*Incidents of—Alteration of, by perpetual settlement and by Regulation XI of* 1793.

Held, upon the evidence in the case, that, upon the settlement of the suit zemindary by the Government at the time of the perpetual settlement, any incidents of the old tenure, as a military jagir, requiring the render of services, if any such had ever existed, were as conditions of tenure implicitly at an end; and that the zemindary, so far as related to tenure, was thenceforth held under the Government as an ordinary zemindary free from any such conditions (746).

HINDU LAW—(*Contd.*)

Impartible Estate—Military Jagir—Estate held as—(*Contd.*)

Held further that there was, in the case, sufficient ground for the presumption that, after the settlement and Regulation XI of 1793, the family were induced to regard the former state of things, and the ancient tenures, whatever they were, as at an end, and to consider and treat the property as an ordinary estate held under the British Government; and that their acts showed, in fact, that they did so consider and treat it (747). RAJAH RAJ KISHEN SINGH *v.* RAMJOY SURMA MOZOOMDAR.

(1872) 2 Suth. 744 = 19 W R. 8 = 8 M.J. 151.

Impartible Estate—Nature and incidents of.

ALTERATION BY WILL OF.

BRITISH RULE—ESTATE EXISTING BEFORE ADVENT OF—SETTLEMENT OR REGRANT BY GOVERNMENT OF—EFFECT OF.

COMPROMISE AFFECTING.

CONFISCATION AND RE-GRANT OF ESTATE.

DISPOSSESSION OF ZEMINDAR BY NEIGHBOUR AND REINSTATEMENT SUBSEQUENTLY BY GOVERNMENT.

EXECUTION SALE OF ESTATE—PURCHASE BY GOVERNMENT AT, AND GRANT TO A SON OF FORMER ZEMINDAR—EFFECT OF.

MADRAS REGULATION 25 OF 1802—SANAD IN COMMON FORM UNDER—ACCEPTANCE OF—EFFECT.

REVENUE ARREARS—RESUMPTION OF ESTATE FOR, DIVISION THEREOF INTO TWO ESTATES, AND GRANT OF ONE OF THEM UNDER SANAD.

SELF-ACQUISITION IN HANDS OF MEMBER OF JOINT FAMILY—ESTATE BECOMING.

SERVICE ATTACHED TO ESTATE—DISCONTINUANCE OF.

USURPATION OF ESTATE BY ANOTHER MEMBER OF FAMILY WITH AID OF SUPERIOR—RECOGNITION OF USURPER BY SUPERIOR—EFFECT OF.

ALTERATION BY WILL OF.

———*Validity of.*

It is admitted that if Randhir Singh (the owner of an impartible estate descendible according to the rule of primogeniture) was of testamentary capacity when he executed the will by which he left his entire estate to his junior wife, he had power as the owner in possession of the impartible estate to make that will, and by it to put an end to the impartibility of the estate, and to exclude his nephew from the succession, which was the effect of the will as it was executed (15). (*Sir John Edge*). LEKHRAJ KUNWAR *v.* HARPAL SINGH. **(1911) 39 I.A. 10 = 34 A. 65 (68) = 9 A.L.J. 40 = 11 M.L.T. 1 = (1911) 1 M.W.N. 16 = 14 Bom. L. R. 33 = 15 C.L.J. 72 = 16 C.W.N. 217 = 13 I.C. 269.**

BRITISH RULE—ESTATE EXISTING BEFORE ADVENT OF—SETTLEMENT OR RE-GRANT BY BRITISH GOVERNMENT OF—EFFECT OF.

———*Presumption.*

If an impartible estate existed as such from before the advent of British rule, any settlement or re-grant thereof by the British Government must, in the absence of evidence to the contrary, and unless inconsistent with the express terms of the new settlement, be presumed to continue the estate with its previous incidents of impartibility and succession by special custom. (*Lord Sinha.*) MARTAND RAO *v.* MALHAR RAO. **(1927) 55 I.A. 45 = 55 C. 403 = 47 C.L.J. 150 = 107 I.C. 7 = 30 Bom. L.R 251 = 27 L.W. 350 = 24 N.L.R. 25 = 32 C.W.N. 621 = (1928) M.W.N. 942 = A.I.R. 1928 P.C. 10 = 54 M.L.J. 397 (401).**

HINDU LAW—(*Contd.*)

Impartible Estate—Nature and incidents of—(*Contd.*)

COMPROMISE AFFECTING.

———*See* HINDU LAW—IMPARTIBLE ESTATE--COMPROMISE REGARDING. **(1911) 39 I.A. 10 (17 8)= 34 A. 65 (70).**

CONFISCATION AND RE-GRANT OF ESTATE.

———*Impartibility and descent of estate—Effect on.*

Prior to 1802, the zemindary of *Nuzvid* formed part of an ancient and much larger estate which was indivisible and descendible to a single heir, and prior to the British rule it was a military Jaghir held on the tenure of military service, and in the nature of a raj or principality.

In 1772 *V*, who had succeeded to the estate, died, and was succeeded by his son *N*, who was proclaimed a rebel, and made a State prisoner in 1783. The entire estate was confiscated and resumed by Government, and in the year 1784 was restored to the eldest son of *N*, the rebel.

Held that it might be assumed that the estate, which was restored in its entirety, was restored as it existed prior to the confiscation, and that the rule as to impartibility and descent continued as before (43). (*Sir Barnes Peacock.*) RAJAH VENKATA NARASIMHA APPA RAO BAHADUK *v.* RAJA NARAYYA APPA RAO BAHADUR.

(1879) 7 I.A. 38 = 2 M. 128 (129-30) = 6 C L R. 152 = 4 Sar. 81 = 3 Suth. 725.

———*Nature of estate in grantee's hands—Alteration of—Intention of Government as to—Inference of, from passing of general law 3 years after—Propriety of.*

Mr. Field does not contend that if the estate granted to *C* in 1790 was a Raj, descendible by family custom, according to the rule of primogeniture, it lost that character on the passing of Regulation XI of 1793; but he insists on that Regulation as evidence of intention. He argues that, inasmuch as it was passed to reduce the number of estates descendible by special custom, the intention of the Government was, presumably, to make the property restored to *C* subject to the ordinary law of succession. Their Lordships, however, are of opinion, that they cannot safely draw any inference concerning the intentions of Government in making a particular grant in 1790, from the passing in 1793 of a general law which, confessedly, does not affect the descent of the large zemindaries held as Raj, or subject to Koolachar, or family custom (36-7). (*Sir James W. Colvile.*) BABOO BEER PERTAB SAHEE *v.* MAHARAJAH RAJENDER PERTAB SAHEE. **(1867) 12 M.I.A. 1 = 9 W.R. 15 = 2 Suth. 114 = 2 Sar. 348.**

———*Nature of estate in grantee's hands—Alteration of, by subsequent executive act—Power of Government as to.*

The Shivagunga zemindary, which was an ancient impartible estate, was granted to the istimrar zemindar by the Madras Government by a proclamation of July, 1801, the terms of which showed that the Government had no intention of altering the quality of the estate. In August, 1801, the Government installed him as ruler of the district.

Semble the istimrar zemindar having thus been placed in the old position of dignity and authority which his predecessors occupied, the Madras Government could not, by any executive act, alter that position (114).

Whether the Government had exercised an act of paramount power on the footing of reconquest after rebellion, or whether they were merely supplying a vacancy caused by escheat, they had in July, or at latest in August, 1801, perfected the act of appointment, and they could not undo it (114-5). (*Sir Arthur Hobhouse.*) MUTTU VADUGANADHA TEVAR *v.* DORASINGA TEVAR.

(1881) 8 I.A. 99 = 3 M. 290 (307) = 4 Sar. 239.

HINDU LAW—(*Contd.*)

Impartible Estate—Nature and incidents of—(*Contd.*)

CONFISCATION AND RE-GRANT OF ESTATE—(*Contd.*)

———*Nature of estate in grantee's hands--Ancestral or self-acquired.*

Notwithstanding the fact that the grantee selected by Government after the escheat of the Shivagunga zamindary was a remote kinsman of the zemindar of the former line, it was *held* to be the necessary conclusion from the terms of the grant and the circumstances in which it was made that the zemindary was the self-acquired property of the grantee. (*Lord Justice Turner.*) KATAMA NATCHIAR *v.* THE RAJAH OF SHIVAGUNGA.

(1863) 9 M. I. A. 539 (606) = 2 W. R (P. C.) 31 = 1 Suth. 520 = 2 Sar. 25.

———The Zemindary of Hunsapore in Behar, was an impartible Raj, which by family usage and custom descended, for many generations, on the death of each successive Rajah, to his eldest male heir, according to the rule of primogeniture, subject to the burthen of making Babooana allowances to the junior members of the family for maintenance. In the year 1767, *F*, the then reigning Rajah of Hunsapore, having rebelled against the British Government, was expelled by force of arms, and the Raj confiscated by Government, who kept possession of the same for upwards of twenty years, and ultimately, in 1790, granted the Raj to *C*, a younger member of the family of *F*, on whom, some years afterwards, the Government conferred the title of Rajah. On a question arising as to whether the estate was the separate and self-acquired property of *C*, or was ancestral property in his hands, *held*, that the estate must be taken to have been the separate and self-acquired property of *C* (34).

On the facts, it is at least clear, that there was a virtual confiscation of the interest of *F* and his descendants in the property, and the assertion of full dominion over it on the part of the East India Company. The Government has not only persistently treated the estate of *F* as forfeited, and refused to recognise any claim on the part of his descendants; it has for more than twenty years applied the revenue to its own purposes; it held itself at liberty either to reject (as it ultimately rejected) the applicatlons of *M*, (the father of *C*,) or to make a fresh grant of the estate to him, imposing new conditions upon the tenure; it held itself at liberty in 1790 to dispose of the property by sale, though as a matter of grace and favour it finally conferred it on *C* (33). The fact that *C* was the member of the family which had so long held the estate, next in succession to the line of *F*, and the son and grandson of persons who had established claims on the gratitude of the company, may have been a motive determining the selection of him as grantee; but it does not affect the nature of his estate, or give to it the character of ancestral property. The legal foundation of his title is still the grant to him from those who had power to make or to withhold it. This point was ruled in the Shivagunga case (34). (*Sir James W. Colvile.*) BABOO BEER PERTAB SINGH *v.* MAHARAJAH RAJENDER PERTAB SINGH.

(1867) 12 M.I.A. 1 = 9 W. R. (P. C.) 15 = 2 Suth. 114 = 2 Sar. 348.

———The holder of an impartible raj was driven out of the country for acts of rebellion. The Raj was thereupon seized by the East India company, and placed under the management of their officers. Subsequently a division of the estate was effected by the company, and in portion of it the heir of the former holder was reinstated, the other portion being granted to members of another branch of the same family.

HINDU LAW—(*Contd.*)

Impartible Estate—Nature and incidents of—(*Contd.*)

CONFISCATION AND RE-GRANT OF ESTATE—(*Contd.*)

Held, that the portion in which the heir was reinstated thereupon became his self-acquired property, though with all the incidents of the family tenure of the old estate as an impartible raj.

It cannot be doubted that the grant to the members of the other branch of the family of the other portion of the raj was a direct exercise of sovereign authority and proceeded from grace and favour alone, and, if so, it is difficult to avoid the conclusion that the reinstatement of the heir of the former holder in a portion of his father's former estate also bore that character. (*Lord Davey.*) RAM NUNDUN SINGH *v.* MAHARANI JANKI KOER.

(1902) 29 I. A. 178 (192-3) = 29 C. 828 (850 1) = 7 C. W. N. 57 = 4 Bom. L. R. 664 = 8 Sar. 351.

———*Qualities of estate, including its impartible character—Alteration of—Intention as to—Evidence.*

In or shortly before the year 1801, the lineal descendants of Sasivarna, the person to whom the Shivagunga Zemindary was originally granted, became extinct. Thereupon, certain ministers, who had for sometime before had the management and control of the Zemindary, maintained their position there by force, and broke out into open rebellion. Upon that the Madras Government issued a Proclamation, dated the 6th of July, 1801, by which they appointed one of the Tevar family, a collateral relative of Sasivarna, to be Zemindar. On the 22nd of April, 1803, a Sunnud was issued by the same Government, fixing the assessment of the Zemindary in accordance with the permanent settlement effected by Madras Regulation XXV of 1802. The terms of the Proclamation (which are set out on pp. 112—114 of their Lordships' judgment in 8 I. A.) showed that from the beginning to the end the Zemindary was referred to, not in its proprietary and private, but in its political and public aspect, that the intention of the Government was to instal the istimrar Zemindar not merely as proprietor but as ruler of the district, and that the policy of the Government clearly was to appoint a ruler whom the rebellious inhabitants would obey. The actual installation of the istimrar Zemindar was effected in August, 1801, the month after the Proclamation.

Held, that though the Madras Government were in a position to grant out the estate on other than the old terms, they did not in fact intend to alter the ancient qualities of the estate, including its character of impartibility (112, 114).

Whether they had exercised an act of paramount power on the footing of reconquest after rebellion, or whether they were merely supplying a vacancy created by escheat, they had in July, or at latest in August, 1801, perfected the act of appointment, and they could not undo it (114-5).

Held further that, even if the Proclamation of 1801, the Regulation of 1802, and the sunnud of 1803, were taken as together constituting one transaction, and the whole were read together, the conclusion would not be different, for the Proclamation only designated the individual Zemindar, while the Regulation and the Sunnud indicated the policy of the Government (which required the appointment of a ruler with authority in his hands) and the quality of his estate (115). (*Sir Arthur Hobhouse.*) MUTTU VADUGANADHA TEVAR *v.* DORASINGA TEVAR.

(1881) 8 I. A. 99 = 3 M. 290 (307-8) = 3 Sar. 239.

———*Raj tenure—Estate in nature of, before confiscation—Re-grant of, as such tenure—Evidence—Title of Raja conferred upon grantee some years after re-grant—Effect—Value of.*

The Hunsapore Raj was an impartible Raj, which by family usage and custom descended, for many generations, on the death of each successive Rajah, to his eldest male heir, according to the rule of primogeniture. In 1767, *F*, the then reigning Rajah, having rebelled against the British Government, was expelled by force of arms, and the Raj confiscated by Government, who kept possession of the same for upwards of 20 years, and ultimately in 1790, granted the Raj to *C*, a younger member of the family of *F*. The grant was in the first instance of the Zemindary without the title of Rajah, and that circumstance was relied upon in support of the contention that the Zemindary was not granted as a Raj tenure. The title of Rajah was, however, conferred upon *C* in 1837 upon his application, founded on the fact, that it had been enjoyed by his predecessors, and annexed to the Zemindary.

Held, that that act of the Government in 1837 could not alter the legal effect of what was actually done in 1790; but that the grant of the title on that representation at least showed that the Government of 1837 did not dissent from the construction which *C*, then put upon the acts of their predecessors 1790 (36). (*Sir James W. Colvile.*) BABOO BEER PERTAB SAHEE *v.* MAHARAJA RAJENDER PERTAB SAHEE. **(1867) 12 M. I. A. 1 = 9 W. R. 15 = 2 Suth. 114 = 2 Sar. 348.**

———*Succession to estate—Rule of, applicable before confiscation—Alteration or preservation of—Intention as to—Evidence.*

Hunsapore was an impartible Raj, which by family usage and custom descended, for many generations, on the death of each successive Rajah, to his eldest male heir, according to the rule of primogeniture, subject to the burthen of making Babooana allowance to the junior members of the family for maintenance. In 1767, *F*, the then Raja of Hunsapore, having rebelled against the British Government, was expelled, and the Raj confiscated by Government. The Government kept possession of the Raj for upwards of 20 years, and ultimately, in 1790, granted it to *C*, a younger member of the family of *F*. Some years afterwards, the Government conferred upon *C*, the title of Raja.

Held, that the estate granted to *C* in 1790, was the Raj of Hunsapore, and that the right of succession to it from him was to be governed by the law or custom which regulated its descent in the time of his ancestors (37).

There was not in this, as in the Shivaganga case, a new Sanad. There is no evidence of the intention of the grantors, nor is there any manner of knowing the precise grounds on which the Government determined to confer the property on *C*. No doubt the term "Raj" is never used in the proceedings connected with the grant of the estate, and the subject of the grant is spoken of only as "the land in Hunsapore which belonged to Rajah *F*." On the other hand, there is no expressed intention to alter the nature of the tenure. The estate, whilst it was in the hands of the company, had never been broken (34-5). The intention to alter the quality of the estate, if it existed, would have been expressed. Again, the selection of a member of the old family, the next in succession to the excluded line, though it cannot make ancestral that which was self-acquired, is a very strong circumstance in favour of the hypothesis, that the intention of the Government was to restore the Zemindary as it had existed before the confiscation, making no further change than was involved in the forfeiture of the rights of *F*, and his descendants, and the substitution, by an act of power, of the person next in the order of succession (35-6). That the title of Raja was not granted with the Zemindary does not affect the position, because that title is not absolutely essential to the tenure of the estate as a Raj. Even as regards this matter, the fact that the title was, on *C's* application, conferred upon him in 1837, shows that the

HINDU LAW—(*Contd.*)

Impartible Estate—Nature and incidents of—(*Contd.*)

CONFISCATION AND RE-GRANT OF ESTATE—(*Contd.*)

Government did not intend to alter the quality of the estate (30). (*Sir James W. Colvile.*) BABOO BEER PERTAB SAHEE *v.* MAHARAJAH RAJENDER PERTAB SAHEE. **(1867) 12 M. I. A. 1 = 9 W. R. (P.C.) 15 = 2 Suth. 114 = 2 Sar. 348.**

DISPOSSESSION OF ZEMINDAR BY NEIGHBOUR AND RE-INSTATEMENT SUBSEQUENTLY BY GOVERNMENT.

——*Impartibility and ancestral nature of estate—Effect on.*

The family in question was an ancient family, holding sway as independent Rajas. They were dispossessed by a neighbouring Raja in the 18th century, but having helped the English, they were reinstated by Warren Hastings. Their Lordships are satisfied that the re-instatement, which was finally carried out at a subsequent period, restored the family possession to what they had always been in ancient times—namely, an impartible raj or Zemindary, and that the Zemindary now is ancestral property and not self-acquired (200). (*Lord Dunedin.*) BAIJNATH PRASHAD SINGH *v.* TEJ BALI SINGH. **(1921) 48 I. A. 195 = 43 A. 228 (233) = 23 Bom. L. R. 654 = 3 U. P. L. R. (P. C.) 35 = 29 M. L. T. 358 = (1921) M. W. N. 300 = 19 A.L.J. 317 = 2 P. L. T. 257 = 33 C. L. J. 388 = 60 I. C. 534 = 40 M. L. J. 387.**

EXECUTION SALE OF ESTATE—PURCHASE BY GOVERNMENT AT, AND GRANT TO A SON OF FORMER ZEMINDAR—EFFECT OF.

——*Merangi Zemindari — Partible or impartible—Evidence.*

Held, affirming the Courts below, that, assuming that impartibility was the rule at one time applicable to the Zemindari of Merangi, the subsequent dealings with the estate, the nature and terms of the grants under which it had been held throughout that century, the absence of proof of any usage or practice of impartibility in the succession to the estate, contrary to the ordinary Hindu law of succession, and the character of the estate, which was in no way distinguishable from an ordinary Zemindari subject to the payment of a fixed assessment of revenue, all clearly led to the conclusion that the Zemindari was at the date of suit a partible estate in a question of succession (53).

The Sannad-i-milkeat-istimirar of 1803 was in the ordinary terms of such grants. There is nothing in the circumstances under which that grant was made to lead to the inference that the Government had in view, in making this new grant, the creation of an impartible Zemindary, as an exception to the ordinary rule of succession of the Hindu law. The single circumstance that the property was given to a representative of an elder branch of the family formerly in possession, in preference to the representative of a younger branch who had been in arms against the Government, is of very little weight. Accordingly, even at this early date, in the beginning of the century, it appears that the Zemindari, if impartible before, became partible in a question of succession, as it became also subject to the disposition of the Zemindar by deed of transfer on sale or gift of the whole or part of the property (53).

In 1835, the Zemindary was exposed to public sale for payment of debt due by the Zemindar, and was purchased by the Government, who held it for sometime. During this time, the dewan of the former Zemindar, and certain of the doratanams, performed an important service to the Government, and, instead of the pecuniary reward which the Government had promised to them, they begged that a new grant of Zemindari might be given to the son of the former Zemindar, and the grant was accordingly made to that boy

HINDU LAW—(*Contd.*)

Impartible Estate—Nature and incidents of—(*Contd.*)

EXECUTION SALE OF ESTATE — PURCHASE BY GOVERNMENT AT, AND GRANT TO A SON OF FORMER ZEMINDAR—EFFECT OF—(*Contd.*)

in the usual terms of a Sunnud-i-milkeat-istimrar, and his heirs, with the ordinary power of sale or disposal of the property in whole or in part. Here again for a second time, there was such a dealing with the estate, as in the circumstances, and having regard to the terms of the grant clearly shows that there was no intention to create an impartible estate, assuming there was power to do so, or to restore an estate previously impartible (53-4). (*Mr. Shand.*) ZEMINDAR OF MERANGI *v.* SRI RAJAH SATRUCHARLA RAMABHADRA RAZU, **(1891) 18 I. A. 45 = 14 M. 237 = 5 Sar. 645.**

MADRAS REGL. XXV OF 1802—SANAD IN COMMON FORM UNDER—ACCEPTANCE OF—EFFECT.

——*See* HINDU LAW—IMPARTIBLE OR PARTIBLE ESTATE—DEVARAKOTTAH ESTATE. **(1890) 17 I. A. 134 = 13 M. 406.**

——*Udayarpalayam Estate—Partible or Impartible.*

The Zemindari of Udayarpalayam was in its origin admittedly impartible. Up to 1765 it was held by one member of the family only not being subject to the ordinary rule of Hindu Law. Between the year 1765 and the establishment of British rule in 1801, the fortunes of the family were of a very varied character. Throughout those troublous times, in turmoil or warfare, sometimes successful rebels, sometimes outcastes or exiles, the Poligars of Udayarpalayam maintained or asserted their claim to the possession of their ancestral estate.

On December 23, 1817, a Sanad in common form was granted to *R*, the Poligar of Udayarpalayam, conferring upon him the rights of a Zemindar under Regl. XXV of 1802 in 65 villages named in the Sanad. The Sanad was expressed to be granted in lieu of all former privileges. It declared that the grantee continuing to perform the specified stipulations and to perform the duties of allegiance to the British Government, its laws and regulations, was authorized and empowered to hold in perpetuity to his heirs, successors, and assigns at the permanent assessment therein named the Zemindary of Udayarpalayam. From the date of the grant of the Sanad to the date of suit the Zemindary was uniformly enjoyed as an impartible estate.

Held, affirming the High Court, that the estate was impartible, and descendible according to the rules of primogeniture (268).

The Zemindari of Udayarpalayam represents the ancient palayam of Udayar, and although for political reasons the estate has been circumscribed in extent, it is clear that it was granted and accepted as equivalent in value to the ancient palayam. On the cession of the Carnatic the British Government assured the Poligars, of whom the Poligar of Udayar was one, that they would enjoy every just and ascertained civil right, with a free exercise of the religious institutions and domestic usages of their ancestors. To this assurance the Government over and over again expressed a determination to adhere, although they deliberated long, and reconsidered their views more than once as to the precise arrangements to be made for the settlement of the country and the restoration of the Poligars (269). (*Lord Macnaghten.*) KACHI KALIYANA RENGAPPA KALAKKA THOLA UDAYAR *v.* KACHI YUVA RENGAPPA KALAKKA THOLA UDAYAR. **8 Sar. 855 = (1905) 32 I.A. 261 = 28 M. 508 = C. L. J. 231 = 10 C. W. N. 95 = 1 M. L. T. 12 = 2 A. L. J. 845 = 7 Bom. L. R. 907 = 15 M L. J. 312.**

——Unless there be an existing estate with other incidents which a Sanad in common form under Regulation XXV can

HINDU LAW—(*Contd.*)

Impartible Estate—Nature and incidents of—(*Contd.*)

MADRAS REGL. XXV OF 1802 –SANAD IN COMMON FORM UNDER — ACCEPTANCE OF — EFFECT—(*Contd.*)

operate to confirm, such Sanad will confer on or confirm in the grantee an estate descendible according to the ordinary rules of inheritance of the Hindu Law. (*Lord Parker.*) VENKATA NARASIMHA APPA ROW *v.* PARTHASARATHY APPA ROW. **(1913) 41 I. A. 51 = 37 M. 199 = 18 C. W. N. 554 = (1914) M. W N. 299 = 16 Bom. L R. 328 = 19 C. L. J. 369 = 15 M. L. T. 285 = 12 A. L. J. 315 = 23 I. C. 166 = 26 M. L. J. 411.**

———The acceptance of a Sanad in common form under Regulation XXV does not of itself, and apart from other circumstances, avail to alter the succession to an hereditary estate. (*Lord Parker.*) VENKATA NARASIMHA APPA ROW *v.* PARTHASARATHY APPA ROW. **(1913) 41 I. A. 51 = 37 M. 199 = 18 C. W. N. 554 = (1914) M. W. N. 299 = 16 Bom. L. R. 328 = 19 C. L. J. 369 = 15 M. L. T. 285 = 12 A L. J. 315 = 23 I. C. 166 = 26 M. L. J 411.**

REVENUE ARREARS—RESUMPTION OF ESTATE FOR, DIVISION THEREOF INTO TWO ESTATES, AND GRANT OF ONE OF THEM UNDER SANAD.

———*Partibility of and succession to, estate granted under Sanad.*

The Zemindary of Nuzvid, prior to 1802, formed part of ancient and much larger estate which was indivisible and an descendible to a single heir, and prior to the British rule it was a military jaghir held on the tenure of military service, and in the nature of a raj or principality.

In 1783, *N*, the then holder of the estate, was proclaimed a rebel and made a state prisoner. The entire estate was confiscated and was resumed by Government, and in 1784 was restored to *V*, the eldest son of *N*. In 1793 the estate was again resumed by Government for arrears of revenue, and in 1802 two new Zemindaries were carved out of it, of which the Zemindari of Nuzvid was granted to *R*, the second son of *N*, and the other Nidadavolu was granted to *V*.

The provisions of the Sunnud under which Nuzvid was granted to *R* differed in no respect from those which are contained in every ordinary deed of permanent settlement; the feudal or military tenure was at an end; the 6 pergunnahs to which the Sunnud related became a new Zemindary subject only to the payment of a fixed land revenue, and subject to the ordinary stipulations and the performance of the duties ordinarily imposed on Zemindars. There was no State policy which required that the new estate of Nuzvid should be indivisible. On the other hand, cl. 7 of the Sunnud expressly provided that the grantee was to be at liberty to transfer, either by sale, gift, or otherwise, to whomsoever he pleased, his proprietary right in the whole or in any part of his Zemindary, and that such transfers should be valid, provided they were not repugnant to the Mahomedan or the Hindu Laws, or to the regulations of the British Government. Such transfers would have been repugnant to the Hindu or Mahomedan laws if they had been intended to be limited to the eldest son or other single heir. Cl. 15 of the Sunnud provided that the grantee was to hold the Zemindary in perpetuity to his heirs, successors, and assigns, at the permanent assessment therein named.

Held, that on the proper construction of the Sunnud of 1802, granting the Nuzvid Zemindary, that the Zemindary thereby created for the first time was not impartible or descendible otherwise than according to the ordinary rule of the Hindu Law (50).

By the limitation to the heirs in cl. 15 of the Sunnud, the

HINDU LAW—(*Contd.*)

Impartible Estate—Nature and incidents of—(*Contd.*)

REVENUE ARREARS—RESUMPTION OF ESTATE FOR, DIVISION THEREOF INTO TWO ESTATES, AND GRANT OF ONE OF THEM UNDER SANAD—(*Contd.*)

grantee's heirs according to the ordinary rule of Hindu Law were intended (48). (*Sir Barnes Peacock.*) RAJA VENKATA NARASIMHA APPA RAO BAHADUR *v.* RAJA NARAYYA APPA RAO BAHADUR. **(1879) 7 I. A. 38 = 2 M. 128 (133-5) = 6 C. L. R. 152 = 4 Sar. 81 = 3 Suth. 725.**

SELF-ACQUISITION IN HANDS OF MEMBER OF JOINT FAMILY—ESTATE BECOMING.

———*Effect of, on its impartible character.*

The Hunsapore case is an authority for holding that a mode of acquisition which constitutes a property as self-acquired in the hands of a member of an undivided family, and thereby subjects it to rules of devolution or disposition different from those applicable to ancestral property, does not thereby destroy its character of impartibility (116). (*Sir Arthur Hobhouse.*) MUTTU VADUGANADHA TEVAR *v.* DORASINGA TEVAR. **(1881) 8 I. A. 99 = 3 M. 290 (308) = 4 Sar. 239.**

SERVICE ATTACHED TO ESTATE—DISCONTINUANCE OF.

———*Effect of.*

The discontinuing of a service attached to an impartible estate does not alter the nature of that estate and render it partible. (*Lord Atkinson.*) RAO KISHORE SINGH *v.* MUSSAMAT GAHENABAI. **(1919) 12 L. W. 730 (743) = 15 N. L. R. 176 = 17 A. L. J. 1077 = 26 M. L. T. 494 = 24 C. W. N. 601 = 22 Bom L. R. 507 = 53 I. C. 630 = 37 M. L. J. 562.**

USURPATION OF ESTATE BY ANOTHER MEMBER OF FAMILY WITH AID OF SUPERIOR—RECOGNITION OF USURPER BY SUPERIOR—EFFECT OF.

———*Estate not separate property in hands of usurper—Rule as to confiscation and re-grant inapplicable to such a case.*

A Mansubdary Talook was held by a joint Hindu family under a grant from the zemindar. By the custom of the family, the Talook was impartible and descendible to a single heir. One of the members of the family took forcible possession of the Talook, and refused to pay the zemindar's revenue. He was ousted out of possession by the zemindar by the aid of *A*, another member of the family, whom the zemindar recognised and put in possession, and afterwards entered into an agreement with him to pay the revenue. There was no division of the family. *Held*, that the estate had not thereby become the self-acquisition or separate property of *A*.

There is a clear distinction between the Shivaganga case and the present case. In the "Shivagunga case" the zemindary had escheated to Government, which was free to deal with it as it chose. By a new sunnud it granted to the Taver, conferring a legal title which none could dispute. In the present case, on the other hand, there was no legal forfeiture; no fresh grant by any person competent to grant a legal title. The evidence only shows that on a dispute between the holder of the estate and the superior, another member of the family came in, and with the strong hand, and in concert with the superior, succeeded in ousting the holder, and in assuming the position and rights of the zemindar (340-2). (*Sir James W. Colvile.*) STREE RAJAH YANUMALA VENKAYAMAH *v.* STREE RAJAH YANUMALA BOOCHIA VENKONDARA. **(1870) 13 M. I. A. 333 = 2 Suth. 302 = 2 Sar. 546 = 13 W. R. 21.**

HINDU LAW—(*Contd.*)

Impartible Estate—Nidadavolu Zemindary.

———*Partible or impartible—Devolution of.*

Held, on the evidence affirming the courts below, that the zemindari of Nidadavolu was not in the nature of a raj, impartible and descendible to a single heir, but was ordinary partible property and descendible according to the ordinary rules of inheritance of the Hindu law. (*Lord Parker.*) VENKATA NARASIMHA APPA ROW *v.* PARTHASARATHY APPA ROW. **(1913) 41 I. A. 51 = 37 M. 199 = 18 C. W. N. 554 = (1914) M. W. N. 299 = 16 Bom. L. R 328 = 19 C. L. J. 369 = 15 M. L. T. 285 = 12 A. L. J. 315 = 23 I. C. 166 = 26 M. L. J. 411.**

Impartible Estate—Nuzvid Zemindary.

———*Nature and incidents of, prior to* 1802 *and to British rule.*

The zemindary of Nuzvid, prior to the year 1802, formed part of an ancient and much larger estate which was indivisible and descendible to a single heir, and prior to the British rule it was a military jaghir held on the tenure of military service, and in the nature of a raj or principality (43). (*Sir Barnes Peacock.*) RAJA VENKATA NARASIMHA APPA RAO BAHADUR *v.* RAJA NARAYYA APPA RAO BAHADUR. **(1879) 7 I. A. 38 = 2 M. 128 (129) = 6 C. L. R. 152 = 4 Sar. 81 = 3 Suth. 725.**

Impartible estate—Origin of.

———Custom—Estate creature of. *See* HINDU LAW—IMPARTIBLE ESTATE—CUSTOM.

———*Family arrangement if may be.*

No doubt one of the ways in which impartible estates may originate is by independent Chiefs or feudatories, exercising almost autocratic powers, being gradually in the course of time reduced by a paramount power to the position of ordinary zemindars ; but these impartible estates may also owe their origin to family arrangements followed up in practice for many generations, whereby it was originally agreed that the family property should be impartible and be held and managed for the benefit of the whole family by a single member at a time in a certain order of succession, the other members being entitled to maintenance only, without any power of interference with the management. (*Lord Atkinson.*) RAO KISHORE SINGH *v.* MUSAMMAT GAHENABAI. **(1919) 12 L. W. 730 (740) = 15 N. L. R. 176 = 17 A. L. J. 1077 = 26 M. L. T. 494 = 24 C. W. N. 601 = 22 Bom. L. R. 507 = 53 I. C. 630 = 37 M. L. J. 562.**

Impartible Estate—Parlakimidi Zemindary.

———*"Maliahs" in—Proprietary right in—Crown—Zemindar of Parlakimidi—Right of.*

The question in dispute was whether the proprietary right in certain tracts, mainly hill tracts, known as the "maliahs" of Parlakimidi, belonged to the plaintiff-appellant, as zemindar of Parlakimidi in the District of Ganjam, or to the Crown.

Held, on a consideration of the various proceedings of the Government in relation to the zemindari of Parlakimidi, that the proprietary right in the " maliahs " belonged to the Crown and not to the zemindar. (*Sir Arthur Wilson.*) RAJAH OF PARLAKIMIDI *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL. **(1905) 32 I. A. 53 = 28 M. 130 = 1 C. L. J. 460 = 9 C. W. N. 553 = 8 Sar. 749.**

———*Maliahs in—Savaras—Bisoyees—Explanation of.*

(*Sir Arthur Wilson.*) RAJAH OF PARLAKIMIDI *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL. **(1905) 32 I. A. 53 (63-6) = 28 M. 130 (145-7) = 1 C. L. J 460 = 9 C. W. N. 553 = 8 Sar. 749.**

HINDU LAW—(*Contd.*)

Impartible Estate—Partible Estate or.

———*See also* HINDU LAW (1) IMPARTIBLE ESTATE—IMPARTIBILITY OF ESTATE (2) INHERITANCE—PRIMOGENITURE AND (3) JOINT FAMILY—PARTITION—PARTIBLE PROPERTY.

———*Concurrent Findings as to—Privy Council's interference with.*

(*Lord Parker.*) VENKATA NARASIMHA APPA ROW *v.* PARTHASARATHY APPA ROW. **(1913) 41 I. A. 51 = 37 M. 199 = 18 C. W. N. 554 = (1914) M. W. N. 299 = 16 Bom. L. R 328 = 19 C. L. J. 369 = 15 M. L. T. 285 = 12 A. L. J. 315 = 23 I. C. 166 = 26 M. L. J. 411.**

———(*Mr. Ameer Ali.*) GIRDHAR DAS *v.* SRI KRISHNA DATT DUBE. **(1919) 12 L. W. 759 = 22 Bom. L. R. 1348 = 29 M. L. T. 71 = 56 I.C 293 = 39 M. L. J. 18 (23).**

———Deshgat watan—Partible or impartible—Presumption—Onus of proof. *See* DESHGAT WATAN. **(1903) 30 I. A. 77 (80) = 27 B. 353 (357).**

———Devarakotta estate. *See* HINDU LAW—IMPARTIBLE ESTATE—DEVARAKOTTA ESTATE. **(1890) 17 I. A. 134 = 13 M. 406.**

———*Enam villages granted by Government to be held in male line from generation to generation.*

The question in the appeal was as to the right of the appellant to a partition of certain enam villages in the Southern Mahratta country, which had been granted by the Government of Bombay by a sunnud, dated 9th April, 1823, to the ancestor of the appellant and respondents, to hold to him and his posterity in the male line from generation to generation.

Held, that there was no reason why the enam villages so granted should not be governed by the general principles of the Hindu law respecting partition of the father's estate among his heirs, and that the division must be according to the Hindu law.

The mode of collecting the revenue has nothing to do with the question. (*Mr. Pemberton Leigh.*) BODHRAO HUNMONT *v.* NURSING ROW. **(1856) 6 M. I. A. 426 = 1 Sar. 560.**

———*Enam village granted by Peishwa to Brahmin brothers in consideration of religious services.*

The village of *A*, was granted in 1762-3 by the Peishwa to six brothers, who were Brahmins, in consideration of their devotion to religious worship, and the arduous services performed by the youngest brother, *C*. The grant did not declare the property to be impartible, nor did it say anything about the management of the village, but, in fact, *C* acted as manager, paying his brothers their share of the income. Afterwards the village was attached, but ultimately in 1800, the attachment was removed, and the Peishwa regranted or continued the inam to *C's* son. Having thus got into possession, he attempted to appropriate the whole income and refused to recognise the interest of the five elder brothers. The representatives of the elder brothers preferred a complaint to the Peishwa, from which it appeared that the brothers had then become separate. An inquiry followed, and an order was made to the effect that in future the representatives of all six brothers should receive equal shares. The management, however, was left in the hands of *C's* son, and notwithstanding some disputes, it afterwards remained in the hands of that branch of the family. Two yadis filed in the case, however, shewed conclusively that it was by the consent of the other co-sharers that the management was continued in *C's* line.

Held, affirming the High Court, that the inam village was partible property.

HINDU LAW—(*Contd.*)

Impartible Estate—Partible Estate or—(*Contd.*)

Neither by the terms of the original grant or of the subsequent orders of the ruling power, nor by family custom, nor by adverse possession has *C's* branch of the family acquired a right to perpetual management of the village of *A*, or in consequence to resist its partition. (*Lord Macnaghten.*) VINAYAK WAMAN JOSHI RAYARIKAR *v.* GOPAL HARI JOSHI RAYARIKAR (1903) 30 I. A. 77 = 27 B. 353 = 7 C.W.N. 409 = 5 Bom. L. R. 408 = 8 Sar. 453.

———*Evidence of partibility.*

In a case in which the facts admitted or found by the courts below were that the family of the parties was joint and undivided ; that the suit estate, though engaged in the name of one brother, was, in point of fact, held and enjoyed by the two brothers as co-sharers ; and that, though there had been no partition of the estate for 6 or 7 generations, the property of the family had in former times been the subject of partitions, *held*, reversing the court below, that the estate was partible. (*Sir James W. Colvile.*) THAKUR DURRIAO SINGH *v.* THAKUR DAVI SINGH. (1873) 1 I.A. 1 (7 8) = 13 B.L.R. 165 = 3 Sar. 301 = R. &. J's No. 25 (Oudh).

———Jaunpore estate. *See* HINDU LAW—IMPARTIBLE ESTATE—PARTIBLE ESTATE OR—CONCURRENT FINDINGS AS TO. (1919) 39 M. L. J. 18 (23).

———Merangi estate. (1891) 18 I. A. 45 (53-4) = 14 M. 237.

———Misapprehension of parties as to — Effect. *See* GRANT—CONSTRUCTION—ESTATE CONVEYED—PARTIBLE OR. (1897) 24 I.A. 118 (122) = 20 M. 256 (264).

———Nidadavolu Zemindary. *See* HINDU LAW—IMPARTIBLE ESTATE—NIDADAVOLU ZEMINDARY.

———Raj—Raja—Technical names of, to estate and to holder thereof—Necessity. *See* HINDU LAW—IMPARTIBLE ESTATE—RAJ—RAJA.

———Shivagunga Zemindary. *See* HINDU LAW—IMPARTIBLE ESTATE—SHIVAGUNGA ZEMINDARI.

———Udayarpalayam estate. *See* HINDU LAW—IMPARTIBLE ESTATE—UDAYARPALAYAM ESTATE. (1905) 32 I.A. 261 (268-9) = 28 M. 508 (515).

Impartible Estate—Patcum Raj in Chota Nagpur.

———*Younger sons of Raja — Maintenance grants to — Duration of—Custom of—Title of younger sons.*

There is a custom in the raj of *Patcum* in Chutia Nagpur that the younger sons of the Rajah are entitled to maintenance, the second being called Hakim, the third Konwar, and the fourth and subsequent, Lals ; but the maintenance given according to this custom ceases with the life of the grantor, and has to be renewed upon a succession to the raj (249). (*Sir Richard Couch.*) RAJAH UDAYA ADITYA DEB *v.* JADUB LAL ADITYA DEB. (1881) 8 I.A. 248 = 8 C. 199 (202) = 4 Sar. 290.

Impartible Estate—Polliem or Palayam.

ALIENATION OF—VALIDITY—MILITARY SERVICE — PALAYAM HELD ON TENURE OF.
DEBTS OF LAST HOLDER.
ENFRANCHISEMENT — ABOLITION OF MILITARY SERVICE.
GUNDAMANAIKANOOR.
HEREDITARY OR NOT—EVIDENCE.
JADAYA GOUNDER JAGIR.
ORIGIN, NATURE AND INCIDENTS OF.
PARTIBLE OR IMPARTIBLE.
POLICE SERVICE TO STATE—TENURE OF.
POLICY OF GOVERNMENT IN REGARD TO.

HINDU LAW—(*Contd.*)

Impartible Estate—Polliem or Palayam—(*Contd.*)

POLIGAR—RELATIONSHIP TO DECEASED —STATUS OF FAMILY OF PLAINTIFF AND OF DECEASED — EVIDENCE.
SETTTED AND UNSETTLED PALAYAMS.
SUCCESSION TO.
UNSETTLED PALAYAM — TENURE OF — ASCERTAINMENT OF.

ALIENATION OF—VALIDITY—MILITARY SERVICE — PALAYAM HELD ON TENURE OF.

———*Abolition of service before alienation—Effect.*

The Palayam of *Kannivadi* was originally held on military service tenure and subject to the payment of a tribute to the paramount power. In 1895, the appellant's grandfather, the palayagar, for the time, mortgaged villages of the palayam for debts previously incurred by him but not binding upon the appellant or upon the palayam. In 1900 the villages were bought by the mortgagees at a sale held in execution of the decree on the mortgage. No permanent settlement had been made with the Palayagar, but in 1905 one was made with the alienees.

In a suit by the appellant for the recovery of the villages sold in execution of the decree on the ground that the palayam was inalienable, it was found that the tenure of military service under which the Palayam had been held had been abolished and determined by the proclamation of the 1st December, 1801.

Held, that in 1895 the Palayam of Kunnivadi was not inalienable, and that the then Palayagar had power to alienate it to suit his own purposes. (*Sir John Edge.*) APPAYASAMI NAICKER *v.* MIDNAPORE ZEMINDARI COMPANY. (1921) 48 I.A. 100 = 44 M. 575 = (1921) M.W.N 352 = 34 C.L.J. 6 = 29 M.L.T. 383 = 14 L.W. 49 = 26 C. W. N. 106 = 20 A. L. J. 393 = (1922) P. C. 154 = 60 I.C. 953 = 40 M.L.J. 537.

DEBTS OF LAST HOLDER.

———*Liability for, of income of estate in son's hands.*

Where a polliem is hereditary and descends to a son as the heir of his father, the income of the zemindary is liable to pay the debts incurred by the deceased Zemindar (315.) (*Sir Barnes Peacock.*) OOLAGAPPA CHETTY *v.* HON. D. ARBUTHNOT AND OTHERS. (1874) 1 I.A. 268 = 14 B. L. R. 115 = 21 W. R. 358 = 3 Sar. 318.

ENFRANCHISEMENT—ABOLITION OF MILITARY SERVICE.

———*Incidents of estate—Effect of.*

It was held in I. L. R. 10 M. 1 that the inam title-deed which had been granted to the palayagar in that case did not confer any new title and that the enfranchisement had no " larger operation than as a release granted by the Crown in respect of its reversionary interest and of the obligation of rendering service". When a palayam was abolished, in so far as the duty of rendering military service was concerned, the estate was continued with all its hereditary incidents to the Palayagar in the same manner as if possessed by a zemindar (254-5). (*Lord Shaw.*) VENKATA JAGANNADHA *v.* VEERABHADRAYYA. (1921) 48 I. A. 244 = 44 M. 643 (654-5) = 30 M. L. T. 14 = 14 L. W. 59 = (1921) M. W. N. 401 = 34 C. L. J. 16 = 26 C. W. N. 302 = (1922) P. C. 26 = 61 I. C. 667 = 1 M. L. J. 1.

GUNDAMANAIKANOOR.

———*Hereditary or not.*

Prima facie the polliem of Gundamanaikanoor was hereditary (315).

HINDU LAW—(*Contd.*)

Impartible Estate—Polliem or Palayam—(*Contd.*)

GUNDAMANAIKANOOR—(*Contd.*)

Their Lordships are of opinion that no sufficient evidence was given to prove that the polleim reverted absolutely to Government upon the death of the late poligar, or that the defendant (his son) held under a fresh grant, by which a newly-created estate for life became vested in him (316). (*Sir Barnes Peacook.*) OOLAGAPPA CHETTY *v.* HON. D. ARBUTHNOT AND OTHERS. **(1874) 1 I. A. 268 = 14 B. L. R. 115 = 21 W. R. 358 = 3 Sar. 318.**

HEREDITARY OR NOT—EVIDENCE.

———Marungapuri—*Ancestral hereditary polliem.*

Held that the finding of the High Court upon the evidence adduced that the polliem in dispute (Marungapuri) was an ancestral hereditary estate was correct (312). (*Sir Barnes Peacock.*) THE COLLECTOR OF TRICHINOPOLY *v.* LEKKAMANI. **(1874) 1 I. A. 282 = 14 B. L. R. 115 = 21 W. R. 358 = 3 Sar. 318.**

———*Polliem not permanently settled under Regulation XXV of* 1802.

A polliem may be hereditary though not permanently settled under Reg. XXV of 1802. Each case must depend upon its own particular circumstances ; a polliem may be hereditary, and the position laid down by the High Court is correct. They say :—"The existence of a proprietary estate in polliems or other lands not permanently assessed, and the tenure by which it has been held, are, in our opinion, matters judicially determinable on legal evidence, just as the right to any other property." (311-2).

Proof of possession or receipt of rent by a person who pays the land revenue immediately to Government is *prima facie* evidence of an estate of inheritance in the case of an ordinary Zemindary. The evidence is still stronger if it be proved that the estate has passed, on one or more occasions, from ancestor to heir. There is no difference in this respect between a polliem and an ordinary zemindary (313). (*Sir Barnes Peacock.*) OOLAGAPPA CHETTY *v.* HON. D. ARBUTHNOT AND OTHERS. **(1874) 1 I. A. 268 = 14 B. L. R. 115 = 21 W. R. 358 = 3 Sar. 318.**

———*Polliem not permanently settled under Regulation XXV of* 1802—*Application by successor to Government for recognition—Effect.*

A polliem may be hereditary though not permanently settled under Reg. XXV of 1802. Each case must depend upon its own peculiar circumstances ; a polliem may be hereditary, and the position laid down by the High Court is correct. They say :—"The existence of a proprietary estate in polliems or other lands not permanently assessed, and the tenure by which it has been held, are, in our opinion, matters judicially determinable on legal evidence, just as the rlght to any other property." (311-2)

It does not at all follow from the fact that on the death of a poligar an application was made to Government for the recognition of the successor that he had not an hereditary estate. It was extremely common in Bengal, before the acquisition of the Dewanny, where a tenure was in fact hereditary from father to son, to take out a new sunnud upon each descent. So also it appears that upon a transfer of title to lands in Calcutta, either by alienation or descent, a fresh pottah was given to the new-holder ; but that was merely a fiscal regulation, and the pottah formed no part of the holder's title (312). (*Sir Barnes Peacock.*) THE COLLECTOR OF TRICHINOPOLY *v.* LEKKAMANI.

(1874) 1 I. A. 282 = 14 B. L. R. 115 = 21 W. R. 358 = 3 Sar. 318.

———*Receipt of rent by person who pays land revenue immediately to Government—Descent from father to son.*

HINDU LAW—(*Contd.*)

Impartible Estate—Polliem or Palayam—(*Contd.*)

KUNDAMANAIKNOOR—(*Contd.*)

In *England*, proof of the possession of land or of the receipt of rent from the person in possession is *prima facie* evidence of a seisin in fee.

In *India* the proof of possession or receipt of rent by a person who pays the land revenue immediately to Government is *prima facie* evidence of an estate of inheritance in the case of an ordinary zemindary. The evidence is still stronger if it be proved that the estate has passed, on one or more occasions, from ancestor to heir. There is no difference in this respect between a polliem and an ordinary zemindary (313). (*Sir Barnes Peacock.*) THE COLLECTOR OF TRICHINOPOLY *v.* LEKKAMANI.

(1874) 1 I. A. 282 = 14 B. L. R. 115 = 21 W. R. 358 = 3 Sar. 318.

JADAYA GOUNDER JAGIR.

———Origin and history of—Devolution of. (*Sir John Wallis.*) KONNAMMAL *v.* ANNADANA JADAYA GOUNDER. **(1927) 55 I. A. 114 = 51 M. 189 = 27 L. W. 497 = 5 O. W. N. 411 = 108 I. C. 354 = 30 Bom. L. R. 802 = 47 C. L. J. 488 = 9 Pat. L. T. 347 = 26 A. L. J. 642 = 32 C. W. N. 983 = A. I. R. 1928 P. C. 68 = 54 M. L. J. 504.**

ORIGIN, NATURE AND INCIDENTS OF.

———" A Polliem is a tract of country subject to a petty Chieftain. In speaking of Poligars. Wilson describes them as having been originally petty Chieftains occupying usually tracts of hill or forest, subject to pay tribute and service to the paramount State, but seldom paying either, and more or less independent ; but as having at present since the subjugation of the country by the East India Company, subsided into peaceable landlords. A Polliem is in the nature of a Raj ; it may belong to an undivided family, but it is not the subject of partition ; it can be held by only one member of the family at a time, who is styled the Poligar, the other members of the family being entitled to maintenance or allowance out of the estate" (85-6). (*Lord Kindgsdown.*) NARAGUNTY LUTCHMEEDAVAMAH *v.* VENGAMA NAIDOO. **(1861) 9 M. I. A. 66 = 1 W. R. P. C. 30 = 1 Suth. 460 = 1 Sar. 826.**

———*Southern India—Palayams in—Sources of information regarding.*

The history of the polliams of Southern India is well known. It is to be found in the Fifth Report from the Select Committee from the House of Commons on the affairs of the East India Company, presented in 1812, a work of great research, and in the Madura Manual, compiled by Mr. Nelson of the Madras Civil Service, by order of the Government of Madras (314).

The account given in the Fifth Report was adopted in the judgment pronounced by Lord Kingsdown in 9 M. I. A. 66 (314). (*Sir Barnes Peacock.*) THE COLLECTOR OF TRICHINOPOLY *v.* LEKKAMANI. **(1874) 1 I. A. 282—14 B. L. R. 115 = 21 W. R. 358 = 3 Sar. 318.**

———The history of the palayams, or polliams, of Southern India is set out in the Fifth Report of the Select Committee on the affairs of the East India Company. It is there stated that the Carnatic Poligars "were originally no more than officers of police to whom was committed the protection of a given portion of country ; headmen of villages, or public servants of other descriptions, whose actual condition had become changed to that of military rulers during those revolutions of power in the Deccan which had everywhere contributed to the usurpation of authority and in no part more than in the Southern division of the Peninsula." The following passage on the same point occurs in 9 M. I. A. 66 at 85 :—

HINDU LAW—(*Contd.*)

Impartible Estate—Polliem or Palayam—(*Contd.*)

ORIGIN, NATURE AND INCIDENTS OF—(*Contd.*)

A polliam is explained in Wilson's Ghossary to be a tract of country subject to a petty chieftain. In speaking of poligars he describes them as having been originally petty chieftains, occupying usually tracts of hill or forest, subject to pay tribute and service to the paramount state, but seldom paying either, and more or less independent, but as having at present, since the subjugation of the country by the East India Company, subsided into peaceable land-holders. This corresponds with the account read at the Bar from the Report of the Select Committee on the Affairs of India in 1812. A polliam is in the nature of a Raj; it may belong to an undivided family, but it is not the subject of partition, it can be held by only one member of the family at a time, who is styled the poligar, the other members of the family being entitled to a maintenance or allowance out of the estate. (*Lord Macnaghten.*) KACHI KALIYANA RANGAPPA KALAKKA THOLA UDAYAR *v.* KACHI YUVA RANGAPPA KALAKKA THOLA UDAYAR.

(1905) 32 I. A. 261 (265-6) = 28 M. 508 (512-3) = 2 C. L. J. 231 = 10 C. W. N. 95 = 1 M. L. T. 12 = 2 A. L. J. 845 = 7 Bom. L. R. 907 = 8 Sar. 855 = 15 M. L. J. 312.

———*Palayagars—Position of.*

A palayam is in the nature of a Raj, it may belong to an undivided family, but it is not the subject of partition; it can be held by only one member of the family at a time.

Palayagars were originally petty chieftains occupying usually tract of hills or forest country, subject to pay tribute and service to the paramount state, but seldom paying either, and more or less independent; but having at present, since the subjugation of the country by the East India Company subsided into peaceable landholders.

Kannivadi held to be a palayam of this description. (*Sir John Edge.*) APPAYASAMI NAICKER *v.* MIDNAPUR ZEMINDARY CO., LTD. **(1921) 48 I.A. 100 (108) = 44 M. 575 (582-3) = (1921) M. W. N. 352 = 34 C. L. J. 6 = 29 M. L. T. 383 = 14 L. W. 49 = 26 C. W. N. 106 = 20 A, L. J. 393 = A. I. R. 1922 P. C. 154 = 60 I. C. 953 = 40 M. L. J. 537.**

———The palayagars were originally petty chieftains occupying usually tracts of hills or forest country subject to pay tribute and service to the paramount state, but seldom paying either, and more or less independent (254). (*Lord Shaw.*) VENKATA JAGANNADHA *v.* VEERABHADRAYYA. **(1921) 48 I. A. 244 = 44 M. 643 (653) = 14 L.W. 59 = (1921) M.W.N. 401 = 34 C.L.J. 16 = 30 M.L.T. 14 = 26 C.W.N. 302 = A.I.R. 1922 P. C. 96 = 61 I. C. 667 = 41 M. L. J. 1.**

PARTIBLE OR IMPARTIBLE.

———Palayams in the polygar countries are generally impartible (111). (*Sir Arthur Hobhouse.*) MUTTU VADUGANADHA TEVAR *v.* DORASINGA TEVAR.

(1881) 8 I. A. 99 (111) = 3 M. 290 (304) = 4 Sar. 239.

———Southern India—Ancient Palayams in—Always held to be impartible. (*Sir John Wallis.*) KONNOMMAL *v.* ANNADANA JADAYA GOUNDER. **(1927) 55 I. A. 114 = 51 M. 189 = 27 L. W. 497 = 5 O. W. N. 411 = 108 I.C. 354 = 30 Bom. L.R. 802 = 47 C. L. J. 488 = 9 Pat. L. J. 347 = 26 A. L. J. 642 = 32 C. W. N. 983 = A. I. R. 1928 (P.C.) 68 = 54 M. L. J. 504.**

POLICE SERVICE TO STATE—TENURE OF.

———*Abolition in Southern India of—Date of.*

The police duties of the zemindars in that part of the country (Madura District) were abolished in 1816 by the Government of Madras. (*Sir John Edge.*) APPAYASAMI NAICKER *v.* MIDNAPORE ZEMINDARY CO., LTD. **(1921) 48 I. A. 100 (113) = 44 M. 575 (587) = (1921) M. W. N. 352 = 34 C. L. J. 6 = 29 M. L. T. 383 = 14 L. W. 49 = 26 C. W. N. 106 = 20 A. L. J. 393 = A. I. R. 1922 P. C. 154 = 60 I. C. 953 = 40 M. L. J. 537.**

HINDU LAW—(*Contd.*)

Impartible Estate—Polliem or Palayam—(*Contd.*)

POLICE SERVICE TO STATE—TENURE OF—(*Contd.*)

———*Evidence of.*

The best and most reliable evidence that a palayam was held on police service tenure would be a sanad showing that it was so held. (*Sir John Edge.*) APPAYASAMI NAICKER *v.* MIDNAPUR ZEMINDARY CO., LTD. **(1921) 48 I. A. 100 (112-3) = 44 M. 575 (586-7) = (1921) M. W. N. 352 = 34 C. L J. 6 = 29 M. L. T. 383 = 14 L. W. 49 = 26 C. W. N. 106 = 20 A. L. J. 393 = A. I. R. 1922 P. C. 154 = 60 I. C. 953 = 40 M. L. J. 537.**

———*Sanads creating—What amount to.*

Where the question was whether the Palayam of Kannivadi was held under a tenure of the Palayagar rendering police service to the state and the only sanads ever shown to have been granted to any Palayagar of Kannivadi contained conditions by which the Palayagar was bound to protect the inhabitants by preventing as far as might be in the power of the Palayagar, robberies, depredations, etc., in their properties, to deliver up persons guilty of murder, and not to give shelter to deserters, and to apprehend and deliver them to the Collector, *held*, that the conditions were similar to the duties which all landholders and zamindars in British India had to perform, and that there was nothing in either of the Sanads from which it could be inferred that the Palayam was held on a tenure of rendering police duties to the State. (*Sir John Edge.*) APPAYASAMI NAICKER *v.* MIDNAPORE ZEMINDARY CO., LTD. **(1921) 48 I. A. 100 (112-3) = 44 M. 575 (587) = (1921) M. W. N. 352 = 34 C. L. J. 6 = 29 M. L. T. 383 = 14 L. W. 49 = 26 C. W. N. 106 = 20 A. L. J. 393 = A.I.R. 1922 P. C. 154 = 60 I. C. 953 = 40 M. L. J. 537.**

POLICY OF GOVERNMENT IN REGARD TO.

———*Proclamation of Lord Clive of* 1801—*Meaning and effect of.*

The State policy with regard to palayagars was definitely announced by the proclamation of Lord Clive in 1801. To all intents and purposes the palayagars were relieved of military duties; they had to give up possession of firearms and weapons of offence and become zamindars; a certain number of pikemen whose names were to be registered were allowed to these chieftains in deference to their personal feelings and "for the purpose of maintaining the pomp and state heretofore attached to the persons of the said palayagars." The meaning of the proclamation is that their estates were subjected to assessment "upon the principles of zamindar tenures." Palayagars so treated were dealt with as zamindars with hereditary estates, their ancestors' possessions being secured to them. (*Lord Shaw.*) VENKATA JAGANNADHA *v.* VEERABHADRAYYA.

(1921) 48 I. A. 244 (254-5) = 44 M. 643 (654) = 14 L. W. 59 = (1921) M. W N. 401 = 34 C, L. J. 16 = 30 M.L T. 14 = 26 C. W. N. 302 = A.I.R. 1922 P. C. 96 = 61 I. C. 667 = 41 M. L. J. 1.

POLIGAR—RELATIONSHIP TO DECEASED—STATUS OF FAMILY OF PLAINTIFF AND OF DECEASED—EVIDENCE.

———*Return made by a former Poligar to Collector pursuant to requisition by Government—Authenticated copy of—Admissibility.*

HINDU LAW—(*Contd.*)

Impartible Estate—Polliem or Palayam—(*Contd.*)

POLIGAR—RELATIONSHIP TO DECEASED—STATUS OF FAMILY OF PLAINTIFF AND OF DECEASED—EVIDENCE—(*Contd.*)

The plaintiff claimed to be entitled to succeed to a Polliem as against the widow of its last holder who had died without male issue. His case was that the Polliem was ancestral property ; that it belonged to the undivided family of himself and the deceased ; and that on the death of the last possessor the right to the Polliem vested in the plaintiff as the next male heir of the family in preference to the widow. The widow denied that the plaintiff and her husband were related at all, and alleged that in any event they were not members of an undivided family.

When the East India Co., took possession of the Polliems, including the suit one, in 1802, they made allowances out of the proceeds to the families of the Polligars, and contemplated the restoration at a future time, when order should have been established in the country, of the property so seized to its owners. To give effect to these views, they procured and forwarded a statement of the particulars of the property so seized, and of the names and families of the existing Polligars. They required returns to be made by the Polligars of those particulars. On that occasion a return was made by the then Polligar of the suit polliem. To prove his case the plaintiff obtained and filed a copy of that return, authenticated by the signature of the Collector of Chittoor, to whose office the ruturn purported to be sent. The accuracy of the copy so produced, and the genuineness of the document, were made out beyond all controversy. And it established beyond doubt that the plaintiff and the deceased were members of the same family ; that the suit Polliem was ancestral ; and that the plaintiff and the deceased were at the date of that document members of an undivided family.

Held, that the copy was an authenticated copy of a public document, and that it established the case of the plaintiff, unless it could be made out that the family, undivided at that time, became afterwards divided (91-2). (*Lord Kingsdown.*) NARAGUNTY LUTCHMEEDAVAMAH *v.* VENGAMA NAIDOO. **(1861) 9 M. I. A. 66 = 1 W. R. (P. C.) 30 = 1 Suth. 460 = 1 Sar 826.**

SETTLED AND UNSETTLED PALAYAMS.

———*Effect—Distinction.*

The only difference between a polliem or zemindary which is permanently settled and one that is not, is that, in the former, the Government is precluded for ever from raising the revenue ; and, in the latter, the Government may or may not have that power (313). (*Sir Barnes Peacock.*) THE COLLECTOR OF TRICHINOPOLY *v.* LEKKAMANI.
(1874) 1 I. A. 282 = 14 B. L. R. 115 = 21 W. R. 358 = 3 Sar. 318.

SUCCESSION TO.

———*Females—Exclusion of — Custom of—Proof of—Cumbalar Tottier caste—Escheat—Crown's claim by.*

Suit by government for possession of the *Polliem* of Erasaca Naiknoor in Madras, as an escheat for want of male heirs, dismissed. The Government having acquiesced in the right of female succession to the *Polliem*, and possession had for a period of eighteen years after the alleged escheat.

Females are not precluded by any rule of descent, custom, or usage of the *Cumbalar Tottier* caste, from succeeding to a *Polliem*. COLLECTOR OF MADURA *v.* VEERACAMOO AMMAL. **(1863) 9 M. I. A. 446 = 2 Sar. 43.**

———*Joint ancestral estate—Surviving male member—Widow of last holder—Preference—Naragunty Polliem.*

The plaintiff claimed to be entitled to succeed to the Naragunty Polliem as against the widow of its last holder, who had died without male issue. His case was that the said Polliem was an ancestral property ; that it belonged to an undivided family of which he and the deceased were members ; and that on the death of the last possessor the right to it vested in the plaintiff as the next male heir of the family in preference to the widow.

Held, affirming the Courts below, that the plaintiff had established his case and was entitled to the suit polliem as against the widow. (*Lord Kingsdown.*) NARAGUNTY LATCHMEEDAVAMAH *v.* VENGAMA NAIDOO.
(1861) 9 M. I. A, 66 = 1 W. R. (P.C.) 30 = 1 Suth. 460 = 1 Sar. 826.

———*Joint family—Brother undivided—Widow—Preference.*

The defendant and the deceased poligar being members of an undivided family, on the death of the latter without issue, the polliem descended to the defendant (the brother of the deceased poligar) in preference to the widow of the deceased (293). (*Sir Barnes Peacock.*) PEDDA AMANI AND CHINNA AMANI *v.* ZEMINDAR OF MARUNGAPURI.
(1874) 1 I. A. 282 = 14 B. L. R. 115 = 21 W. R 358 = 3 Sar. 318.

UNSETTLED PALAYAM—TENURE OF—ASCERTAINMENT OF.

———*Mode of.*

The existence of a proprietary estate in palayams or other lands not permanently assessed, and the tenure by which it has been held are matters judicially determinable on legal evidence, just as the right to any other property. (*Sir John Edge.*) APPAYASAMI NAICKER *v.* MIDNAPUR ZEMINDARY CO., LTD. **(1921) 48 I. A. 100 = 44 M. 575 (586) = (1921) M. W. N. 352 = 34 C. L. J. 6 = 29 M. L. T. 383 = 14 L. W. 49 = 26 C. W. N. 106 = 20 A. L. J. 393 = A.I.R. 1922 P. C. 154 = 60 I. C. 953 = 40 M. L. J. 537.**

Impartible Estate—Raj.

———*Descent of, to eldest male heir—Custom of—Inheritance—Inchoate rights of, in junior members—Non-existence of.*

In a Raj descendible, according to custom, to the eldest male heir, there are no inchoate rights of inheritance in the junior members of the family (39). (*Sir James W. Colvile.*) BABOO BEER PERTAB SAHEE *v.* MAHARAJAH RAJENDER PERTAB SAHEE. **(1867) 12 M. I. A. 1 = 9 W. R. (P. C.) 15 = 2 Suth. 114 = 2 Sar. 348.**

———*Principality—Raj as a—Indivisibility and descent to eldest son—Rule as to—Basis of.*

With respect to a Raj as a principality, the general rule is that the estate descends to the eldest son, and is not divisible amongst all, and it must be so It is a Sovereignty, a Principality, a subordinate Sovereignty and Principality no doubt, but still a limited Sovereignty and Principality, which, in its very nature, excludes the idea of division in the sense in which that term is used in the present case (187). (*Mr. Pemberton Leigh.*) BABOO GUNESH DUTT SINGH *v.* MAHARAJ MOHESHUR SINGH.
(1855) 6 M. I. A. 164 = 2 Suth. 20 = 1 Sar. 521.

Impartible Estate—Raj Raja—Technical names of, to Estate and to holder thereof—Necessity.

———*Effect of presence or absence of.*

On an issue as to whether or not the Zemindary of Tirhoot constituted a Raj domain, and as such descended entire to a single heir to the exclusion of the other members of the family, *held* that the fact that the original founder of the family and many of his successors were described, not as "Rajas" or "Maharajahs," but as "Thakoors" was a circum-

HINDU LAW—(*Contd.*)

Impartible Estate—Raj—Raja—Technical names of, to Estate and to holder thereof—Necessity—(*Contd.*)

stance which was utterly unimportant (191).(*Mr. Pemberton Leigh.*) BABOO GUNESH DUTT SINGH *v.* MAHARAJAH MOHESHUR SINGH. **(1865) 6 M. I. A. 164 = 2 Suth. 20 = 1 Sar. 521.**

———That the title of Rajah was not absolutely essential to the tenure of the estate as a Raj is shown by the *Tirhoot* case (6 M. I. A. at p. 191). (*Sir James W. Colvile.*) BABOO BEER PERTAB SAHEE *v.* MAHARAJAH RAJENDER PERTAB SAHEE. **(1867) 12 M. I. A. 1 (36) = 9 W. R. (P. C.) 15 = 2 Suth. 114 = 2 Sar. 348.**

———A custom of descent according to the law of primogeniture may exist by kolachar or family custom, although the estate may not be what is technically thrown either as a raj in the north of India or as a polliem in the south of India. (*Sir James W. Colvile.*) CHOWDHRY CHINTAMUN SINGH *v.* MUSST. NOWLUKHO KONWARI.

(1873) 2 I. A. 263 (269) = 1 C. 153 = 24 W. R. 255 = 3 Sar. 537.

———"Raj" does not necessarily imply impartibility of an estate. (*Lord Sinha.*) MARTAND RAO *v.* MALHAR RAO.

(1927) 55 I. A. 45 = 55 C. 403 = 24 N. L. R. 25 = 32 C. W. N. 621 = 30 Bom. L. R. 251 = 27 L. W. 350 = 107 I. C. 7 = 47 C. L. J. 150 = (1928) M. W. N. 942 = A. I. R. 1928 P. C. 10 = 54 M. L. J. 397.

Impartible Estate—Raj Bhara.

———*Nature of—Succession to—Custom of.*

The suit was by the plaintiff-appellant to recover possession of the estate called raj *Bhara*. The last holder of the estate died without issue. The plaintiff was his uncle, and he claimed to recover the estate from the defendant the widow of the deceased.

Held, that the plaintiff had made out satisfactorily that the raj of Bhara was an ancient raj, and an ancestral estate, and that by virtue of an ancient custom in the family it was impartible, and to be held and enjoyed by only a single member at a time (163). (*Sir Barnes Peacock.*) RAJAH RUP SINGH *v.* RANI BAISNI. **(1884) 11 I. A. 149 = 7 A. 1 (19) = A. W. N. (1884) 246 = 4 Sar. 533.**

Impartible Estate—Ramnad Zamindary.

———History and incidents of. (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SETHUPATHY. **(1868) 12 M. I. A. 397 (423-5) = 10 W. R. (P.C) 17 = 1 B. L. R. (P. C.) 1 = 2 Suth. 135 = 2 Sar. 361.**

———Nature of—Descent of, to single heir. *See* HINDU LAW—IMPARTIBLE ESTATE—SOUTHERN INDIA.

(1868) 12 M. I. A. 397 (423)

Impartible Estate—Revenue arrears—Resumption of estate for—Division thereof into two estates, and grant of one of them under sanad.

———Partibility of, and succession to, estate granted under sanad. *See* HINDU LAW—IMPARTIBLE ESTATE—NATURE AND INCIDENTS OF—REVENUE ARREARS.

(1879) 7 I. A. 38 = 2 M 128.

Impartible Estate—Service attached to—Discontinuance of.

———Effect of, on impartible nature of estate. *See* HINDU LAW—IMPARTIBLE ESTATE—NATURE AND INCIDENTS OF—SERVICE ATTACHED TO ESTATE.

(1919) 37 M. L. J. 562.

Impartible Estate—Settled and unsettled estates.

———Effect—Distinction. *See* HINDU LAW—IMPARTIBLE ESTATE—POLLIEM—SETTLED AND UNSETTLED POLLIEMS.

(1874) 1 I. A. 282 (313).

HINDU LAW—(*Contd.*)

Impartible Estate—Shivagunga Zamindary.

———Devolution of—History of. (*Sir Arthur Hobhouse.*) MUTTU VADUGANADHA TEVAR *v.* DORASINGA TEVAR.

(1881) 8 I. A. 99 (106-8) = 3 M. 290 (299-300) = 4 Sar 239.

———Impartible character of—Effect on, of Proclamation of July, 1801—Installation in August 1801, Reg. XXV of 1802, and sunnud of 1803. *See* HINDU LAW—IMPARTIBLE ESTATE—NATURE AND INCIDENTS OF—QUALITIES OF ESTATE, INCLUDING ITS IMPARTIBLE CHARACTER. **(1881) 8 I. A. 99 (112, 114-5) = 3 M. 290 (307-8).**

———*Nature of—Enjoyment of—Right of.*

The Zemindary of Shivagunga is admitted to be in the nature of a Principality—impartible, and capable of enjoyment by only one member of the family at a time (588). (*Lord Justice Turner.*) KATAMA NATGHIAR *v.* THE RAJAH OF SHIVAGUNGA. **(1863) 9 M. I. A. 539 = 2 W. R. (P. C.) 31 = 1 Suth. 520 = 2 Sar. 25.**

———*Origin of.*

The Zemindary appears to have been created in or about the year 1730. At that time, Kurta Tevar, Rajah of Ramnad, having received valuable services from one of his family, Sasivarna Tevar, granted to him two-fifths of the Ramnad estate, calling the granted portion a distinct Zemindary of Shivagunga (106). (*Sir Arthur Hobhouse.*) MUTTU VADUGANADHA TEVAR *v.* DORASINGA TEVAR.

(1881) 8 I. A. 99 = 3 M. 290 (298-9) = 4 Sar. 239.

———Origin and history of. (*Lord Justice Turner.*) KATAMA NATCHIAR *v.* RAJAH OF SHIVAGUNGA.

(1863) 9 M. I. A. 539 (588, 592) = 3 W. R. (P. C.) 31 = 1 Suth. 520 = 2 Sar. 25.

———*Partible or Impartible.*

The question was whether the Shivagunga Zemindary was a partible or an impartible estate.

The evidence of the nature of the Zemindary was this: that it belonged to a class of possesions which were in the nature of chieftainships, and impartible; that the great Zemindary of Ramnad out of which it was taken was impartible; that the small Zemindary of Padamattur which was taken out of it was impartible; that, according to family tradition and belief, it was impartible; and that from its first creation until the date on which the question arose it had passed from hand to hand as if it were impartible.

Held, that the evidence irresistibly led to the conclusion that the Zemindary was impartible (111-2). (*Sir Arthur Hobhouse.*) MUTTU VADUGANDHA TEVAR *v.* DORASINGA TEVAR. **(1881) 8 I. A. 99 = 3 M. 290 (303-4) = 4 Sar. 239.**

———*Partibility of—Admission by istimrar zemindar of—What amounts to.*

The question was whether the Shivagunga Zemindary was or was not an impartible estate.

It appeared that in 1822 the istimrar zemindar was asked by the Collector of the district whether it was customary for the zemindar to divide the estate between his children, what would be his motives, and what his authority for a division, and that he did not answer the first or third questions at all, and merely said that, "from motives of regard to the children, the zemindar divides the estate between them."

Held, that the answer was extremely ambiguous and evasive, and that a contention as to the partibility of the estate could not be built upon such an answer (110-1).

The answer is at the utmost a contention that the estate is alienable by the zemindar, and that he has a discretion to divide it; not that it is partible if not divided by him (111). (*Sir Arthur Hobhouse.*) MUTTU VADUGANADHA TEVAR *v.* DORASINGA TEVAR. **(1881) 8 I. A. 99 = 3 M. 290 (303) = 4 Sar. 239.**

HINDU LAW—(*Contd.*)

Impartible Estate —Shivagunga Zamindary—(*Contd.*)

———*Succession—Rule of, applicable.*

Whatever suggestions of a special custom of descent may heretofore have been made (and there are traces of such in the proceedings), the rule of succession to the Shivagunga zemindary is now admitted to be that of the general Hindu law prevalent in that part of India, with such qualifications only as flow from the impartible character of the subject (588-9). (*Lord Justice Turner.*) KATAMA NATCHIAR *v.* THE RAJAH OF SHIVAGUNGA.

(1863) 9 M. I. A. 539 = 2 W. R. (P. C.) 31 = 1 Suth. 520 = 2 Sar. 25

Impartible Estate—Sivagiri Zamindary.

———History of. (*Sir Barnes Peacock.*) MUTTAYAN CHETTIAR *v.* SANGILI VIRA PANDIA CHINNATAMBIAR.

(1882) 9 I. A. 128 (133) = 6 M. 1 (7-8) = 12 C. L. J. 169 = 4 Sar. 354.

Impartible Estate—Southern India—Zamindaries large in.

———*Nature of—Descent of, to single heir.*

The zemindary of Ramnad is, like many of the large zemindaries in the South of India, in the nature of a Raj, or Principality, descendible to a single heir (423). (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SETHUPATHY. **(1868) 12 M. I. A. 397 = 10 W. R. (P. C.) 17 = 1 B. L. R. (P C.) 1 = 2 Suth. 135 = 2 Sar. 361.**

Impartible Estate—Succession to.

ANCESTRAL ESTATE.
ANCESTRAL ESTATE AND SELF-ACQUISITIONS OF HOLDER.
BROTHERS BY DIFFERENT MOTHERS—PRIORITY AS BETWEEN, BASED ON PRIORITY OF MARRIAGES OF MOTHERS.
CUSTOM OF.
FEMALES.
FULL BLOOD AND HALF BLOOD.
GOVERNMENT'S RIGHT TO SETTLE.
JOINT FAMILY MEMBER—HOLDER A—SELF-ACQUISITION OF—ESTATE FORMING.
MATERNAL GRANDFATHER'S ESTATE INHERITED BY DAUGHTER'S SON—SUCCESSION TO, ON HIS DEATH.
OBSTRUCTED INHERITANCE—DEVOLUTION OF.
OBSTRUCTED INHERITANCE — INHERITANCE ONCE OBSTRUCTED IF ALWAYS OBSTRUCTED.
PARTIBLE PROPERTY—RULE OF SUCCESSION APPLICABLE TO.
PRIMOGENITURE.
RULE OF, APPLICABLE.
SELF-ACQUISITION OR SEPARATE ESTATE OF HOLDER.
SEPARATED MEMBER—ESTATE OF—RULE APPLICABLE TO.
SONS BY DIFFERENT WIVES—PREFERENCE.

ANCESTRAL ESTATE.

———Succession to—Widow—Divided agnatic relation—Rights of—Preference of former to latter—Custom of—Onus of proof of. *See* HINDU LAW — IMPARTIBLE ESTATE—SUCCESSION TO—OBSTRUCTED INHERITANCE.

(1916) 43 I. A. 269 (281-2) = 38 A. 552 (567-8)

ANCESTRAL ESTATE AND SELF-ACQUISITIONS OF HOLDER.

———Succession to—Rights of—Widow—Divided agnate. *See* HINDU LAW—IMPARTIBLE ESTATE—SUCCESSION TO—OBSTRUCTED INHERITANCE.

(1916) 43 I. A. 269 (281-2) = 38 A. 552 (567-8)

HINDU LAW—(*Contd.*)

Impartible Estate—Succession to—(*Contd.*)

BROTHERS BY DIFFERENT MOTHERS—PRIORITY AS BETWEEN, BASED ON PRIORITY OF MARRIAGES OF MOTHERS.

———*Custom of—Proof of.*

The question was as to the succession to the impartible estate of Saptur descendible to a single heir according to the custom of primogeniture. The last holder of the estate died a minor and unmarried. The claimants were the plaintiff, the half brother of the deceased, and the defendant, the whole brother of the deceased. The defendant alleged that he was entitled, by the custom prevailing in the Saptur zamindary and in other zamindaries held by zamindars of the same caste in Madura and neighbouring districts, to succeed in preference to the plaintiff by reason of his mother having been married prior to the plaintiff's mother.

Held, affirming the Courts, that the defendant had made out the custom set up by him. (*Sir Richard Couch.*) SUNDARALINGASWAMI KAMAYA NAIK *v.* RAMASAMI KAMAYA NAIK. **(1899) 26 I. A. 55 (57) = 22 M. 515 (518) = 1 Bom. L. R. 850 = 7 Sar. 531.**

CUSTOM OF.

———Evidence of—Admissibility on question of custom as to partible estates. *See* HINDU LAW—INHERITANCE—CUSTOM OF—IMPARTIBLE ESTATES.

(1909) 36 I. A. 125 (136-7) = 31 A. 457 (475-6).

———Evidence of—Court of Wards—Collector making inquiry on behalf of Board of Revenue acting as—Opinions of zemindars of District obtained by—Summary of, in Collector's letter to Board of Revenue—Admissibility of—Value of. *See* HINDU LAW—IMPARTIBLE ESTATE—SUCCESSION TO—SONS BY DIFFERENT WIVES—PREFERENCE—YOUNGER SON OF, ETC. **(1872) Sup. I. A. 1 (5) = 14 M. I. A. 570.**

———*Evidence of—Estates unconnected with estate in question—Estates carved out of same estate as that in question—Evidence of custom in—Admissibility.*

The question was whether the Mitakshara law of succession had been so far modified by custom, with respect to the ancestral raj of Bhara, as that failing lineal descendants of a deceased Rajah, his widow was entitled to succeed to the raj in preference to the plaintiff, who was a collateral male heir and the eldest male member of the joint family.

To prove the said custom, cases of the succession of a widow to the exclusion of collateral male heirs in Mirzapore and in Cawnpore were relied upon. No connection between them and Bhara was, however, shewn to exist.

Held, that such cases, even if they could have any weight, were not admissible as evidence to prove a family custom in Bhara (163).

Quaere, whether evidence of a custom of descent in another estate which was carved out of the same estate as the Raj Bhara would be admissible in support of a similar custom in the Raj Bhara (158). (*Sir Barnes Peacock.*) RAJAH RUP SINGH *v.* RANI BAISNI.

(1884) 11 I. A. 149 = 7 A. 1 (10, 14-5) = A. W. N. (1884) 246 = 4 Sar. 533.

———*Family custom—Continuance of, after change in condition of things necessitating custom—Maxim* cessat ratio cessat lex—*Applicability.*

In a case in which the District Judge had found on evidence that the family to which the litigants belonged a custom of primogeniture prevailed, that under it women were excluded from inheritance, and that the male relative who was in the eldest line of male descent from the last holder or his father or grandfather succeeded, the appellate court concurred with the District Judge in holding that the evidence established that the custom found by the District

HINDU LAW—(*Contd.*)

Impartible Estate—Succession to—(*Contd.*)

CUSTOM OF—(*Contd.*)

Judge to be an existing operative custom was at some time or other existing as an operative binding custom. Where they differed from him apparently was that they held that the custom, though once existing and operative, had ceased to be so, either because the primitive conditions out of which it sprung had ceased to exist, and therefore *cessat ratio cessat lex*, or because owing to the improvement in education and the spread of socialistic opinions consequent thereon, the custom had been so gradually but steadily and persistently encroached upon that it had, as it were, been eaten away, and had ceased to be observed or applied.

Held, that a family might agree expressly or impliedly to continue to observe a custom necessitated by the condition of things existing in primitive times, after that condition had completely altered, and that, therefore, the principle embodied in the expression *cessat ratio cessat lex* did not apply where the custom outlived the condition of things which gave it birth.

It is clear that such a custom may, if observed and acted upon, survive the primitive condition of things out of which it originally, from the very necessity of the case, sprung. (*Lord Atkinson.*) RAO KISHORE SINGH *v.* MUSAMMAT GAHENABAI. **(1919) 12 L. W. 730 (737, 740) = 15 N. L R. 176 = 17 A. L. J. 1077 = 26 M. L.T. 494 = 24 C. W. N. 601 = 22 Bom. L. R. 507 = 53 I. C. 630 = 37 M. L. J. 562.**

———Ordinary law—Applicability—Presumption— Onus of proof. *See* HINDU LAW—CUSTOM—APPLICABILITY OF—ABORIGINAL BHUYIAS AND CASES REFERRED TO THEREIN. **(1922) 50 I, A. 58 (62-4) = 2 Pat. 230.**

———*Seniority in age and nearness of kin required by—Claimant with one of qualifications—Right of.*

Where the custom of succession to an impartible estate required the union of two things to constitute the legal heir, *viz.*, seniority in age and nearness of kin, a claimant who has but one of these qualifications (seniority) cannot be entitled to succeed by the family custom. (*Lord Chelmsford.*) NEELKISTO DEB BURMONO *v.* BEERCHUNDER THAKOOR. **(1869) 12 M. I. A. 523 (541-2) = 12 W. R. (P. C.) 21 = 3 B. L. R. (P. C.) 13 = 2 Suth. 243 = 2 Sar. 523.**

———*Widow—Exclusion of—Custom of—Decision against—Succession after lifetime of widow—Custom of—Suit setting up, by defeated party against widow—Not barred.*

A suit by a widow claiming to be entitled to succeed to an impartible estate on the ground of her being mother and heiress of the last male holder was decreed in her favour, notwithstanding the claim of the defendant therein to be preferentially entitled to the estate. *Held*, in a subsequent suit by the defendant in the prior suit against the plaintiff therein, that though the plaintiff was barred by the former adjudication from setting up a family custom for the purpose of showing that he was entitled to possession of the estate during the lifetime of the widow, he was not thereby barred from setting up the family custom for the purpose of showing that upon her death, he, if he survived, would be entitled to succeed her (158). (*Sir Barnes Peacock.*) TEKAIT DOORGA PERSAD SINGH *v.* TEKAITNI DOORGA KONWARI. **(1878) 5 I. A. 149 = 4 C. 190 (200) = 3 C. L. R. 31 = 3 Suth. 540 = 3 Sar. 827.**

FEMALES.

———*Exclusion of—Custom of.*

In a case relating to the rule of succession applicable to the Kunjpure Raj both parties were agreed that by the custom of the family females were excluded from inheritance (90). (*Mr. Ameer Ali.*) IBRAHIM ALI KHAN *v.* MUHAMMAD AHSAN ULLAH KHAN. **(1912) 39 I. A. 85 = 14 Bom. L R. 271 = 9 A. L. J. 390 = 15 C. L.J. 352 = 16 C. W. N. 625 = 13 I. C. 695 = 22 M. L. J. 478.**

———*Exclusion of—Custom of—Onus of proof of.*

There is no inconsistency between a custom of impartibility and the right of females to inherit as may be illustrated by the well-known Shivagunga case, and therefore the general law must prevail, unless it be proved that the custom extends to the exclusion of females. (*Lord Davey.*) RAM NUNDUN SINGH *v.* MAHARANI JANKI KOER. **(1902) 29 I. A. 178 (194) = 29 C. 828 (852) = 7 C. W. N. 57 = 4 Bom. L. R. 664 = 8 Sar. 351.**

———The appellant sued for a declaration of title to, and for recovery of possession of, the estate of a deceased Hindu, claiming to be his sole heir. He claimed that heirship by virtue of a special custom, according to which (1) females were wholly excluded from inheritance ; (2) on the death of a proprietor the whole estate passed to a single person, subject to the liability to maintain the other members of the proprietor's family ; (3) on the death of a proprietor the male relative who was in the eldest line of male descent from him succeeded, and in default, the male relative in the eldest line of male descent, from his father, any next from his grandfather succeeded and so on. The defendants were the mother and the step-mother of the deceased, claiming to be entitled as the latter's heirs to the suit estate under the ordinary Hindu law.

Held, that the onus of proving the custom alleged was on the appellant. (*Lord Atkinson.*) RAO KISHORE SINGH *v.* MUSAMMAT GAHENABAI. **(1919) 12 L.W. 730 (736) = 15 N. L. R 176 = 17 A. L. J. 1077 = 26 M. L T. 494 = 24 C. W. N. 601 = 22 Bom. L.R. 507 = 53 I. C. 630 = 37 M. L. J. 562.**

———*Exclusion of—Custom of—Proof of—Quantum.*

Held, affirming the High Court, that there was no sufficient evidence of a custom to exclude females from inheritance affecting the Bettia Raj. (*Lord Davey.*) RAM NUNDUN SINGH *v.* MAHARANI JANKI KOER. **(1902) 29 I. A. 178 (194-5) = 29 C. 828 (852-3) = 7 C. W. N. 57 = 4 Bom. L R. 664 = 8 Sar. 351.**

———Right of—Custom of impartibility not necessarily inconsistent with. *See* HINDU LAW—IMPARTIBLE ESTATE—SUCCESSION TO—SEPARATED MEMBER—ESTATE OF—RULE APPLICABLE TO. **(1915) 42 I. A. 192 (198) = 42 C. 1179 (1191).**

FULL BLOOD AND HALF BLOOD.

———*Preference of Hindu law as regards—Applicability.*

It was contended that the preference under the general Hindu law of whole blood to half blood does not extend to a Raj, and to support this contention reliance was placed on the rule which obtains in certain cases of undivided ancestal estate, when brothers of the whole and half blood are on the same footing. The rule which was insisted upon is this, that in the case of a Raj or kingdom, or other impartible estate descending by inheritance to a sole heir, the court must view the property as though it were joint estate, part of an undivided joint ancestral estate, and apply the law applicable to such an estate, with a view to the selection of the eldest from those who would be equal in degree as coparceners. The High Court treated this position as novel and unknown to them and rejected it.

Their Lordships concur in the opinion of the High Court (539-40). (*Lord Chelmsford.*) NEELKISTO DEB BURMONO *v.* BEERCHUNDER THAKOOR. **(1869) 12 M. I. A. 523 = 12 W. R. (P. C.) 21 = 3 B. L. R. (P. C.) 13 = 2 Suth. 243 = 2 Sar. 523.**

HINDU LAW—(*Contd.*)

Impartible Estate—Succession to—(*Contd.*)

GOVERNMENT'S RIGHT TO SETTLE.

———The preamble of Madras Reg. XXV of 1802 recognised the right of private property and did not assert a right on the part of Government to deprive or dispossess zamindars in their lifetime, or their heirs after their deaths, for the purpose of transferring their rights to Government, or to new holders at the will of Government, independent of any considerations connected with the realisation of revenue (307). (*Sir Barnes Peacock.*) COLLECTOR OF TRICHINOPOLY *v.* LEKKAMANI. (1874) 1 I. A. 282 = 21 W. R. 358 = 14 B. L. R. 115 = 3 Sar. 318.

———*Permanently settled estate—Omission to issue permanent sunnud in respect of.*

The question of succession, when it first arose, was further complicated by the fact, that the suit zemindary, though permanently settled, was one of those as to which it was then conceived that, owing to the omission to issue a permanent sunnud the Government of Fort Saint George had retained the right of nominating, on the death of each successive holder, his successor. The confirmation by this Board of the decision of the High Court of Madras in the Marungapury case has since established that there was no legal foundation for this pretension on the part of Government ; and it must now be taken to be settled law that the title to the zemindary is to be determined by the ordinary law of succession in like cases (170). (*Sir James W. Colvile.*) SRI RAGHUNADHA *v.* SRI BROZO KISHORO. (1876) 3 I. A. 154 = 1 M. 69 (77) = 25 W. R. 291 = 3 Sar. 583 = 3 Suth. 263.

———At one time the Government entertained the notion that as to certain zamindaries in the Presidency of Madras they had a right to settle the succession (8). (*Sir James W. Colvile.*) RAJAH VELLANKI VENKATA KRISHNA ROW *v.* VENKATA RAMA LAKSHMI NARASAYYA. (1876) 4 I. A. 1 = 1 M. 174 (185) = 26 W. R. 21 = 3 Sar. 669 = 3 Suth. 353.

JOINT FAMILY MEMBER—HOLDER A—SELF-ACQUISITION OF—ESTATE FORMING.

———*Rule applicable to.*

Even if the late zemindar continued to be generally undivided in estate with his brother's family, yet, if the zemindary was his self-acquired and separate property, it would be descendible, like separate estate, to his widows and daughters and their issue preferably to his nephews, though the latter, as co-parceners, would be entitled to his share in the undivided property (615). (*Lord Justice Turner.*) KATAMA NATCHIAR *v.* THE RAJAH OF SHIVAGANGA. (1863) 9 M. I. A. 539 = 2 W.R. P C. 31 = 1 Suth. 520 = 2 Sar. 25.

———Where an impartible zemindari has been acquired by the last holder or his branch as a self-acquisition, the other undivided members of the family take no interest in it and it descends as the separate property of the acquirer. That was what happended in the Shivagunga case. (*Sir John Wallis.*) KONNAMMAL *v.* ANNADANA JADAYA GOUNDER. (1927) 55 I.A. 114 = 51 M. 189 = 27 L. W. 497 = 5 O. W. N. 411 = 108 I. C. 354 = 30 Bom. L. R. 802 = 47 C. L. J. 488 = 9 Pat. L.T. 347 = 26 A. L. J. 642 = 32 C. W. N. 983 = A. I. R. 1928 P. C. 68 = 54 M. L. J. 504.

MATERNAL GRANDFATHER'S ESTATE INHERITED BY DAUGHTER'S SON—SUCCESSION TO, ON HIS DEATH,

———His son—Son of another daughter of original zemindar—Preference. *See* HINDU LAW—DAUGHTER'S SON—MATERNAL GRANDFATHER — IMPARTIBLE ESTATE, ETC. (1896) 23 I. A. 128 = 19 M. 451.

HINDU LAW—(*Contd.*)

Impartible Estate—Succession to—(*Contd.*)

OBSTRUCTED INHERITANCE—DEVOLUTION OF.

———*Two courses of, under Mitakshara law—Applicability of, to impartible estate.*

The Mitakshara law recognises two courses of devolution in the case of what is called "obstructed inheritance" —the ancestral property descending in one channel, the self-acquired property in another Even where the estate is impartible, the distinction in the course of descent is recognised (281). For example, where the owner of an ancestral impartible estate, possessed also of self-acquired properties, dies leaving lineal male descendants, as the inheritance is "unobstructed," both classes of property go to them ; supposing, however, he were to die leaving no male progeny in the direct line, but a widow and a divided agnatic relation, in the absence of a custom the self-acquired property would go to the widow, whilst the estate would devolve on the agnatic line. The onus of establishing a custom dehors the ordinary rule in such a case would lie on the person asserting it (281-2). (*Mr. Ameer Ali*). MURTAZA HUSSAIN KHAN *v.* MD. YASIN ALI. (1916) 43 I.A. 269 = 38 A. 552 (567-8) = 14 A.L.J. 1083 = 20 M. L. T. 362 = 4 L.W. 538 = (1916) 2 M. W. N. 555 = 19 O. C. 290 = 18 Bom. L. R. 884 = 25 C.L.J. 1 = 1 Pat. L. W. 122 = 21 C. W. N. 410 = 36 I. C. 299 = 31 M. L. J. 804.

OBSTRUCTED INHERITANCE—INHERITANCE ONCE OBSTRUCTED IF ALWAYS OBSTRUCTED.

———It is contended that if the inheritance of an impartible estate once becomes obstructed, it is always obstructed, so that on the death of each owner the true successor is the heir of the last unobstructed owner. This position has not the support of either authority or principle. (*Lord Hobhouse.*) MUTTU VADUGANADHA TEVAR *v.* PERIASAMI. (1896) 23 I. A. 128 = 19 M. 451 = 6 M. L. J. 149 = 7 Sar. 83.

PARTIBLE PROPERTY—RULE OF SUCCESSION APPLICABLE TO.

———Applicability of. *See* HINDU LAW—IMPARTIBLE ESTATE—SUCCESSION—RULE APPLICABLE TO—PARTIBLE PROPERTY.

PRIMOGENITURE.

———(*See also* HINDU LAW—INHERITANCE — PRIMOGENITURE.)

———*Collateral succession—Applicability of rule in case of—Evidence.*

Nothing has been found by either court in India as to the rule which governed the abnormal descent of Padamattur to a single heir. There is some evidence that up to 1829 it was governed in the course of direct descent from father to son, by the rule of primogeniture, but as to the rule in the case of collateral succession there is no evidence (69-70). (*Sir James W. Colvile.*) PERIASAMI *v.* PERIASAMI. (1878) 5 I. A. 61 = 1 M. 312 (325) = 2 C.L.R. 81 = 3 Suth. 508 = 3 Sar. 795.

———*Custom of—Gungore talook.*

It was admitted that the enjoyment of this talooka (Gungore) has long been by a single member of the family, and that it has passed from father to son according to the rule of primogeniture for several generations. The existence of this family custom has, moreover, been litigated at various times from a very early period, and has been affirmed by repeated decisions (269). (*Sir James W. Colvile.*) CHOUDHRY CHINTAMUN SINGH *v.* MUSSAMUT NOWLUKHO KONWARI. (1875) 2 I.A. 263 = 1 C. 153 (159) = 24 W.R. 255 = 3 Sar. 537 = 3 Suth. 204.

HINDU LAW—(*Contd.*)

Impartible Estate—Succession to—(*Contd.*)

PRIMOGENITURE—(*Contd.*)

———*Custom of—Kannivadi Zemindary.*

The zemindari of Kannivadi, in the Madras Presidency, is an impartible estate, the succession to which is regulated by the custom of primogeniture. (*Sir Andrew Scoble.*) ABDUL AZIZ KHAN *v.* APPAYASAMI NAICKER.

(1903) 31 I.A. 1 = 27 M. 131 (140) = 6 Bom. L. R. 7 = 8 C. W. N. 186 = 8 Sar. 568.

———*Custom of—Nature of—Deed recording—Construction—Death of registered proprietor "without issue"—Devolution of estate in event of, on his younger brother or his eldest son—Provision for—Effect—Issue means issue in male line.*

In regard to an estate the succession to which was governed by a family custom of primogeniture, the nature of the family custom was thus referred to in a deed executed by the junior members of the family in favour of the then holder of the estate :—"Talooka Gungore, an ancestral estate, has been, in accordance with family custom from time immemorial, held by one person, the eldest son and the registered proprietor, from generation to generation, and in case the registered proprietor dies without issue, the younger brother of the deceased or his eldest son becomes the rightful proprietor of talooka Gungore."

It was contended that the usage limited the succession to the eldest son of the recorded owner, or, if he died without issue, then to his younger brother or brother's son ; that there was no evidence of any custom beyond those limits ; and that the last owner having died without a son or brother or brother's son, the custom as proved could not be held to modify the ordinary law of inheritance applicable to those circumstances.

Held that, in the statement of the family customs in the said deed, it was not intended to confine the passing over of the whole, in the event of the proprietor dying without issue, to a younger brother of the deceased or his eldest son, and further, that the words "without issue" must be taken to import "issue in the male line" (272).

In a document between Hindus, and indeed in the Mitakshara itself, it is by no means unusual to find that the leading member of a class is alone mentioned when it is intended to comprehend the whole class. Accordingly the real effect of the definition of the family custom in the deed referred to above was that the property was ancestral property ; that, though ancestral property, it was held by special custom by one person at the time according to the rule of primogeniture, with a provision that where the direct male line failed it should then go over to the collateral lines (272). (*Sir James W. Colvile.*) CHOWDHRY CHINTAMUN SINGH *v.* MUSSAMUT NOWLUKHO KONWARI. **(1875) 2 I. A. 263 = 1 C. 153 (162) = 24 W R. 255 = 3 Sar. 537 = 3 Suth. 204.**

———*Custom of—Patcum Raj in Chutia Nagpur.*

The Raj of *Patcum* in Chutia Nagpur is admittedly an impartible raj, and one in which the custom of primogeniture exists (249). (*Sir Richard Couch.*) RAJAH UDAYA ADITYA DEB *v.* JADUB LAL ADITYA DEB.

(1881) 8 I. A. 248 = 8 C. 199 (202) = 4 Sar. 290.

———*Custom of—Proof of—Quantum.*

On a contest between the sons of *G.* the last holder of the ilaka of Rawutpore, situate in the Zillah of Cawnpore, in Bengal, *held*, on the evidence affirming the court below, that the Raj of Rawutpore was indivisible, and descended entire to the eldest son to the exclusion of the other sons.

The evidence in the case consisted, *inter alia* of—

(1) a statement by *G*, the father, before the Magistrate of the Foujdari Court of the District to the effect that the custom in his family was, through every generation since the estate came into existence, that the eldest son succeeded to the musnud, and the estate was held by him entire and undivided, and that the subsistence of the other sons was provided for ;

(2) statements by Rajas made in answer to inquiries by the Magistrate as to the custom with respect to the division of estates of Rajas, such statements being in favour of the custom found ; and

(3) the pedigree of the suit family, which showed that there had been eight descents, and that in three or four at least of those there having been more than one son, the property had not been divided between those sons. (*Mr. Pemberton Leigh.*) RAWUT URJUN SINGH *v.* RAWUT GHUNSIAM SING. **(1851) 5 M. I. A. 169 = 1 Suth. 227 = 1 Sar. 415.**

———*Custom of, applicable to lands appertaining to chief—Civil and criminal powers of chief—Withdrawal by Government of—Acquisitions of chief subsequent to—Applicability of custom to.*

In a suit brought by the younger sons of the last holder of the Kunjpura estate against their eldest brother for partition of the said estate, the defendant pleaded that the estate was an impartible riasat or principality which had been recognised as such by the sovereign power, and which had descended under a custom of primogeniture, and that the plaintiffs had no title beyond a claim to maintenance.

The Court below found in favour of the custom set up by the defendant, and held that it applied to all property that appertained to the riasat prior to 1849. In that year the Government withdrew from the chiefs of Kunjpura the quasi-sovereign powers they had till then exercised. The Court below was of opinion that in consequence of that withdrawal the chiefship ceased as an independent entity and that the lands and property acquired by the Nawab after 1849 were not subject to the same rule of succession as had applied to "lands which once appertained to the chief as chief." The Court below accordingly decreed the plaintiffs' claim in respect of the properties acquired subsequent to 1849.

Held, dissenting from the Court below, that the custom found applied equally to acquisitions made after 1849.

There is nothing to show that the Government, in withdrawing the civil and criminal powers the Chiefs had hitherto exercised, intended to make any alteration in their status or to vary the rule which had governed the succession to the Kunjpur estate. The withdrawal of those powers was no doubt due to the needs of administration, but that circumstance cannot affect the custom under which the entire estate descended by the rule of primogeniture to a single male heir (95). (*Mr. Ameer Ali.*) IBRAHIM ALI KHAN *v.* MUHAMMAD AHSAN ULLAH KHAN.

(1912) 39 I. A. 85 = 14 Bom. L. R. 271 = 9 A.L.J. 390 = 15 C. L. J. 352 = 16 C. W. N. 625 = 13 I. C. 695 = 22 M. L. J. 478.

———*Lineal primogeniture—Custom of—Applicability of, to cases of collateral succession—Evidence of—Applicability of custom in cases of direct succession—Evidence of—Value of.*

The question was whether the rule of lineal primogeniture applied in cases of collateral relationship in the succession to the impartible estate called Dhalboom, which descended upon a single heir. It was admitted that according to the *koolachar* or custom in the family, and those belonging to the same group, a grandson whose father was dead succeeded to the grandfather's estate in preference to a surviving uncle. But it was contended that that did not prove that

HINDU LAW—(*Contd.*)

Impartible Estate—Succession to—(*Contd.*)

PRIMOGENITURE—(*Contd.*)

the rule of lineal primogeniture applied in cases of collateral relationship.

Held that that fact had an important bearing on the question, though standing alone it might not be sufficient to establish the point. (*Lord Macnaghten.*) MOHESH CHUNDER DHAL *v.* SATRUGHAN DHAL.

(1902) 29 I. A. 62 (67-8) = 29 C. 343 (353) = 6 C. W. N. 459 = 4 Bom. L. R. 372 = 8 Sar. 238.

———*Lineal primogeniture—Custom of—Applicability of, to cases of collateral succession—Proof of.*

In a case in which the question was whether the rule of lineal primogeniture applied in cases of collateral relationship in the case of succession to the impartible estate of Dhalboom, *held* that the respondent who had set up such a custom had established it by satisfactory evidence. (*Lord Macnaghten.*) MOHESH CHUNDER DHAL *v.* SATRUGHAN DHAL. **(1902) 29 I. A. 62 = 29 C. 343 = 6 C.W.N. 459 = 4 Bom. L. R. 372 = 8 Sar. 238.**

———*Lineal primogeniture—Custom of—Proof of—Quantum.*

The appeal arose out of a suit brought by the respondents to recover possession from the appellant with mesne profits of part of a Zamindari (known as the Chakai Estate) in the Monghyr District, to which they claimed that one or other of them had title as reversionary heir of the last male owner.

The estate was impartible ancestral property, and it was alleged that the right of succession was governed by a family as well as a local custom under which the estate devolved upon the eldest male member of the senior branch who was known as the Tekait.

The Courts below held that the custom of succession alleged by the respondents was established.

Their Lordships affirmed the judgments below. (*Viscount Haldane.*) RAVANESHWAR PRASAD SINGH *v.* CHANDI PRASAD SINGH. **(1915) 43 C. 417 = 36 I.C. 499.**

———*Lineal primogeniture—Rule of—Applicability of—Evidence of—Families of same group—Decrees establishing rule in—Value of.*

In a case in which the question was whether the rule of succession in a family holding an impartible estate descendible to a single heir was lineal primogeniture, *held* that decrees relating to disputes in families, belonging to the same group, in which it was decided that the rule of succession was lineal primogeniture, though not binding on the parties to the suit, went a long way to show the prevalence of the custom among families having a common origin, and settled in the same part of the country. (*Lord Macnaghten.*) MOHESH CHUNDER DHAL *v.* SATRUGHAN DHAL.

(1902) 29 I. A. 62 (68) = 29 C. 343 (354) = 6 C. W. N. 459 = 4 Bom. L. R. 372 = 8 Sar. 238.

———*Lineal primogeniture—Rule of—Applicability of—Evidence of—Titles of honor given to sons of reigning Raja in order of seniority—Precedence marked by—Value of.*

In coming to the conclusion that the rule of succession in a family holding an impartible estate descendible to a single heir was lineal primogeniture, the High Court relied on the precedence conferred or marked by the titles of honor given to the sons of the reigning Raja in order of seniority, a precedence which would naturally be attached to the lines of descent traced from them.

Held that the High Court was right in relying upon that circumstance. (*Lord Macnaghten.*) MOHESH CHUNDER DHAL *v.* SATRUGHAN DHAL. **(1902) 29 I. A. 62 (68) = 29 C. 343 (354) = 6 C. W. N. 459 = 4 Bom. L. R. 372 = 8 Sar. 238.**

HINDU LAW—(*Contd.*)

Impartible Estate—Succession to—(*Contd.*)

PRIMOGENITURE—(*Contd.*)

———*Rule of—Applicability of, in absence of anything pointing to a different conclusion.*

If there is absolutely nothing to guide the mind to any other conclusion, an impartible estate will descend according to the law of primogeniture (145.) (*Sir Arthur Hobhouse.*) THAKUR ISHRI SINGH *v.* BALDEO SINGH **(1884) 11 I.A. 135 = 10 C. 792 (805) = 13 C L. R. 418 = 4 Sar. 528 = R. & J.'s No 79 (Oudh).**

———*Rule of—Applicability of, to cases of two widows.*

Quaere Whether the rule of primogeniture could be applicable to the case of two widows (161). (*Sir Barnes Peacock.*) RAJAH RUP SINGH *v.* RANI BAISNI. **(1884) 11 I.A. 149 = 7 A. 1 (17) = A.W.N. (1884) 246 = 4 Sar. 533.**

———*Rule of, applicable—Preferential right in case of, under Mitakshara law—Claimant entitled under rule of lineal primogeniture—One nearer in degree.*

In a case in which the " rule of primogeniture " regulates the succession to an impartible estate, the claimant who will be entitled to succeed under the rule of lineal primogeniture is, under the ordinary Mitakshara law, entitled to succeed in preference to the one who is nearer in degree. (*Lord Shaw.*) DEBI BAKHSH SINGH *v.* CHANDRABHAN SINGH. **(1910) 37 I. A. 168 (181) = 32 A. 599 (610-1) = 12 C. L. J. 303 = 14 C. W. N. 1010 = 8 M. L. T. 273 = 7 A. L. J. 1122 = 12 Bom. L. R. 1015 = 13 O. C. 316 = 7 I. C. 734 = 20 M. L. J. 917.**

———*Tanistry or, applicable—Onus of Proof—Evidence.*

On the death of *M*, an Oudh talukdar, without issue, a question arose as to the rule of succession applicable to the property moveable and immoveable, other than the taluka, of which he died possessed. The appellant and the respondent were the brothers of *M*, the appellant being the elder. It was common ground that the property in dispute was impartible, and the question for decision was whether, as contended for the appellant, it descended by the law of primogeniture, that is, whether the eldest took the whole. There was evidence adduced in the case showing that tanistry (selection of the ablest of several members, without reference to seniority) rather than primogeniture was the governing rule of the family.

Held that the appellant, on whom the *onus* lay to show that primogeniture was the law of the family, had failed to prove his case (147-8). (*Sir Arthur Hobhouse.*) THAKUR ISHRI SINGH *v.* BALDEO SINGH. **(1884) 11 I. A. 135 = 10 C. 792 (805) = 13 C. L. R. 418 = 4 Sar 528 = R. & J.'s No. 79 (Oudh).**

RULE OF, APPLICABLE.

———Effect on. *See* Cases under HINDU LAW—IMPARTIBLE ESTATE—NATURE AND INCIDENTS OF.

———*Evidence—Statement or return by former holder of estate in answer to official inquiry—Admissibility—Weight due to—No positive rule of succession in the family laid down therein—Effect.*

In a case in which the question was whether the rule of succession in a family holding an impartible estate descendible to a single heir was lineal primogeniture, it appeared that the grandfather of the last owner made, when he was the ruling Raja, a statement or return in answer to an official requisition on a printed form. The statement or return was a clear statement of succession as regards the Raja's own sons. In dealing with more remote relations the Raja did not arrange the members of his family in any intelligible order of succession. Indeed the heading of the column in which the relationship of those persons was stated

HINDU LAW—(*Contd.*)

Impartible Estate—Succession to—(*Contd.*)

RULE OF, APPLICABLE—(*Contd.*)

did not require that the names entered therein should be arranged according to their order of succession to the estate. The heading simply required that there should be written how many sons, how many brothers and brothers' sons, the zemindar had, and amongst them who were near and who were remote, and by how many generations remote, with particulars.

That statement or return was principally relied upon against the contention that the rule of succession was lineal primogeniture. The High Court treated the document as an important document, but declined to accept it as laying down any positive rule of succession in the family.

Held that the learned Judges of the High Court acted rightly in the matter. (*Lord Macnaghten.*) MOHESH CHUNDER DHAL *v.* SATRUGHAN DHAL.

(1902) **29 I.A.** 62 (68-9) = **29 C.** 343 (354-5) = **6 C.W.N.** 459 = **4 Bom. L. R.** 372 = **8 Sar.** 238.

———*General Hindu law in absence of family custom beyond custom of impartibility.*

When an estate is impartible it is enjoyed in a different mode from that prescribed by the ordinary Hindu law; but the inheritance is to be treated by the same mode, unless some further family custom exists beyond the custom of impartibility. (*Lord Hobhouse.*) MUTTUVADUGANADHA TEVAR *v.* PERIASAMI. (1896) **23 I.A.** 128 = **19 M.** 451 = **7 Sar.** 83 = **6 M.L.J.** 149.

———*General Hindu law with such qualifications only as flow from impartible character of estate.*

In the case of a zemindary, which is in the nature of a principality, impartible, and capable of enjoyment by only one member of a family at a time, the rule of succession is that of the general Hindu law prevalent in that part of India, with such qualifications only as flow from the impartible character of the subject (6). (*Sir Montague E. Smith.*) RAMALAKSHMI AMMAL *v.* SIVANANTHA PERUMAL SETHURAYAR. (1872) **Sup. I A. 1 = 14 M.I.A 570 = 12 B.L.R. 396 = 2 Suth. 603 = 3 Sar. 108 = 17 W.R. 553.**

———See also. (*Sir John Wallis.*) KONNAMMAL *v.* ANNADANA TADAYA GOUNDER. (1928) **55 I.A. 114 = 51 M. 189.**

———*Partible property—Rule of succession applicable to—Applicability of.*

According to the decision in the Shivagunga case, the fact of the Raj being impartible does not affect the rule of succession. In considering who is to succeed on the death of the Raja, the rules which govern the succession to a partible estate are to be looked at, and the question is, what would be the right of succession, supposing instead of being an impartible estate it were a partible one (131). (*Sir Richard Couch.*) RAJA JOGENDRA BHUPATI HURRI CHUNDUN MAHAPATRA *v.* NITYANUND MANSINGH.

(1890) **17 I.A.** 128 = **18 C.** 151 (154) = **5 Sar.** 596.

———In considering who is to succeed on the death of the holder of an impartible estate, the first principle is that a rule of decision in regard to succession to impartible property is to be found in the Mithakshara law applicable to partible property, subject to such modifications as naturally flow from the character of the property as an impartible estate. The second principle is that the only modification which impartibility suggests in regard to the right of succession is the existence of a special rule for the selection of a single heir when there are several heirs of the same class who would be entitled to succeed to the property if it were partible under the general Hindu law. We have first to ascertain the class, and we have next to select the single heir applying the special rule. (*Lord Collins.*) PARBATI KUNWAR *v.* CHUNDUR PAL KUNWAR.

(1909) **36 I. A. 125** (136-7) = **31 A.** 457 (475-6) =

HINDU LAW—(*Contd.*)

Impartible Estate—Succession to—(*Contd.*)

RULE OF, APPLICABLE—(*Contd.*)

10 C.L.J. 216 = 13 C.W.N. 1073 = 11 Bom. L. R. 890 = 6 A.L.J. 767 = 12 O.C. 304 = 4 I.C. 25 = 19 M.L.J. 605.

SELF-ACQUISITION OR SEPARATE ESTATE OF HOLDER.

———Joint family member—Estate forming self-acquisition or separate property of—Rule applicable to. *See* HINDU LAW—IMPARTIBLE ESTATE—SUCCESSION TO—JOINT FAMILY MEMBER.

(1863) **9 M. I. A. 539** (615).

———Rule of succession applicable to—Applicability of, to joint ancestral estate on mere ground of impartible nature of estate. *See* HINDU LAW—IMPARTIBLE ESTATE—JOINT FAMILY PROPEREY—ESTATE FORMING—SUCCESSION TO—SEPARATE PROPERTY.

———Succession to estate on foot of its being—Right of—Renunciation of. *See* HINDU LAW—IMPARTIBLE ESTATE—JOINT FAMILY PROPERTY—ESTATE FORMING—SEPARATION AS REGARDS—AGREEMENT EFFECTING—AGREEMENT BY HOLDER, ETC.

(1878) **5 I.A. 61 = 1 M. 312.**

SEPARATED MEMBER—ESEATE OF—RULE APPLICABLE TO.

———If the zemindar, at the time of his death, was separate in estate from his brother's family, the zemindary ought to have passed to one of his widows, and failing his widows, to a daughter, or descendant of a daughter, preferably to nephews; following the course of succession which the law prescribes for separate estate (589). (*Lord Justice Turner.*) KATAMA NATCHIAR *v.* THE RAJA OF SHIVAGUNGA. (1863) **9 M.I.A. 539 = 2 W. R. (P. C.) 31 = 1 Suth. 520 = 2 Sar. 25.**

———Applicability of, to estate forming joint family property by mere fact of impartibility of estate. *See* HINDU LAW—IMPARTIBLE ESTATE—JOINT FAMILY PROPERTY—ESTATE FORMING—SUCCESSION TO—SEPARATE PROPERTY—MITHAKSHARA RULE OF, ETC.

———*Females—Inheritance right of—Custom of impartibility not necessarily inconsistent with.*

The widow of the last holder of an impartible estate which descends by the rule of primogeniture is not excluded from the succession if her husband was in fact separated and died without male issue, and if no custom which would exclude her from the succession is proved. There is no inconsistency between a custom of impartibility and the right of females to inherit, and therefore the general law must prevail unless it be proved that the custom extends to the exclusion of females (198). (*Sir John Edge.*) THAKURAIN TARA KUMARI *v.* CHATURBHUJ NARAYAN SINGH. (1915) **42 I.A.** 192 = **42 C.** 1179 (1191) = **19 C.W.N.** 1115 = **18 M.L.T.** 228 = **2 L.W.** 843 = **(1915) M.W.N.** 717 = **13 A.L.J.** 1034 = **17 Bom L.R.** 1012 = **22 C.L.J.** 498 = **30 I. C.** 833 = **29 M.L.J.** 371.

SONS OF DIFFERENT WIVES—PREFERENCE.

———*Elder son by third wife—Younger son by second.*

Held that, under the general Hindu law, apart from any district or family custom, an elder son by the third wife of the last male holder of an impartible zemindary was entitled to inherit in preference to the younger by the second wife of the deceased, the mothers being of the same caste (8-9). (*Sir Montague E. Smith.*) RAMALAKSHMI AMMAL *v.* SIVANANTHA PERUMAL SETHURAYAR.

(1872) **Sup. I. A. 1 = 14 M. I. A. 570 = 17 W. R. 553 = 12 B. L. R. 396 = 2 Suth. 603 = 3 Sar. 108.**

HINDU LAW—(*Contd.*)

Impartible Estate—Succession to—(*Contd.*)

SONS OF DIFFERENT WIVES —PREFERENCE—(*Contd.*)

———*Eldest son of wife married later—Younger son of first-married wife or of wife married earlier.*

According to the Hindu law, the eldest son of a wife married later is entitled to succeed to the impartible estate of his father in preference to a younger son of a wife married earlier, or of the first-married wife (108-9). (*Lord Davey.*) JAGADISH BAHADUR *v.* SHEO PARTAB SINGH.

(1901) 28 I.A. 100 = 23 A. 369 (380-1) = 5 C.W.N. 602 = 3 Bom.L.R. 298 = 8 Sar. 19 = 11 M.L.J. 178.

———*First-born son of fourth wife—Later-born son of third wife married after death without issue of former wives—Wives of same class or caste—Wives of different castes—Distinction.*

Held, that as between the appellant, the son of the third wife of a poligar, whose marriage took place after the death without issue of the two former wives, and the respondent, the son of his fourth wife but born before the appellant, the latter was entitled to succeed to his father's estate in preference to the former, in a case in which their mothers were of the same class (7-8).

The preference which has been given to the first-born son over his brothers, irrespective of the priority of the marriages of their mothers, mainly depends upon the religious rules which guide the Hindu community. The principle deduced from the rules above mentioned, and the reasons upon which their Lordships' judgment in the case of Ramalakshmi Ammal (14 M. I. A. 570) are founded, apply with equal force to the first-born son of his father, whether born of a first-married wife or of a junior wife (4-5). The reasons on which the precedence and privileges of the first wife over her co-wives are founded are scarcely pertinent to the succession of sons to their father, which is governed by other considerations (7).

Quaere, what would be the proper rule of succession where the wives are of a different class or caste (6). (*Sir Montague E. Smith.*) PEDDA RAMAPPA NAYANIVARU *v.* BANGARI SESHAMMA NAYANIVARU. **(1880) 8 I. A. 1 = 2 M. 286 (290, 293, 292) = 8 C. L. R. 315 = 4 Sar. 203.**

———Younger son of first wife—Preference of, to elder son by junior wife—Custom of—Existence of—Concurrent findings as to—Privy Council's interference with—Practice. (*Lord Davey.*) JAGADISH BAHADUR *v.* SHEO PERTAB SINGH. **(1901) 28 I.A. 100 (107) = 23 A. 369 (379 80) = 5 C. W. N. 602 = 3 Bom. L. R. 298 = 8 Sar. 19 = 11 M. L. J. 178.**

———*Younger son of senior wife—Elder son of junior wife—Preference of former to latter—Custom of—Evidence of—Court of wards—Collector making inquiry on behalf of Board of Revenue as—Opinions of Zemindars of District obtained by—Summary of, given in Collector's letter to Board of Revenue—Admissibility of—Value of.*

The suit related to the succession to the impartible estate of Urcadu in the Tinnevelly District and the question was whether there existed amongst the Zemindars of the District a custom by which the son of the senior wife, though younger, was entitled to succeed in preference to an earlier-born son of a junior wife.

In 1849, the Board of Revenue acting as the Court of Wards desiring to know which of the two minor sons of the Zemindar of Parayur, was to succeed him, requested the Collector of Tinnevelly and Madura to ascertain the rule of succession "as regards sons by different wives," and it appeared from the Collector's letter to the Secretary of the Board that the opinions of 20 Zemindars and the Poligars were collected, copies of which he sent, giving also, at the same time, an abstract of them in his letter. The Court of Wards acted upon the opinions thus obtained.

The Zemindars who gave their opinions as above stated or some of them could have been called as witnesses in support of the custom set-up. But not only were none examined but even their written opinions, as they gave them, were not produced. The only evidence offered of those opinions was the Collector's letter and summary above referred to.

Held, that the Collector's letter and summary was not properly admissible, and if received, could not be safely relied on as affording clear and unambiguous proof of the existence of an ancient and invariable custom in the district (5). (*Sir Montague E. Smith.*) RAMALAKSHMI AMMAL *v.* SIVANANTHA PERUMAL SETHURAYAR.

(1872) Sup. I. A. 1 = 17 W. R. 553 = 12 B. L. R. 396 = 1 Suth. 603 = 3 Sar. 108 = 14 M. I. A. 570.

Impartible Estate—Sunnud granted by Government in respect of—Effect of.

———*Grant creating new right—Acknowledgment of existing title—Test.*

Held, in the case of a Sunnud granted by the Government in respect of a polliem, that what was called the Sunnud was not a grant creating a new right, but a mere recognition or acknowledgment of an existing title (312). (*Sir Barnes Peacock.*) THE COLLECTOR OF TRICHINOPOLY *v.* LEKKAMANI. **(1874) 1 I. A. 282 = 14 B. L. R. 115 = 21 W. R. 358 = 3 Sar. 318.**

Impartible Estate—Sunnud granting—Setting aside of, on ground of fraud—Suit for.

———*Maintainability—Lapse of time.*

In a suit brought in 1886 the appellant contended that by a fraud alleged to have been committed in the years 1802 and 1803 by *G*, a Sunnud appointing him Zemindar of Shivagunga was granted to him by the Government in 1803, whereas it should have been granted to his elder brother *W*.

G, however, entered upon the Zemindari at the date of the Sunnud, and he and his descendants had enjoyed it ever since. There was no secrecy about his appointment to be Zemindar. The matter was the subject of public proclamation, and *W* must have known, and all his descendants must have known, that the Sunnud granting the Zemindary was in the name of *G*, and the Zemindari was actually occupied and enjoyed by *G* and his descendants.

Held, that the suit instituted after such a long lapse of time to re-open the question was not maintainable. (*Lord Hobhouse.*) BALA GOURI VALLABHA TEVAR *v.* ZEMINDAR OF SHIVAGANGA. **(1894) 21 I. A. 93 = 17 M. 384 = 6 Sar. 466 = 4 M. L. J. 139.**

Impartible Estate—Tipperah Raj.

———*Jobraj—Appointment of—Custom as to—Eldest son of kindred Jobraj—Appointment of—Necessity.*

Held, on the evidence in the case, that in the Tipperah Raj there was no restriction by the family custom on the reigning Rajah, obliging him to appoint the eldest of his kindred *Jobraj* (538-9) (*Lord Chelmsford.*) NEELKISTO DEB BURMONO *v.* BEERCHUNDER THAKOOR.

(1869) 12 M. I. A. 523 = 12 W. R. (P. C.) 21 = 3 B. L. R. (P. C.) 13 = 2 Suth. 243 = 2 Sar. 467.

———*Jobraj—Appointment of—Proof of.*

Held, on the evidence in the case, that the deceased Raja of Tipperah did in fact appoint the respondent, his uterine brother, *Jobraj* (549-50) (*Lord Chelmsford.*) NEELKISTO DEB BURMONO *v.* BEERCHUNDER THAKOOR.

(1869) 12 M. I. A. 523 = 12 W. R. (P. C.) 21 = 3 B. L. R. (P. C.) 13 = 2 Suth. 243 = 2 Sar. 467.

HINDU LAW—(*Contd.*)

Impartible Estate—Tipperah Raj—(*Contd.*)

———*Jobraj—Selection of—Free choice of reigning Raja as to—Custom of—Evidence defeating—Actual observance of seniority in a considerable number of instances if.*

With regard to the custom of the appointment of a *Jobraj* by a reigning Rajah of Tipperah, the question was whether, as contended by the appellant, the reigning Rajah was bound to appoint a *Jobraj* partly on account of an alleged promise or intention on the part of the former *Rajah*, and partly on the ground that he was the oldest living member of the class out of which, according to the family custom, a *Jobraj* could alone be selected, or whether, according to the respondent's contention, the choice of the reigning *Rajah*, at least within a certain class, was absolutely free, and could not be controlled by the wishes of a former Rajah. The appellant's preferential title by seniority to the *Jobrajship* was sought to be established by evidence of a family custom to be collected from the instances given in the genealogy of actual successions.

Held, however, that where there was evidence of a power of selection the actual observance of seniority even in a considerable series of successions could not of itself defeat a custom which established the right of free choice (538). (*Lord Chelmsford.*) NEELKISTO DEB BURMONO *v.* BEERCHUNDER THAKOOR. **(1869) 12 M. I. A. 523 = 12 W. R. (P. C.) 21 = 3 B. L. R. (P. C.) 13 = 2 Suth. 243 = 2 Sar. 467.**

———*Succession to—Custom of, in absence of appointment of Jobraj or Burra Thakoor.*

The custom in the Tipperah Raj, where no appointment of *Jobraj* or *Burra Thakoor* has been made, requires the union of two things to constitute the legal heir, *viz.*, seniority in age and nearness of kin (541-2). (*Lord Chelmsford.*) NEELKISTO DEB BURMONO *v.* BEERCHUNDER THAKOOR. **(1869) 12 M. I. A. 523 = 12 W. R. (P. C.) 21 = 3 B. L. R. (P. C.) 13 = 2 Suth. 243 = 2 Sar. 467.**

———*Succession to—Jobraj and Burra Thakoor—Appointment of—Custom of.*

According to the kulachar or family custom governing the right of succession to the Tipperah Raj and the Zemindary appertaining to it, a reigning Rajah should name a *Jobraj* and *Burra Thakoor*, of whom the first succeeds to the throne and the latter to the office of *Jobraj*. Both parties to this appeal admit the custom so far (538). (*Lord Chelmsford.*) NEELKISTO DEB BURMONO *v.* BEERCHUNDER THAKOOR **(1869) 12 M. I. A. 523 = 12 W. R. (P. C.) 21 = 3 B. L. R. (P. C.) 13 = 2 Suth. 243 = 2 Sar. 467.**

———*Succession to—Law governing—Kulachar.*

It is admitted that the right of succession to both the Tipperah Raj and the zemindary appertaining to it is governed not by the general law, but by *kulachar* or family custom (537). (*Lord Chelmsford.*) NEELKISTO DEB BURMONO *v.* BEERCHUNDER THAKOOR.

(1869) 12 M. I. A. 523 = 12 W. R. (P. C.) 21 = 3 B. L. R. (P. C.) 13 = 2 Suth. 243 = 2 Sar 467.

Impartible Estate—Tirhoot Zemindary.

———*Abdication by reigning Raja in favour of eldest son or next immediate male heir—Custom of—Proof of.*

The question in the case was, whether the ancestral estate of the Zemindary of Tirhoot constituted a *Raj* domain, and as such descended entire to a single heir to the exclusion of the other members of the family, or was divisible among the co heirs in equal shares according to the usual course of succession provided by the Hindu law. The first respondent maintained the former, and the appellant the latter, of these propositions.

Held, on the evidence, that no doubt could be entertained either as to the fact of the estate being a *Raj*, or as to the

HINDU LAW—(*Contd.*)

Impartible Estate—Tirhoot Zemindary—(*Contd.*)

fact of the usage prevailing that the reigning Raja has the power of abdicating, and by deed assigning the Raj in favour of his eldest son or next immediate male heir, and that such usage was proved beyond all controversy to have prevailed in that country, and to have been acted upon in the instance in question (193). (*Mr. Pemberton Leigh.*) BABOO GUNESH DUTT SINGH *v.* MAHARAJA MOHESHUR SINGH. **(1855) 6 M. I. A. 164 = 2 Suth. 20 = 1 Sar. 521.**

———*Junior members in—Baboo allowances to—Grants by way of—Absolute grants to them—Incidents of—Distinction.*

A *Baboo* allowance is a provision for younger sons, as an appanage of the Zemindary of Tirhoot (178). Where an estate is granted to a younger son as a *Baboo* allowance, he continues to pay the rent and assessment to the Raja; the property is never separated from the Zemindary at all. The cases, therefore, of absolute grants, and of grants by way of *Baboo* allowance, are essentially different in their nature. Properties entirely transferred under a deed of grant would be transferred as such in the Collector's Books into the names of those persons to whom they were given. If they are made as *Baboo* allowances, they will be described in the Collector's Books as *Baboo* allowances, and the owners of those Baboo allowances will have to pay the revenue, not to the Government, but to the Raja in whose Principality the property is situate (197). (*Mr. Pemberton Leigh.*) BABOO GUNESH DUTT SINGH *v.* MAHARAJAH MOHESHUR SINGH. **(1855) 6 M. I. A. 164 = 2 Suth. 20 = 1 Sar. 521.**

Impartible Estate—Title to—Contest as to—Evidence in case of.

———*Nicest scrutiny and examination of—Necessity of—Reason for.*

This contest is in truth a contest as to the title to reign. Into such disputes, passions stronger than those which affect the minds of ordinary litigants may well be supposed to enter, and fear and favour may sway in an unusual degree the minds of those who depose on either side. The power of an absolute Prince over the fate of those who surround him may enable him to carry a body of witnesses deposing to facts to which it may be difficult to offer any positive contradiction. The addition by false testimony of an incident or two, or of a few words, to an actual scene or ceremony, may, if credited, determine the title to a throne; and it is scarcely possible to conceive a case more requiring than this does, the nicest scrutiny and examination of the evidence. (*Lord Chelmsford.*) NEELKISTO DEB BURMONO *v.* BEERCHUNDER THAKOOR.

(1869) 12 M. I. A. 523 (543) = 12 W. R. (P. C.) 21 = 3 B. L. R. (P. C.) 13 = 2 Suth. 243 = 2 Sar. 467.

Impartible Estate—Transfer of.

———*Registered instrument—Necessity—Recital of transfer in mortgage deed—Notices to revenue authorities of alleged transfer—Mutation of names—Delivery of possession—Sufficiency of.*

An impartible Zemindary having been mortgaged, the Zemindar, with other members of the joint family, including the defendant, his then presumptive heir, executed on November 4, 1882, a deedpoll addressed to the mortgagee which recited that a portion of the mortgage amount was borrowed in order that it might be paid as a recompense to the Zemindar for his transferring even then the right to the Zemin to the defendant and his addressing an arzi to the Collector stating the said fact. The deed, after reciting that the mortgaged properties had been conveyed to the mortgagee to be enjoyed by him in lieu of interest, provid

HINDU LAW—(*Contd.*)

Impartible Estate—Transfer of—(*Contd.*)

ed that on payment at the end of any fusli by all the executants jointly or by the defendant of the amount due under the mortgage, the mortgagee should transfer the mortgaged properties to the defendant.

The arzis contemplated in the deed were presented by the Zemindar to the effect that he had transferred to the defendant the right to the Zemindary and all other possessions and had delivered the same into his hands, and that the name of the defendant might be entered in the register and that orders might in future be issued for conducting all the revenue proceedings through the defendant as the Zemindar.

Mutation of names in the Collector's books was effected in the year 1888; though possession of the mortgaged properties had always been with the mortgagee, and it did not appear that the Zemindar was ever put out of possession of the other property.

Held, that, though there might have been an intention on the part of the Zemindar to transfer the Zemin and other properties to the defendant, it never was effected in the mode required by law; and that the defendant could not, as against the heir of the Zemindar, call for implement of the intention, because he failed to shew any contract founded on valuable consideration (55).

It is not disputed that according to the law established at this time such a transfer could not be effected except by a registered deed. The arzis and the statement made to the Collector clearly do not bear any such character. Even if a complete change had been effected as regards mutation of names in the Collector's books and as regards delivery of possession, it would at the utmost do no more than give a starting point for the law of limitation. It would not supply the conditions of the law of transfer (53). (*Lord Hobhouse.*) IMMUDIPATTAM THIRUGNANA *v.* PERIYA DORASAMI. **(1900) 28 I. A. 46 = 24 M. 377 (383-5) = 5 C. W. N. 217 = 7 Sar. 811.**

———*Valuable consideration—Transfer for—Contract for—Evidence of.*

In a suit to recover an impartible Zemindary, the defendant pleaded a contract for valuable consideration between plaintiff's predecessor in title and himself to transfer the Zemindary to him. The only proof adduced in support of such a contract was a recital of the transfer of the Zemindary to him in a deed of usufructuary mortgage executed by him, the predecessor in title of the plaintiff, and other members of the joint family to which they belonged, in favour of a third party.

Held, that the deed was both in form and substance a transaction between the family and the mortgagee for the purpose of strengthening his title and not between the several members of the family and that it did not evidence a contract between the Zemindar and the defendant which the latter could enforce (54). (*Lord Hobhouse.*) IMMUDIPATTAM THIRUGNANA *v.* PERIYA DORASAMI.

(1900) 28 I. A. 46 (54) = 24 M. 377 (384-5) = 5 C. W. N. 217 = 7 Sar. 811.

Impartible Estate—Udayarpalayam Estate

———Partible or impartible. *See* HINDU LAW—IMPARTIBLE ESTATE—NATURE AND INCIDENTS OF—MADRAS REG. XXV OF 1802. **(1905) 32 I. A. 261 (268-9) = 28 M. 508 (515).**

Impartible Estate—Usurpation of, by another member of family with aid of superior—Recognition of usurper by superior—Effect.

———Estate not separate property in hands of usurper. *See* HINDU LAW—IMPARTIBLE ESTATE—NATURE AND INCIDENTS OF—USURPATION OF, ETC.

(1870) 13 M.I.A. 333.

HINDU LAW—(*Contd.*)

Impartible Estate—Widow (with life interest under will of husband) in possession of—Manager of Estate—Pension on resignation to.

———*Ekrarnama providing for—Effect—Contract binding on recommendation merely.*

B, who was the widow of the last holder of the impartible estate of Dumraon, and who was in possession of the said estate under the will of her husband bequeathing the said estate to her for the term of her life, executed an ekrarnamah in favour of the respondent, the then manager of the estate. The ekrarnamah ran as follows:—

"I therefore, in order to safeguard against the loss which the said Munshi" (the respondent) "may sustain, if perchance he vacates this post" (that is, the managership of the estate) "for any reason in future, I think it just and proper that if in future the said Munshi gives up this service for any reason....., he, the said Munshi, shall get Rs. 500 monthly as pension for life from the date he resigns the post of manager of the Dumraon Raj, and I hope that by allowing this (torn) if perchance he, according to his desire, reverts to the profession of pleadership, he shall get to some extent compensation for the loss he may sustain for leaving his profession after (? for) a longtime, and he will pass his old age in comfort. The heirs and representatives of me, the executant, and the Gaddinashin and administrators of the Dumraon Raj should fully comply with the (terms of) this deed."

Held that the ekrarnama was not in terms a contract binding the executor or administrators of *B*, the widow, to pay the pension, nor could it be said that it was a binding contract on the owner or administrators of the Dumraon Raj to pay such a pension.

The words "should fully comply with the terms of this deed" are not a binding promise to pay such a pension, but only a recommendation by the lady to two different parties to comply with the deed, *i.e.*, to pay the pension. If it had been intended to provide that the pension was to be a right of the respondent to obtain this money, the words are surely insufficient to effect such an intention. The words are that they "should fully comply" with the terms of the deed. She did not treat, therefore, the ekrarnama as an ordinary contract. (*Sir Robert Stout.*) KESHO PRASAD SINGH *v.* SIV SARAN LAL. **(1921) 15 L. W. 589 = 1922 P. C. 226 = L. R. 3 P. C. 115 = 26 C. W. N. 689 = 30 M. L. T. 50 = 77 I. C. 44.**

Increment—Principal.

———Increment following. *See* HINDU LAW—PRINCIPAL.

Inheritance.

INHERITANCE.
ANCESTRAL AND SELF-ACQUIRED OR SEPARATE PROPERTIES—DEVOLUTION OF, UNDER MITHAKSHARA LAW.
ADOPTED SON.
AUTHORITIES ON LAW OF.
BANDHUS.
BROTHERS.
CASTE—DEGRADATION FROM.
COLLATERALS.
CROWN—ESCHEAT.
CUSTOM OF.
DAUGHTER.
DAUGHTER'S DAUGHTER.
DAUGHTER'S SON.
DEBTS BINDING ON.
DISQUALIFICATION SUBSEQUENT TO OPENING OF—DIVESTING OF ESTATE BY REASON OF.
EQUALITY AMONG HEIRS.
EXCLUSION FROM.
FEMALES.

HINDU LAW—(*Contd.*)

Inheritance—*Contd.*)

FREEHOLD AND PERSONALTY—SUCCESSION TO.
FULL-BLOOD AND HALF-BLOOD.
GENTILES IN THE MITHAKSHARA.
GHATWALLY TENURES.
GRANDMOTHER (PATERNAL).
HEIRS.
HEIRSHIP—UNITY OF.
ILLEGITIMATE SON.
INCREMENT--PRINCIPAL.
JOINT FAMILY—MEMBER OF.
INHERITANCE—LAST FULL OWNER.
LAW APPLICABLE.
LAW OF.
LEGAL COURSE OF—ALTERATION OF.
MIGRATING FAMILY.
MITHAKSHARA.
MITHILA LAW—MATERNAL RELATIONS.
MOTHER.
MURDERER.
OBSTRUCTED INHERITANCE.
PERSONS ENTITLED TO RIGHT OF.
PERSONS ENTITLED TO RIGHT OF—PREFERENCE AS BETWEEN.
PERSONS TAKING BY—DUTY OF.
PRIMOGENITURE.
PRINCIPAL—INCREMENT.
PROPINQUITY—SPIRITUAL BENEFIT.
RELIGION—CONNECTION BETWEEN.
RELIGIOUS SUCCESSION—SPIRITUAL PRECEPTOR—SUCCESSION TO—PUPIL'S RIGHT OF.
RIGHT OF.
RULE OF.
SAPINDAS.
SELF-ACQUIRED OR SEPARATE PROPERTY.
SISTER.
SON.
SOVEREIGN—PUBLIC AND PRIVATE PROPERTY OF.
SPIRITUAL BENEFIT.
SPIRITUAL PRECEPTOR.
SRADDH — PERFORMANCE OF -- PREFERABLE RIGHT OF.
Stare decisis—APPLICABILITY OF PRINCIPLE OF.
SURVIVORSHIP.
TRANSFER—DEVOLUTION OF PROPERTY BY.
UNOBSTRUCTED INHERITANCE.
VESTING OF--DISQUALIFICATION SUBSEQUENT TO.
WIDOW.
WOMAN.
YAGNAVALKYA'S TEXT RELATING TO SUCCESSION TO SONLESS HINDU.

Inheritance—Ancestral and self-acquired or separate properties—Devolution of, under Mithakshara law.

The Mithakshara law recognises two courses of devolution in the case of what is called "obstructed inheritance"—the ancestral property descending in one channel, the self-acquired property in another (281). (*Mr. Ameer Ali.*) MURTAZA HUSAIN KHAN *v.* MAHOMED YASIN ALI.
(1916) 43 I.A. 269 = 38 A. 552 (567) = 14 A.L.J. 1083 = 20 M.L.T. 362 = (1916) 2 M.W.N. 555 = 4 L.W. 538 = 19 O.C. 290 = 18 Bom. L. R. 884 = 25 C.L.J. 1 = 1 Pat. L. W. 122 = 21 C.W.N. 410 = 36 I.C. 299 = 31 M.L.J. 804.

———Courses and incidents of—Distinction. *See* HINDU LAW—INHERITANCE—JOINT FAMILY—MEMBER OF.
(1863) 9 M.I.A. 539 (609).

———Custom varying—Onus of proof of. *See* HINDU LAW—INHERITANCE—OBSTRUCTED INHERITANCE—DEVOLUTION OF.
(1916) 43 I.A. 269 (281-2) = 38 A. 552 (567-8).

HINDU LAW—(*Contd.*)

Inheritance—Adopted son.

———Inheritance by. *See* HINDU LAW—ADOPTION—ADOPTED SON—INHERITANCE BY.

———Inheritance to. *See* HINDU LAW—ADOPTION—ADOPTED SON—INHERITANCE TO.

Inheritance—Authorities on law of.

——— *See* HINDU LAW—INHERITANCE—LAW OF—AUTHORITIES ON.

Inheritance—Bandhus.

———*Meaning of word "Bandhu" in Mithakshara.*

The word "bandhu" has, in the system of Mithakshara, a distinctive and technical meaning, and signifies the Bhinna-gotra sapindas (306). It implies a relation belonging to a different family but entitled by Sapinda-relationship (308). (*Mr. Ameer Ali.*) RAMACHANDRA MARTANDA WAIKAR *v.* VINAYAK VENKATESH KOTHAKAR.
(1914) 41 I. A. 290 = 42 C. 384 (414, 416) = 18 C.W.N. 1154 = 16 M.L.T. 447 = 10 N.L.R. 112 = (1914) M.W.N. 835 = 16 Bom. L.R. 863 = 12 A.L.J. 1281 = 20 C.L.J. 573 = 25 I.C. 290 = 27 M.L.J. 333.

———Atma Bandhu—Preference of, over pitri bandhu. (*Lord Hobhouse.*) MUTHUSWAMI MUDALIAR *v.* MUTHUKUMARASWAMI MUDALIAR. **(1896) 23 I. A. 83 = 19 M. 405 = 7 Sar. 45 = 6 M. L. J. 113.**

———*Atma Bandhus* ex parte paterna *and* ex parte materna—*Preference as between.*

The question of priority as between atma bandhus *ex parte paterna* and those *ex parte materna* has been the subject of much discussion—the latest word on the subject being found in L. R. 48 I. A. 349, which decided that, as between pitri-bandhus and matri-bandhus, the preference given to the former is settled. (*Lord Phillimore.*) KENCHAVA *v.* GIRIMALLAPPA CHANNAPPA.
(1924) 51 I. A. 368 (376) = 48 B. 569 = 26 Bom. L. R. 779 = 20 L. W. 417 = A.I.R. 1924 P. C. 209 = 3 Pat. L. R. 9 = 22 A. L. J. 962 = 40 C. L. J. 447 = 29 C. W. N. 271 = 35 M. L. T. 241 = (1924) M. W. N. 719 = 82 I. C. 966 = 47 M. L. J. 401.

———*Class of—Division of each, into cognates* ex parte paterna *and cognates* ex parte materna *and preference of former to latter—Propriety of.*

Recent writers on Hindu law have divided each class of bandhus into two sub-classes respectively designated as cognates *ex parte paterna*, and cognates *ex parte materna*. The sub-division is evidently based on an inference from the order in which the several bandhus are mentioned in the illustrative enumeration. For instance, among the atma-bandhus enumerated, the name of the father's sisters son is first given ; then comes the mother's sister's son ; and after him the son of the mother's brother. Similarly, among the specifically named pitru-bandhus first comes the son of the father's paternal aunt, and amoung matru-bandhus the son of the mother's paternal aunt. From this it has been inferred that the expounder of the rule in question intended that each class should be divided into two sub-classes according to the side of relationship, and that in every case preference should be given to the father's side. *Quaere*, how far this proposition is in conformity with the express rule that in each class propinquity should be the governing factor (359). (*Mr. Ameer Ali.*) VEDACHALA MUDALIAR *v.* SUBRAMANIA MUDALIAR. **(1921) 48 I. A. 349 = 44 M 753 (761-2) = 14 L. W. 402 = (1921) M. W. N. 669 = 2 Pat. L. T. 707 = 26 C. W. N. 159 = 24 Bom.L.R. 649 = 30 M. L. T. 198 = 4 U. P. L. R. (P. C.) 13 = A. I. R. 1922 P. C. 33 = 64 I. C. 402 = 41 M. L. J. 676.**

HINDU LAW—(*Contd.*)

Inheritance—Bandhus—(*Contd.*)

———*Class same—Bandhus of—Succession as between—Mithakshara rule as to.*

Quaere, as to the rule of succession under the Mithakshara as between bandhus of the same class (94-5). (*Sir John Edge.*) ADIT NARAYAN SINGH *v.* MAHABIR PRASAD TEWARI. **(1921) 48 I. A. 86 = 2 Pat. L. T. 97 = 14 L. W. 20 = 25 C. W. N. 842 = 23 Bom. L. R. 692 = 6 Pat. L. J. 140 = 19 A. L. J. 208 = (1921) M. W. N. 153 = 33 C. L. J. 263 = 60 I. C. 251 = 40 M. L. J. 270.**

———*Classes of—Preference among—Basis of—Nearer class of Bandhus—Preference of, to more remote class—Basis of—Mithakshara law.*

In families governed by the law of the Mithakshara the right of succession amongst the three classes of bandhus mentioned in Ch II, S. 6 of the Mithakshara is governed by the propinquity of the class; accordingly a pitri-bandhu does not succeed until the class of atma-bandhus is exhausted, and a matri-bandhu does not succeed uutil the classes of atma bandhus and pitri-bandhus are exhausted. The rule of the Mithakshara, in preferring the nearer to the more remote class of bandhus, is not dependent on individual propinquity or on the efficacy of offerings to a deceased person (94-5). (*Sir John Edge.*) ADIT NARAYAN SINGH *v.* MAHABIR PRASAD TEWARI. **(1921) 48 I. A. 86 = 2 Pat. L. T. 97 = 14 L. W. 20 = 25 C. W. N. 842 = 23 Bom. L. R. 692 = 6 Pat. L. J. 140 = 19 A. L. J. 208 = (1921) M. W. N. 153 = 33 C. L. J. 263 = 60 I. C. 251 = 40 M. L. J. 270.**

———*Classes of, specified by Mithakshara—Addition to.*

The classes of Bandhus specified by the Mithakshara cannot be added to (309). (*Mr. Ameer Ali.*) RAMACHANDRA MARTANDA WAIKAR *v.* VINAYAK VENKATESH KOTHAKAR. **(1914, 41 I. A. 290 = 42 C. 384 (416-7) = 18 C. W. N. 1154 = 16 M. L. T. 447 = 10 N. L. R. 112 = (1914) M. W. N. 835 = 16 Bom. L. R. 863 = 12 A. L. J. 1281 = 20 C. L. J. 573 = 25 I. C. 290 = 27 M. L. J. 333.**

———*Enumeration of, in Mithakshara—Illustrative and not exhaustive.*

The text (enumerating the three classes of Bandhus and quoted in S. 6, Chapter II of the Mithakshara) does not purport to be an exhaustive enumeration of all Bandhus who are capable of inheriting, nor is it cited as such, or for that purpose, by the author of the Mithakshara,—it is used simply as a proof or illustration of his proposition, that there are three kinds or classes of Bandhu; and all that he states further upon it is, the order in which the three classes take, *viz.*, that the Bandhus of the deceased himself must be exhausted before any of his father's Bandhus can take, and so on (465). (*Sir James W. Colvile.*) GRIDHARI LALL ROY *v.* THE BENGAL GOVERNMENT.

(1868) 12 M. I. A. 448 = 10 W. R. (P. C.) 31 = 1 B. L. R. (P. C.) 44 = 2 Suth. 159 = 2 Sar. 382.

———The enumeration of bandhus as heirs in the Mithakshara is not enhaustive. It is an attempt to classify those heirs by sample, not to specify every member of each class. (*Lord Hobhouse.*) MUTHUSWAMI MUDALIAR *v.* SUNAMBEDU MUTHUKUMARASWAMI MUDALIAR

(1896) 23 I. A. 83 = 19 M. 405 = 7 Sar. 45 = 6 M. L. J. 113.

———*Father's Bandhus—Right of, on failure of deceased's bandhus.*

It is admitted that, failing the Bandhus of the deceased, the Bandhus of the father are entitled to inherit (467). (*Sir James W. Colvile.*) GRIDHARI LALL ROY *v.* GOVERNMENT OF BENGAL. **(1868) 12 M. I. A. 448 = 10 W. R. (P. C.) 31 = 1 B. L. R. (P. C.) 44 = 2 Suth. 159 = 2 Sar. 382.**

HINDU LAW—(*Contd.*)

Inheritance—Bandhus—(*Contd.*)

———*Heritable right of—Basis of, under Mithakshara—Sapinda-relationship—Meaning of—Mutuality of sapinda-relationship—Necessity.*

The right of inheritance is founded on Sapinda-relationship, which, under the Mithakshara-means consanguinity, in a distinct legal sense clearly explained by the author. This bond comes to an end with the fifth degree when the descent is through a female. It seems difficult to conceive that the right to inherit should continue after the relationship on which it is founded, and which gives it birth, has come to an end (310-1).

The Sapinda-relationship, on which the heritable right of collaterals is founded, ceases in the case of the Bhinna-gotra Sapinda with the fifth degree from the common ancestor; in order to entitle a man to succeed to the inheritance of another he must be so related to the latter that they are Sapindas of each other, in other words, there must be a mutuality of Sapinda-relationship between the propositus and his heritable Sapindas (311-2). (*Mr. Ameer Ali.*) RAMCHANDRA MARTANDA WAIKAR *v.* VINAYAK VENKATESH KOTHAKAR. **(1914) 41 I. A. 290 = 42 C. 384 (420) = 18 C. W. N. 1154 = 16 M. L. T. 447 = 10 N. L. R. 112 = (1914) M. W. N. 835 = 16 Bom. L. R. 863 = 12 A. L. J. 1281 = 20 C. L. J. 573 = 25 I. C. 290 = 27 M. L. J. 333**

———*Heritable right of, in female line—Condition.*

A bandhu must, in order to be heritable in a female line, fall within the fifth degree from the common male ancestor and must be so related to the deceased person that they were mutually sapindas of one another, that is to say, where the Mithakshara law applies, persons connected by particles of one body; but if these conditions are satisfied that rule takes effect. (*Sir John Edge.*) ADIT NARAYAN SINGH *v.* MAHABIR PRASAD TEWARI. **(1921) 48 I. A. 86 = 2 Pat. L. T. 97 = 14 L. W. 20 = 25 C. W. N. 842 = 23 Bom. L. R. 692 = 6 Pat. L. J. 140 = 19 A. L. J. 208 = (1921) M. W. N. 153 = 33 C. L. J. 263 = 60 I. C. 251 = 40 M. L. J. 270.**

———*Inheriting bandhus under Mithakshara.*

The Bhinna-gotra sapindas (blood relations connected through females who have passed into other families or gotras) on whom the law confers the right of inheritance are the inheriting sapindas (354.) (*Mr. Ameer Ali.*) VEDACHALA MUDALIAR *v.* SUBRAMANIA MUDALIAR.

(1921) 48 I. A. 349 = 44 M. 753 (757) = 14 L. W. 402 = (1921) M. W. N. 669 = 2 Pat. L. T. 707 = 26 C. W. N. 159 = 24 Bom. L. R. 649 = 30 M.L.T. 198 = 4 U. P. L. R. (P. C.) 13 = A. I. R. 1922 P. C. 33 = 64 I C. 402 = 41 M. L. J. 676.

———*Male bandhu—Preference of, over female bandhu—Paternal line—Preference of, over maternal line—Principles of—Conflict between—Decision in case of—Bombay Presidency.*

In I. L. R. 45 B. 353, the principle that among bandhus the male is entitled to preference over the female—even though the latter is nearer in degree—was accepted as being law for the Bombay Presidency as much as for the Madras Presidency; and preference was given to a mother's sister's son over a brother's daughter. In that particular case the actual decision would appear to conflict with I. L. R. 26 B. 710, because it apparently ignored the supposed prior and paramount claim of paternal over maternal bandhus. Whenever therefore the two conflicting principles of preference of the paternal over the maternal line and preference of the male over the female sex, in the Presidency of Bombay,

HINDU LAW—(*Contd.*)

Inheritance—Bandhus—(*Contd.*)

have to be weighed, the Court which weighs them will have to choose between these two decisions of the High Court. (*Lord Phillimore.*) KENCHAVA *v.* GIRIMALLAPPA CHANNAPPA. **(1924) 51 I. A. 368 (376 7) = 48 B. 569 = 26 Bom. L. R. 779 = 20 L. W. 417 = A. I. R. 1924 P. C. 209 = 3 Pat. L. R. 9 = 22 A. L. J. 962 = 40 C. L. J. 447 = 29 C. W. N. 271 = 35 M. L. T. 241 = (1924) M. W. N. 719 = 82 I. C. 966 = 47 M L. J. 401.**

———*Male and female Bandhus of equal nearness—Preference of former, over latter—Father's sister's son—Father's brother's daughter—Preference—Bombay Presidency.*

As between bandhus of equal nearness to the propositus, male members are to be preferred to females. There is no case in the Bombay Presidency which decides that some preference is not to be given to male bandhus over female.

Held, accordingly, that the father's sister's son of the deceased was entitled to succeed to his property to the exclusion of his father's brother's daughters. (*Lord Phillimore.*) KENCHAVA *v.* GIRIMALLAPPA CHANNAPPA. **(1924) 51 I. A. 368 (376-7) = 48 B. 569 = 26 Bom L. R. 779 = 20 L. W. 417 = A. I. R. 1924 P. C. 209 = 3 Pat. L. R. 9 = 22 A. L. J. 962 = 40 C. L. J. 447 = 29 C. W. N. 271 = 35 M. L. T. 241 = (1924) M. W. N. 719 = 82 I. C. 966 = 47 M. L. J. 401.**

———Nearer class of—Preference of, to more remote class of—Mithakshara rule as to—Basis of. *See* HINDU LAW—INHERITANCE—BANDHUS—CLASSES OF—PREFERENCE AMONG. **(1921) 48 I. A. 86 (94 5) = 40 M. L. J. 270.**

———Persons entitled to succeed as—Preference as between. *See* HINDU LAW—INHERITANCE—PERSONS ENTILED TO RIGHT OF—PREFERENCE AS BETWEEN.

———*Postponement of, to sapindas and samanodakas.*

A Bandhu or cognate cannot take the property of the last proprietor as long as there is either a sapinda or a Samanodaka in existence. Those two classes must be exhausted before bandhus are resorted to, in order to discover the heir of the last proprietor (165). (*Sir Montague E. Smith.*) THAKOOR JUBNATH SINGH *v.* COURT OF WARDS. **(1875) 2 I. A. 163 = 15 B. L. R. 190 = 23 W. R. 409 = 3 Sar. 490 = 3 Suth. 142.**

———*Preferability among — Tests for determining—I.L.R.* 16 M. 23 (30)—*Principles laid down in.*

In the absence of any express authority varying the rule, the propositions enunciated in I.L.R. 16 M. 23 (30) furnish a safe guide for determining preferability among contending bandhus. The propositions are:—(1) those who are Binna gotra-sapindas or related through females born in or belonging to the family of the propositus are bandhus; (2) as stated in the text of Vridha Satatapa or Baudhayana they are of three classes, *viz.*, atma-bandhus, pitru-bandhus and matru-bandhus, and succeed in the order in which they are named; (3) the examples given therein are intended to show the mode in which nearness of affinity is to be ascertained; and (4) as between bandhus of the same class, the spiritual benefit they confer upon the propositus is, as stated in Viramitrodaya, a ground of preference (360, 364). (*Mr. Ameer Ali.*) VEDACHELA MUDALIAR *v.* SUBRAMANIA MUDALIAR. **(1921) 48 I. A. 349 = 44 M. 753 (767) = 14 L. W. 402 = (1921) M. W. N. 669 = 2 Pat. L. T. 707 = 26 C. W. N. 159 = 24 Bom. L. R. 649 = 30 M.L. T. 198 = 4 U. P. L. R. (P. C.) 13 = A. I. R. 1922 P. C. 33 = 64 I C. 402 = 41 M. L. J. 676.**

HINDU LAW—(*Contd.*)

Inheritance—Bandhus—(*Contd.*)

———Right of—Basis of—Preference—Test as to—Propinquity—Spiritual benefit—Mithakshara law. *See* HINDU LAW — INHERITANCE—MITHAKSHARA—INHERITANCE UNDER.

——— Right to succeed as a bandhu. *See* UNDER HINDU LAW—INHERITANCE—PERSONS ENTITLED TO RIGHT OF.

Inheritance—Brothers.

———*Full brother—Preference of, to half brother.*

The authorities are uniform to the effect that the brother of the whole blood succeeds in preference to the half blood. (*Mr. Baron Parke.*) SUMBHOO CHUNDER CHOWDHRY *v.* NARAINI DEBIA. **(1835) 5 W. R. (P C.) 100 = 1 Suth. 25 (28) = 3 Knapp. 55 = 1 Sar. 65.**

———*Full brother—Preference of, to half-brother by general Hindu Law—Reason for.*

By the general Hindu Law *B*, (brother by the whole blood) would be the heir to *E*, in preference to his half-brother, were it a disputed succession to divided property (539). The reason given for the preference is, that he (the full-brother) offers more sacrifices, and benefits more the manes of the dead of his family; in their eyes a real substantial ground of preference. In nature also, he is nearer, and, therefore, satisfies the description nearest of kin (541) (*Lord Chelmsford.*) NEELKISTO DEB BURMONO *v.* BEERCHUNDER THAKOOR.

(1869) 12 M. I. A. 523 = 12 W. R. (P. C.) 21 = 3 B. L. R. (P. C.) 13 = 2 Suth. 243 = 2 Sar. 467.

———*Full brother—Preference of, to half brother in Dayabhaga joint family—Reason for.*

In a joint family governed by the Daya-bhaga law a brother of the whole blood succeeds in preference to a brother of the half-blood to the share of a deceased brother.

The brother of the whole blood stands with regard to religious offices in a higher position than the brother of the half-blood. The brother of the whole blood offers three oblations to the ancestors of the deceased on the father's side, and three on the mother's; whereas the brother of the half-blood offers three to the paternal ancestors only. Therefore, there are reasons peculiar to the Hindu Law of Succession, as expounded by the Dayabhaga, which may have led to distinction in the mode in which the succession to brothers takes place (152). (*Sir Montague E. Smith.*) SHEO SOONDARY *v.* PIRTHEE SINGH

(1877) 4 I. A. 147 = 3 Suth. 411 = 3 Sar. 724 = Bald. 119.

———*Full brother—Preference of, to half-brother under Mithakshara law.*

According to the Mithakshara law a step-brother is not entitled to share equally with a brother of the whole blood in the succession of a deceased brother. (*Lord Collins.*) ANANT SINGH *v.* DURGA SINGH.

(1910) 37 I. A. 191 (196) = 32 A. 363 (372) = 12 C. L. J. 36 = 14 C. W. N. 770 = 7 A. L. J. 704 = 12 Bom. L. R. 504 = 8 M. L. T. 79 = 13 O. C. 163 = 6 I. C. 787 = 20 M. L. J. 604.

———*Full brother divided and not reunited—Half brother re-united—Equal rights of.*

Where there has been a separation, a half-brother who becomes reunited gains by the reunion a better position than he otherwise would have had and is brought up to the level of a whole brother who has not become reunited (153). (*Sir Montague E. Smith.*) SHEO SOONDARY *v.* PIRTHEE SINGH. **(1877) 4 I. A. 147 = 3 Suth. 411 = 3 Sar. 724 = Bald. 119.**

———*Full and half-brothers—Equal right of succession of—Custom of—Proof of.*

HINDU LAW—(*Contd.*)

Inheritance—Brothers—(*Contd.*)

Held, affirming the court below, that the custom set up by the plaintiff had not been established, the custom being that the full and the half-brothers were entitled to succeed equally to the property of a deceased brother in derogation of the Mithakshara law. (*Lord Collins.*) ANANT SINGH *v.* DURGA SINGH. **(1910) 37 I. A, 191 (197)= 32 A. 363 (372-3)=12 C. L. J. 36=14 C. W. N. 770= 7 A. L. J. 704=12 Bom. L. R. 504=8 M. L. T. 79= 13 O. C. 163=6 I. C. 787=20 M. L. J. 604.**

———*Half-brother—Right of, as against more remote kinsmen.*

A half-brother may be postponed to an uterine brother, but there is no reason for holding that he should he postponed to more remote kinsmen (91). (*Lord Hobhouse.*) MUTHUSWAMI MUDALIAR *v.* MUTHUKUMARASWAMI MUDALIAR. **(1896) 23 I. A. 83=19 M. 405= 7 Sar. 45=6 M. L. J. 113.**

———Nephews—Preference over. *See* HINDU LAW—INHERITANCE—PERSONS ENTITLED TO RIGHT OF—PREFERENCE AS BETWEEN—NEPHEWS.

(1866) 10 M. I. A. 490 (504).

Inheritance—Caste—Degradation from.

———Effect of, on property acquired by inheritance—Act XXI of 1850—Effect of, on Hindu law rule. *See* HINDU LAW—CASTE—DEGRADATION FROM.

(1880) 7 I. A. 115 (156)=5 C. 776 (792).

Inheritance—Collaterals.

———*Descent in case of, under Mithakshara law—Confinement of, to sons—Correctness of—"Putra" in Mithakshara in connection with such descent—Meaning of.*

Admitted by the word "putra," as used by Vijnaneswara in relation to the last owner, signifies and includes son, grandson, and great-grandson. That word and its synonym employed by Vijnaneswara in connection with other relatives, such as brother, uncle or grand-uncle, must be understood in a generic sense as in the case of the deceased owner, and the descendants in each ascending line, up to the fixed limit, should be exhausted at any rate to the third degree before making the ascent to the line next in order of succession (227).

If his intention had been to confine the descent in the case of collaterals to the actual sons of brothers and uncles, he would have employed terms which would have exactly conveyed his meaning, such as atmaja or *auras*, which mean "son of one's loins" (220). (*Mr. Ameer Ali.*) BUDDHA SINGH *v.* LALTU SINGH.

(1915) 42 I. A. 208=37 A. 604 (616, 623)= 20 C. W. N. 1=22 C. L. J. 481=13 A. L. J. 1007= 17 Bom. L. R. 1022=(1915) M. W. N. 772=2 L. W. 897= 18 M. L. T. 409=30 I. C. 529=29 M. L. J. 434.

———*Right of—Basis of—Manu's text—Sapinda—Relationship.*

The right of collaterals to succeed to the inheritance of a deceased person is based on the rule of Manu, which has been translated differently by different writers, but which in substance amounts to this, that the estate of a deceased goes to his nearest Sapinda. The right of collaterals, therefore, is dependent on the existence of the sapinda-relationship between the propositus and the claimant (217). (*Mr. Ameer Ali.*) BUDDHA SINGH *v.* LALTU SINGH.

(1915) 42 I. A. 208=37 A. 604 (613)= 20 C. W. N. 1=22 C. L. J. 481=13 A. L. J. 1007= 17 Bom. L. R. 1022=(1915) M. W. N. 772= 2 L. W. 897=18 M. L. T. 409=30 I. C. 529= 29 M. L. J. 434.

HINDU LAW—(*Contd.*)

Inheritance—Crown—Escheat.

———Claim by. *See* ESCHEAT.

Inheritance—Custom of.

ANCESTRAL HEREDITARY PROPERTY—DESCENT OF, TO DIRECT DESCENDANTS—CUSTOM OF.

———*Onus of proof of.*

It has been contended that though this was ancestral property—descendible property—yet it would descend only to the direct descendants of the original donee. Their Lordships are of opinion that it being proved not to be originally for life only, but to be an hereditary property, and having apparently descended in the ordinary way of Hindu property, first to the sons, and then from the son to the mother, it lies on those who say it is confined to direct descendants, and that no one can claim it but the direct descendants of the original donee, to prove their case and show that by some custom that was the proper construction. In the absence of that, the property must be held to be one which went in the ordinary way of Hindu property. RAJAH MAHENDRA SINGH *v.* JOKHA SINGH.

(1873) 2 Suth. 802=19 W. R. 211.

DISCONTINUANCE OF—POSSIBILITY OF.

———Family and territorial customs—Distinction. *See* HINDU LAW—INHERITANCE — CUSTOM OF—FAMILY CUSTOM—DISCONTINUANCE OF.

(1872) 19 W. R. 8.

ESSENTIALS OF VALID.

———Proof necessary. *See* (1) CUSTOM—VALIDITY OF; (2) HINDU LAW—CUSTOM—VALIDITY OF; AND (3) HINDU LAW—DAUGHTER—INHERITANCE—EXCLUSION FROM—CUSTOM OF.

EVIDENCE OF.

———*Impartible estate—Custom in case of—Evidence of—Admissibility on question arising in case of partible estates.*

It was argued that evidence of a custom regulating the succession to impartible estates, such as rajhes, where the rule of gaddinashin prevailed, was altogether inadmissible on a question as to the custom of succession to a partible estate governed by the ordinary Hindu law.

Held, that there was nothing in the mere fact of partibility to make evidence of a family custom excluding or postponing daughters to collaterals in impartible estates necessarily inapplicable to partible estates. (*Lord Collins.*) PARBATI KUNWAR *v.* CHANDAR PAL KUNWAR.

(1909) 36 I. A. 125 (136-7)=31 A. 457 (476)= 10 C. L. J. 216=13 C. W. N. 1073=11 Bom. L. R. 890= 6 A. L. J. 767=12 O. C. 304=4 I. C. 25= 19 M. L. J. 605.

———*Kanungos—Declarations of*—Wajib-ul-arz—*Entries in—Government inquiries as to succession—Replies given to—Admissibility of—Value of.*

Declarations, such as those of Kanungos, entries made in the village records (*Wajib-ul-arzes*) by the officer charged by Government with that duty, and answers given to official inquiries made under Government direction as to the rules of succession prevailing in particular families, are *prima facie* admissible in evidence as purporting to be made by the proper officer in performance of a special duty, and presumably, with due regard to the rules laid down for his guidance. Technical objections to them are material rather to the weight than to the admissibility of the particular evidence (135-6). (*Lord Collins.*) PARBATI KUNWAR *v.* CHANDAR PAL KUNWAR. **(1909) 36 I. A. 125=31 A. 457 (476)= 10 C. L. J. 216=13 C. W. N. 1073= 11 Bom. L. R. 890=6 A. L. J. 767=12 O. C. 304= 4 I. C. 25=19 M. L. J. 605.**

HINDU LAW—(*Contd.*)

Inheritance—Custom of—(*Contd.*)

EVIDENCE OF—(*Contd.*)

———Specific instances—Proof of—Necessity—General evidence of existence or exercise of custom by members of family or tribe likely to have knowledge thereof—Sufficiency of. *See* CUSTOM — INHERITANCE -- EVIDENCE OF—SPECIFIC INSTANCES.

(1925) 52 I. A. 379 (383-4) = 6 Lah. 502.

FAMILY CUSTOM.

———Continuance of, after change in condition of things necessitating custom—Maxim *Cessat ratio cessat lex*—Applicability. *See* HINDU LAW—IMPARTIBLE ESTATE—SUCCESSION TO—CUSTOM OF—FAMILY CUSTOM.

(1919) 12 L. W. 730 (737, 740).

———*Destruction of—Perpetual settlement— Settlement of estate at time of—Effect—Raj well-established—Estate whose origin not known.*

A settlement of an estate made at the time of the perpetual settlement would not, of itself, have operated to destroy a family usage regulating the manner of descent. It would not have had this effect in the case of a well-established raj and even in the case where the origin could not be shown, it may be assumed that it would not, of itself, affect an existing family custom (746). RAJAH RAJ KISHEN SINGH *v.* RAMJOY SURMA MOZOOMDAR.

(1872) 2 Suth. 744 = 19 W. R. 8 = 8 M. J. 151.

———*Discontinuance of—Possibility of—Territorial custom—Distinction.*

Their Lordships cannot find any principle or authority for holding that in point of law a manner of descent of an ordinary estate, depending solely on family usage, may not be discontinued so as to let in the ordinary law of succession. Such family usages are in their nature different from a territorial custom which is the *lex loci* binding all persons within the local limits in which it prevails (749). RAJAH RAJ KISHEN SINGH *v.* RAMJOY SURMA MOZOOMDAR.

(1872) 2 Suth. 744 = 19 W. R. 8 = 8 M. J. 151.

———*Estate not absolutely owned by family — Family custom of succession to—Existence of—Possibility of.*

It is hard to see how a family custom of succession to an estate not absolutely owned by the family could ever have existed (66). *(Sir Andrew Scoble.)* RAMAKANTA DAS *v.* CHOWDHURI SHAMANAND DAS.

(1908) 36 I. A. 49 = 36 C. 590 (598) = 6 M. L. T. 84 = 9 C. L. J. 499 = 13 C. W. N. 581 = 11 Bom. L. R. 530 = 6 A. L. J. 364 = 1 I.C. 754 = 19 M. L. J. 239.

———*Proof of—Four instances of comparatively modern date—Insufficiency of.*

The parties to the litigation belonged to the tribe in Oudh known as Ahban Thakurs. The defendant alleged a family custom that on the extinction of the line of one of several brothers the descendants of all the brothers took equally without reference to their nearness to the common ancestor.

The Sub Judge held the custom proved. His decision was reversed on appeal, the appellate Court holding that the alleged custom had not been made out.

On examination of the evidence, it was found that in support of the alleged custom four instances at most could be adduced, and those of a comparatively modern date, and that there was no other evidence.

Held, that a family custom in derogation of the ordinary law could not be supported on so slender a foundation. *(Lord Macnaghten.)* CHANDIKA BAKHSH *v.* MUNA KUAR. **(1902) 29 I. A. 70 = 24 A. 273 = 6 C. W. N. 425 = 4 Bom. L. R. 376 = 8 Sar. 233.**

HINDU LAW—(*Contd.*)

Inheritance—Daughter.

———*See* HINDU LAW—DAUGHTER—INHERITANCE.

Inheritance—Daughter's daughter.

———*See* HINDU LAW — DAUGHTER'S DAUGHTER—INHERITANCE.

Inheritance—Daughter's son.

———*See* HINDU LAW—DAUGHTER'S SON.

Inheritance—Debts binding on.

———*Liability for, of person taking estate.*

The general principle of the Hindu law is that he who takes the estate becomes liable for the debts of the estate; and this principle is especially applicable to a case where, but for the debt, the estate would have been lost to the person so taking it. *(Sir Andrew Scoble.)* KARIM-UD-DIN *v.* GOBIND KRISHNA NARAIN.

(1909) 36 I. A. 138 (147) = 31 A. 497 (506) = 6 M. L. T. 275 = 10 C. L. J. 243 = 13 C. W. N. 1117 = 11 Bom. L. R. 911 = 6 A L. J. 807 = 3 I. C. 795 = 19 M. L. J. 687.

Inheritance—Disqualification subsequent to opening of—Divesting of estate by reason of.

———*See* HINDU LAW—DAUGHTER—INHERITANCE—RIGHT ONCE VESTED BY. **(1875) 2 I. A. 113 (124).**

———*See* HINDU LAW—INHERITANCE—RIGHT OF—BASIS OF—DAYABHAGA—SONS.

(1880) 7 I. A. 115 (146-7) = 5 C. 776 (781-2.)

———The general rule of Hindu law is that an estate once vested by succession or inheritance is not divested by any act which, before succession or incapacity, would have formed a ground for exclusion of inheritance (153). *(Sir Barnes Peacock.)* MONIRAM KOLITA *v.* KERRY KOLITANY.

(1880) 7 I. A. 115 = 5 C. 776 (788) = 6 C. L. R. 322 = 4 Sar. 103 = 3 Suth. 765.

———If a son once succeeds, the estate inherited by him is not divested for anything less than degradation, though causes which would have excluded him if they had existed before succession arise after the estate has descended (146-7). *(Sir Barnes Peacock.)* MONIRAM KOLITA *v.* KERRY KOLITANY. **(1880) 7 I. A. 115 = 5 C. 776 (781-2) = 6 C. L. R. 312 = 4 Sar. 103 = 3 Suth. 765.**

Inheritance—Equality among heirs.

———*Spirit of Hindu law—Entire equality—Attainment of, impossible—Partial attainment of it at least in spirit of Hindu law.*

Equality among the heirs is the spirit of the Hindu Law; and if that entire equality cannot, as in the present case in consequence of the dispositions of the will it cannot, be attained, the partial attainment of it is more in the spirit of the Hindoo law, than its total rejection (555-6). *(Lord Justice Turner.)* SREEMUTTY SOORJEEMONEY DOSSEE *v.* DENOBUNDOO MULLICK. **(1857) 6 M. I. A. 526 = 4 W. R. 114 = 1 Suth. 291 = 1 I. J. N. S. 37 = 1 Bour. Rep. 228 = 1 Sar. 583.**

———*See also* HINDU LAW—PRINCIPAL—INCREMENT.

Inheritance—Exclusion from.

BLINDNESS.
CUSTOM OF.
DEAF AND DUMB—PERSON BORN.
DISQUALIFICATION SUBSEQUENT TO OPENING OF INHERITANCE NOT A GROUND OF.
INSANITY.
LEPROSY.
MURDERER—INHERITANCE TO PROPERTY OF MURDERED—EXCLUSION FROM.

HINDU LAW—(*Contd.*)

Inheritance—Exclusion from—(*Contd.*)

PLEA OF—RIGHT TO SET UP—ESTOPPEL.

PREFERENTIAL RIGHT TO INHERITANCE—SPIRITUAL EFFICACY—TEST OF—APPLICABILITY OF.

RULE OF, MUST BE CLEAR AND UNMISTAKABLE SON.

BLINDNESS.

———*Exclusion on ground of—Condition.*

According to the Hindu Law, blindness, to cause exclusion from inheritance, must be congenital. Mere loss of right which has supervened after birth is not a ground of disqualification. (*Sir John Edge.*) GUNJESHWAR KUNWAR *v.* DURGA PERSHAD SINGH.

(1917) 44 I. A. 229 (234) = 45 C. 17 = 7 L. W. 94 = 16 A. L. J. 1 = (1918) M. W. N. 16 = 20 Bom. L. R. 38 = 22 M. L. T. 403 = 22 C. W. N. 74 = 26 C. L. J. 557 = 42 I. C. 849 = 34 M. L. J. 1.

CUSTOM OF.

———Daughter—Exclusion of. *See* HINDU LAW—DAUGHTER.

———Daughter's son—Exclusion of. *See* HINDU LAW—DAUGHTER'S SON—INHERITANCE—EXCLUSION FROM.

———*Grandmother—Exclusion of—Custom of—Evidence against—Wajib-ul-arz.*

In a case in which the question was whether the plaintiff was, as a female, excluded from inheriting the real property of her grandson by the custom of the family and tribe of the parties, the defendants pleaded generally that no female whatever could succeed, and adduced oral evidence to that effect. A wajib-ul-arz, which was put in, was, however, in these terms: "If the deceased have two or more wives, lawfully married, then the property left by the deceased would be divided among the number of wives in this way; that if there be one son from one wife, and two or more from the other, then the one son from the former would take one half, and the two or more from the latter would take the other half, subdividing it equally among themselves; but a wife having no male issue shall receive no share; she shall, however, receive maintenance from the sons of the other wives who have inherited a share. In our family the custom is to give no share to daughters. If none of the wives lawfully married to a deceased co-sharer have any issue, in such a case of course the childless widow shall have possession of the share of the deceased. If a widow being childless desire to adopt a son, she can adopt one of the nearest male members of her deceased husband's family. She shall not be competent to adopt her brother or brother's son. Women not lawfully married, and their issue, provided they bear good moral character, will be entitled to receive only food and clothing, but shall not receive a share."

Held that the wajib-ul-arz very much qualified the general statement of the witnesses that no female could succeed in the family; for it distinctly stated that under some circumstances wives and widows succeeded, although it did not distinctly state that grandmothers did (8-9). (*Sir Robert P. Collier.*) BURJORE AND BHAWANI PERSHAD *v.* MUSST. BHAGANA. **(1883) 11 I. A. 7 = 10 C. 557 (560-1) = 4 Sar. 498 = R. & J's No. 76 (Oudh).**

———*Grandmother—Exclusion of—Custom of—Proof of.*

The suit was brought by the plaintiff-respondent against the defendants-appellants for the purpose of recovering a certain mouzah which was last owned by the plaintiffs' grandson, one *P*; and the only question for division was whether the plaintiff, as a female was excluded from inheritance by the custom of the family and tribe. The defendants in the suit were the male descendants collateral to the plaintiff's husband.

HINDU LAW—(*Contd.*)

Inheritance—Exclusion from—(*Contd.*)

CUSTOM OF—(*Contd.*)

Held, affirming the Courts below, that the defendant had not sustained the burden of proof laid upon him, *viz.*, that the plaintiff, as a female, was excluded from the inheritance (8-9). (*Sir Robert P. Collier.*) BURJORE AND BHAWANI PERSHAD *v.* MUSST. BHAGANA. **(1883) 11 I. A. 7 = 10 C. 557 (561) = 4 Sar. 498 = R. & J's No. 76 (Oudh).**

———*Sons younger—Exclusion of, with allotment of maintenance—Nad Gowdki family—Custom among—Validity of.*

The first question is as to the existence of a custom in the *Nad Gowdki* family by which, on descent, where there was more than one son, it is alleged, that the younger brothers did not, according to the ordinary Hindu Law, share with the eldest son in a division of the property, but received maintenance, or an allotment of property in lieu of maintenance, in place of sharing in the whole property.

After considering the evidence, their Lordships find no sufficient evidence of a special custom of the kind to have prevailed in this family (35).

Quaere as to the validity or otherwise of such a custom in that part of India (35-6). (*Lord Cairns.*) MANTAPA NADGOWDA *v.* BASWANTRAO NADGOWDA.

(1871) 14 M. I. A. 24 = 15 W.R. (P.C) 33 = 2 Suth. 407 = 2 Sar. 648.

———Widow—Babuana and Sohag grants in Durbhanga raj—Custom of exclusion in case of—Applicability of, before and after partition. *See* HINDU LAW—IMPARTIBLE ESTATE—DURBHANGA RAJ—BABUANA AND SOHAG GRANTS IN—SUCCESSION TO, ETC.

(1914) 41 I. A. 275 (286, 289) = 42 C. 582 (603, 606).

DEAF AND DUMB—PERSON BORN.

———*Exclusion of.*

It was admitted that the plaintiff was born deaf and dumb, and was consequently, by Hindu Law, incapable of inheriting (23). (*Sir Richard Couch.*) CHAUDHRI HIRA SINGH *v.* CHAUDHRI GUNGA SAHAI.

(1883) 11 I. A. 20 = 6 A. 322 (326) = 4 Sar. 491.

DISQUALIFICATION SUBSEQUENT TO OPENING OF INHERITANCE NOT A GROUND OF.

See HINDU LAW—INHERITANCE—DISQUALIFICATION SUBSEQUENT TO OPENING OF.

INSANITY.

———*Evidence as to—Religious duties—Admitted performance of, by alleged lunatic—Value of.*

The priests allowed *J* alleged to be insane to perform all his religious duties. He performed the oblations to his father, which, according to the religion of the Hindus, would have no beneficial effect, and ought not to have been performed by him if he had been in a state of insanity (178), (*Sir Barnes Peacock*) DEWAN RAN BIJAI BAHADUR SINGH *v.* RAE JAGATPAL SINGH,

(1890) 17 I. A. 173 = 18 C. 111 (118) = 5 Sar. 590 = R. & J's No. 120.

———*Evidence as to—Treatment of alleged lunatic by his own family—Value of.*

A very important matter in considering the state of mind of a person alleged to be insane is the manner in which he was treated by his own family. In the present case, none of the family of *J*, who is alleged to have been insane at the time when the succession opened and to be therefore excluded from inheritance, prior to the application for a certificate of insanity, long after the right to the succession had attached, ever treated him as insane. The priests allowed him to perform all the religious duties. He performed

HINDU LAW—(*Contd.*)

Inheritance—Exclusion from—(*Contd.*)

INSANITY—(*Contd.*)

the oblations to his father, which, according to the religion of the Hindus, would have no beneficial effect, and ought not to have been performed by him if he had been in a state of insanity. One of the principal reasons why, according to the Hindu law, insanity excludes from the right of inheritance is, that an insane person is incapable of performing religious duties, and because he is incapable of providing for the marriage of daughters, and other matters of that sort. But in this case the gentleman performed them all. His family never objected ; the priests never objected. He is stated to have been present at the marriage of his daughter. He himself was allowed to marry ; he was married three times to ladies whose father would in all probability have refused to allow their daughters to marry an insane man, and by one of them he had a son who was not insane. All these circumstances, with reference to the mode in which *J* was treated by his family, appear to their Lordships to have considerable weight and considerable importance in deciding the question of his sanity (178). (*Sir Barnes Peacock.*) DEWAN RAN BIJAI BAHADUR SINGH *v.* RAE JAGATPAL SINGH. **(1895) 17 I. A. 173 = 18 C. 111 (116-8) = 5 Sar. 590 = R. & J's No. 120.**

———*Evidence of—Holding out and treatment as heirs of persons entitled in default of alleged lunatic—Value of.*

The question was whether *S*, a Hindu was insane at the time of the death of her mother when the succession to her father opened, and was accordingly excluded from inheritance on that ground, or whether she became so only two months after the death of her mother.

Held, that the fact that immediately after the death of the mother, the sons of *S*, and not *S*, were held out to be, and were dealt with as, the heirs of the last male owner, confirmed, as the *res gestoe* of the case, the evidence in favour of the conclusion that *S*, was insane at the time of her mother's death (530-1).

If *S* had not been then insane, it seems almost improbable that some person would not have put forward her interest, or that third parties would have dealt with those as heirs, who really did not possess that character (531.) (*Sir James W. Colvile.*) BABOO BODHNARAIN SINGH *v.* BABOO OMRAO SINGH. **(1870) 13 M.I.A. 519 = 15 W.R. (P.C.) 1 = 6 B.L.R. 509 = 2 Suth. 371 = 2 Sar. 607.**

———*Evidence of — Medical evidence — Relations and family domestics—Non-production of—Inference from.*

The question was whether *S* was, as alleged by the appellants, insane at the date of the death of her mother when the succession to her father opened, or whether, as alleged by the plaintiff-respondent, the husband of the lunatic, she became insane only two months after her mother died.

With regard to the evidence adduced for the plaintiff-respondent, their Lordships made the following observations :—

" The case of the respondents is open to the observation that if it is true, far better evidence of it might have been produced than has been produced by the respondents. For instance, if the woman became mad within two months of her mother's death, one would suppose that that madness must have been caused by some disorder which would require and receive medical treatment. We have, however, no medical evidence whatever. We have nothing to show, that having been sane up to a certain period, she became suddenly ill. Again, we have none of the near relations of the family produced. The mere fact that the husband verifies in the ordinary way the truth of the allegation in the plaint, is no answer to the suggestion that, if he had a true case, he, the nearest relation of this party, might have come forward and shown how the madness came on and all the circumstances relating to it. He, again, has within his power all her family and female domestics ; but there is not a single witness produced on that side, except the witnesses of the character so common in the Indian Courts, *viz.*, male menial servants, dependants, and ryots living in the neighbourhood, who are all obviously persons less likely to have the circumstances deposed to within their knowledge, and to be far less trustworthy, than the members of the family who might have been produced " (527-8). (*Sir James W. Colvile.*) BABOO BODHNARAIN SINGH *v.* BABOO OMRAO SINGH. **(1870) 13 M. I. A. 519 = 15 W. R. (P.C.) 1 = 6 B. L. R. 509 = 2 Suth 371 = 2 Sar. 607.**

———*Evidence of—Rumour and general belief in District as to insanity of person in question—Witness's statement of his own knowledge to fact of — Admissibility and value of—Witness conversant with district.*

On an issue as to whether one *S*, who was insane, first became so before or after the death of her mother, a witness spoke of his own knowledge to the fact, that at a particuiar period the insanity of *S* was rumoured and generally believed in the District with which he was conversant. Objection was taken to the admissibility of that evidence on the ground that it was hearsay.

Held, that the evidence could not properly be described as mere hearsay (529).

Quaere, whether that testimony, if objected to, would have been receivable on the trial of such an issue in an English Court of Justice (529)

As regards the effect to be legitimately given to that testimony, their Lordships observed as follows :—If we had to deal here with the broad question of sanity or insanity—whether *S* were now sane or insane,—the witness's evidence would be of little or no value. But when it is an admitted fact that the woman is insane, and the question is, whether she first became so before or after the death of her mother, the testimony of a trustworthy witness, that long before that period she was, to his knowledge, reputed insane, is an important corroboration of the direct testimony given in the cause to the fact of her insanity at that time (530). (*Sir James W. Colvile.*) BABOO BODHNARAIN SINGH *v.* BABOO OMRAO SINGH.

(1870) 13 M.I. A. 519 = 15 W.R. (P.C.) 1 = 6 B. L. R. 509 = 2 Suth. 371 = 2 Sar. 607.

———*Evidence of, given in suit raising question as to—Rejection of, on ground of non-production of such evidence in inquiry under Lunacy District Courts Act XXXV of 1858—Propriety.*

The appeal arose out of an action in ejectment. The title upon which the plaintiff-respondent sued was based upon the fact that his wife, as the daughter of *M*, the last surviving widow of one *T*, became on the death of her mother entitled to the property as the next heir of her father, *T* ; and the principal issue raised in the cause was, whether that lady had not lost her right to inherit, by reason of her lunacy. The sole question was whether the lady was or was not insane at the time of her mother's death or whether, as alleged by the plaintiff, she became insane within two months after that event.

Within two months after the death of *M*, the plaintiff applied to the Zillah Judge, under Act XXXV of 1858 to be appointed Committee of his wife, alleging her lunacy. The Judge delegated the inquiry to a Munsiff. The defendants-appellants, who claimed title to the suit property under an ikrarnamah executed by the lunatic's sons and *M*, appeared as objectors on that proceeding. They appeared

HINDU LAW—(*Contd.*)

Inheritance—Exclusion from—(*Contd.*)

INSANITY—(*Contd.*)

before the Munsif, but did not attend throughout the inquiry, and failed to produce witnesses to prove that the lady had been a lunatic from the time at which they alleged she became so, or at any time before the death of *M*. The Munsiff took evidence on the part of the plaintiff-respondent, and came to the conclusion, that the lady was of unsound mind. In his report the Munsif stated that the evidence adduced before him established that the lady became a lunatic only after the death of her mother. That report having been made to the Judge, the appellants again objected before the Judge, but he held that he had no jurisdiction to decide the question between the parties; that the simple issue was whether the lady was a person possessed of any property; and if so, whether she was sane or insane and required the protection of a Committee; and accordingly he appointed the Husband Committee.

In the suit out of which the appeal before their Lordships arose, the High Court thought the evidence before them being conflicting, the scale was turned in the plaintiff's favour by the Munsif's report, and decreed the suit.

Held, that if the High Court meant to say that the conduct of the appellants, as evidenced by the proceeding under Act XXXV of 1858, had been such as to lead to an inference that the case they afterwards made was untrue, they gave an effect to their conduct which it did not fairly bear. (526).

All that appears is, that the appellants went unnecessarily before a Tribunal which could not have decided the question between them and the opposite party, and that being there they failed to produce their evidence. Their Lordships are of opinion that it is neither a necessary nor a legitimate inference from that fact that the evidence which the appellants have produced in this suit ought not to be believed (526-7). (*Sir James W. Colvile,*) BABOO BODHNARAIN SINGH *v.* BABOO OMRAO SINGH.

(1870) 13 M.I. A. 519 = 15W. R. (P. C.) 1 = 6 B. L. R. 509 = 2 Suth. 371 = 2 Sar. 607.

———*Exclusion on ground of.*

Lunacy, by Hindu Law, is a bar to succession. (*Sir Jame W. Colvile,*) KOOER GOOLAB SINGH *v.* RAO KURUN SINGH. **(1871) 14 M. I. A. 176 (193-4) = 10 B.L.R. 1 = 2 Suth. 474 = 2 Sar. 722.**

———*Exclusion on ground of—Admission in plaint of—What amounts to.*

The action out of which the appeals arose was brought by *J*, who was the eldest son, and *B* who was the third son of *P*, against the appellant, for the recovery of an estate in Oudh of which he had held possession. They were the nearest relatives entitled to succeed, but for *D*, who was the second son of *P*. *D*, though alive, was not made a party to the suit, and he never claimed the estate. The estate being descendible as an impartible estate, *J* and *B* could not take jointly, and *J* alone was the proper heir if he was not excluded from inheritance in consequence of insanity.

In the plaint *J* was described as insane, and he sued through his wife as his guardian. But the plaint, nevertheless, claimed that the estate had descended to him, and it went on to state that "the plaintiffs" (that is *J* and *B* who joined in the plaint) "are sapindas, ... , and under the ordinary rules of the Hindu law the plaintiffs are the nearest male heirs and collaterals".

Held that, although *J* might be incompetent to commence the suit, or to proceed therein except by a guardian, the plaint was no evidence, nor did it lead to any inference that he was not the heir-at-law, and that he was excluded from inheritance on the ground of insanity (175).

HINDU LAW—(*Contd.*)

Inheritance—Exclusion from—(*Contd.*)

INSANITY—(*Contd.*)

J could not have been an heir, as was claimed in the plaint; if he was excluded from inheritance. The plaint shews that *J* was considered competent to inherit, and that he was not excluded by reason of insanity at the time when the succession opened, although he might have been insane at the time of the filing of the plaint (176). *Sir Barnes Peacock*). DEWAN RAN BIJAI BAHADUR SINGH *v.* RAE JAGATPAL SINGH. **(1890) 17 I.A. 173 = 18 C. 111 (115) = 5 Sar. 590 = R. & J.'s No. 120.**

———*Exclusion on ground of—Reason for.*

One of the principal reasons why, according to the Hindu law, insanity excludes from the right of inheritance is, that an insane person is incapable of performing religious duties, and because he is incapable of providing for the marriage of daughters, and other matters of that sort (178). (*Sir Barnes Peacock.*) DEWAN RAN BIJAI BHADUR SINGH *v.* RAE JAGATPAL SINGH.

(1890) 17 I A. 173 = 18 C. 111 (118) = 5 Sar. 590 = R. & J's No. 120.

———*Onus of proof of—Person not always a lunatic, but admittedly become so within 2 months of opening of succession—Effect.*

In a suit brought in right of a lunatic by her husband, the Committee, for the recovery of the properties of her father to which she was alleged to have become entitled on the death of her mother, *semble* it might be sufficient for the plaintiff in proving his title, to prove that the lady, who had admittedly not always been a lunatic, was the nearest heiress to the last male owner, and that the onus might be on the defendants in possession to prove that the lunatic had been a lunatic for some time before the death of her mother; but it was a burden which became of a much lighter character when the lunacy was admitted to have supervened within two months of the critical time, the death of the mother (527). (*Sir James W. Colvile*). BABOO BODHNARAIN SINGH *v.* BABOO UMRAO SINGH.

(1870) 13 M I A. 519 = 15 W.R. (P C) 1 = 6 B.L R. 509 = 2 Suth. 371 = 2 Sar. 607.

———*Proof of—Quantum.*

In a case in which the question was whether *J* was excluded from inheritance on the ground of insanity, the Judicial Commissioner held, reversing the Court below, that he was insane at the time when the succession opened, and that he was, therefore, excluded from the right of inheritance.

Held, on the evidence, that there were no sufficient grounds for the Judicial Commissioner reversing the finding of the first Court (179). (*Sir Barnes Peacock*). DEWAN RAN BIJAI BAHADUR SINGH *v.* RAE JAGATPAL SINGH.

(1890) 17 I.A 173 = 18 C.111 (118) = 5 Sar. 590 = R & J's No. 120.

———*Son—Insanity of—Evidence of — Recital in his father's will to that effect not.*

In a case in which the question was whether a person was excluded from inheritance on the ground of insanity, the Judicial Commissioner, who held that he was, attached very great importance to the will of his father, in which the father stated that he was insane.

Held that the mere statement by the father in his will that his son was insane was no evidence upon which the Court could properly act in determining the question as to the son's exclusion from the right of inheritance upon the ground of insanity (179). (*Sir Barnes Peacock*). DEWAN RAN BIJAI BAHADUR SINGH *v.* RAE JAGATPA L SINGH.

(1890) 17 I.A. 173 = 18 C. 111 (118) = 5 Sar. 590 = R & J.s' No. 120,

HINDU LAW—(*Contd.*)

Inheritance—Exclusion from--(*Contd.*)

INSANITY—(*Contd.*)

———*Test of—Incapacity to answer questions—Incapacity to distinguish between right and wrong.*

From the mere fact that a person alleged to be insane is incapable of answering the questions put to him it does not follow that he is not capable of distinguishing between right and wrong (177). (*Sir Barnes Peacock.*) DEWAN RAN BIJAI BAHADUR SINGH. *v.* RAE JAGATPAL SINGH.
(1890) **17 I.A. 173 = 18 C. 111 (117) = 5 Sar. 590 = R. & J's No. 120.**

LEPROSY.

———*Exclusion on ground of — Adoption—Capacity to take in—Disqualification as to—Condition.*

The question was whether *N*, a Hindu, was so afflicted with leprosy as to deprive him of the position of being joint owner of certain family property, and secondly to deprive him of the ability to make a valid adoption of a son.

The Courts below concurrently found that *N* was not so crippled or disabled by bodily infirmity or deformity as to cease to be a useful member of society capable of holding and enjoying property. Their findings showed that although he was afflicted with a certain type of leprosy it was a type not very apparent except to minute inspection, and certainly a type which did not unfit him for performing both social and religious duties in company with others.

Held, affirming the Courts below, that the leprosy of *N* was not a disqualification.

Deformity and unfitness for social intercourse arising from the virulent and disgusting nature of the disease would appear to be what has been accepted in both the texts and the decisions as the most satisfactory test. (*Lord Shaw.*) RAMABAI *v.* HARNABAI. (1924) **51 I.A. 177 = 48 B. 363 = A.I.R. 1924 P.C. 125 = 22 A L.J 384 = (1924) M W.N. 357 = 34 M.L.T. 81 = 20 L.W. 8 = 10 O. & A.L.R. 829 = 29 C.W.N. 129 = 80 I.C. 193 = 46 M.L.J. 537.**

———Virulent form of—Evidence. *See* HINDU LAW—RELIGIOUS ENDOWMENT — MUTT—MOHUNT OF—ADOPTION OF CHELA BY—LEPROSY DISQUALIFYING—EVIDENCE. (1895) **22 I.A. 94 (105-6) = 22 C. 843 (858).**

MURDERER—INHERITANCE TO PROPERTY OF MURDERED—EXCLUSION FROM.

———*Legal and beneficial estate—No distinction between.*

The theory of legal and equitable estates is no part of Hindu Law.

Held, therefore, that as regards the disqualification of a murderer to inhe it the property of the murdered person, no distinction could be drawn between the beneficial and legal estate. (*Lord Phillimore.*) KENCHAVA *v.* GIRIMALLAPPA CHANNAPPA. (1924) **51 I. A. 368 (373 4) = 48 B. 569 = 26 Bom. L. R. 779 = 20 L. W. 417 = A. I. R. 1924 P. C. 209 = 3 Pat. L. R. 9 = 22 A. L. J. 962 = 40 C. L. J. 447 = 29 C. W. N. 271 = 35 M. L. T. 241 = (1924) M. W. N. 719 = 82 I. C. 966 = 47 M. L. J. 401.**

———*Personal or extends to his heirs also.*

Where it was found that *H*, who would, under the Hindu Law, have been entitled to succeed to the estate of *P* after the death of his (*P*'s) mother, who succeeded to his property for the ordinary Hindu woman's estate, had murdered *P*, *held* that the principles of equity, justice, and good conscience excluded the murderer *H*, and that he could not himself succeed to the property of *P*; that he should be treated as non-existent and not as one who formed the stock

HINDU LAW—(*Contd.*)

Inheritance—Exclusion from—(*Contd.*)

LEPROSY--(*Contd.*)

for a fresh line of descent; and that consequently title could not be claimed through him.

Quaere whether the rule under the Hindu Law would not be the same. (*Lord Phillimore.*) KENCHAVA *v* GIRIMALLAPPA CHANNAPPA. (1924) **51 I. A. 368 (373-4) = 48 B. 569 = 26 Bom. L. R. 779 = 20 L. W. 417 = A.I.R. 1924 P. C. 209 = (1924) M. W. N 719 = 22 A, L. J. 962 = 40 C. L. J. 447 = 35 M. L. T. 241 = 29 C. W. N. 271 = 3 Pat. L. R. 9 = 82 I. C. 966 = 47 M. L. J. 401.**

PLEA OF—RIGHT TO SET UP—ESTOPPEL.

———*Conduct of other members of family giving rise to—Recognition of right of inheritance till incapacity becomes apparent—Effect.*

It would not be reasonable, or conducive to the peace and welfare of families, to construe acts done out of kindness and affection to the disadvantage of the doer of them, by inferring a gift when it is plain that no gift could have been intended.

Where two surviving brothers constituted a joint Mithakshara family and the elder brother treated the younger, who had been born deaf and dumb, as a member of the family, and as being entitled to equal rights in the family properties, until it became absolutely clear that his malady was incurable, *held* that there was no ground for supposing that the elder brother intended to divest himself of his own property or to waive any rights accruing to him by reason of the younger brother's incapacity, and that there was no principle of law founded on the doctrine of estoppel, or laches, or the law of limitation or otherwise, which compelled the Court to hold that the elder brother's acts and conduct had an effect and operation which he could not have intended or contemplated (20-1). (*Lord Macnaghten.*) LALA MUDDUN GOPAL LAL *v.* MUSSUMAT KHIKHINDA KOER. (1890) **18 I. A. 9 = 18 C. 341.**

PREFERENTIAL RIGHT TO INHERITANCE—SPIRITUAL EFFICACY—TEST OF—APPLICABILITY OF.

———Distinction—Mithakshara law. *See* HINDU LAW—INHERITANCE—RIGHT OF—PREFERENCE.
(1870) **13 M. I. A. 373 (392-3).**

RULE OF MUST BE CLEAR AND UNMISTAKABLE.

———A rule of Hindu law, which is relied upon as preventing the natural course of inheritance, ought to be clear and unmistakable. (*Sir John Edge.*) GUNJESHWAR KUNWAR *v* DURGA PRASHAD SINGH.
(1917) **44 I. A. 229 (234) = 45 C. 17 = 7 L. W. 94 = 16 A. L. J. 1 = (1918) M. W. N. 16 = 20 Bom. L. R. 38 = 22 M. L. T. 403 = 22 C. W. N. 74 = 26 C. L. J. 557 = 42 I. C. 849 = 34 M. L. J. 1.**

———*Son—Exclusion—Grounds—Dayabhaga law.*

The proprietary right of a son by inheritance from his father is expressly ordained, because the wealth devolving upon sons benefits the deceased, and the right of succession of other heirs to the property is also founded on competence for offering oblations at obsequies. But a son, even if by the mere fact of his birth he delivers his father from the hell called *put*, is, according to the Dayabhaga, excluded for certain causes from inheritance in the same manner as other heirs; but if he once succeeds, the estate is not divested for anything less than degradation, though causes which would have excluded him if they had existed before succession arise after the estate has descended (146-7). (*Sir Barnes Peacock.*) MONIRAM KOLITA *v.* KERRY KOLITANY. (1880) **7 I. A. 115 = 5 C. 776 (781-2) = 6 C. L. R. 322 = 4 Sar. 103 = 3 Suth. 765.**

HINDU LAW—(*Contd.*)

Inheritance—Females.

———Exclusion of—Custom of. *See* HINDU LAW—INHERITANCE—EXCLUSION FROM—CUSTOM OF.

———Inherited property of—Succession to. *See* UNDER HINDU LAW—STRIDHAN.

———*Right of—Bengal and Madras Schools—Benares School—Bombay School.*

According to the received doctrine of the Bengal and Madras Schools, women are held to be incompetent to inherit, unless named and specified as heirs by special texts. This exclusion seems to be founded on a short text of Baudhayana which declares that "women are devoid of the senses, and incompetent to inherit." The same doctrine prevails in Benares. The principle of the general incapacity of women for inheritance, founded on the text just referred to, has not, however, been adopted in Western India (231). (*Sir Montague E. Smith.*) LULLOOBHOY BAPOOBOY *v.* CASSIBAI. (1880) 7 I. A. 212=5 B 110 (118)= 7 C. L. R. 445=4 Sar. 164=3 Suth. 795.

———Right of, to succeed as Gotraja Sapindas. *See* HINDU LAW—INHERITANCE—SAPINDAS—FEMALES.

Inheritance—Freehold and personalty—Succession to.

———English law distinction as to—Unknown to Hindu law. *See* HINDU LAW—INHERITANCE—RELIGION—CONNECTION BETWEEN. (1872) Sup. I. A. 47 (64).

Inheritance—Full blood and half-blood.

———Preference of former to latter in Mithakshara—Confined to sapindas of the same degrees of descent from the common ancestor. (*Mr. Ameer Ali.*) GANGA SAHAI *v.* KESARI. (1915) 42 I. A. 177 (184)= 37 A. 545 (556-7)=17 Bom. L. R 998= 13 A. L. J. 999=19 C. W. N. 1175=2 L. W. 837= (1915) M. W. N. 713=18 M. L T. 203= 22 C.L.J. 508=30 I. C. 265=29 M. L. J. 329.

Inheritance—Gentiles in the Mithakshara.

———*Class of, in the Mithakshara—Constitution of—Conditions necessary for.*

Family union or connection derived from a common head, the founder of the family, may reasonably be regarded, amongst a patriarchal people,as the source of the entire class from which a succession of heirs may be derived. Again, as males are preferred to females in succession, from religious reasons, this same class may be reasonably subject to the condition that the descent be generally derived from males, who, for the same reason, may obtain a constant preference. The text of the whole of the 5th and 6th sections of the 2nd Chapter of the Mithakshara is in the strictest conformity to these principles. The Gentiles, or *Gotraja* (from the *Gotra*), are described as descending from one common stock, a male, and derived generally through males, as forming a family, though embracing, possibly, many families, and such original bond of union is regarded as necessary to the constitution of the *Gotra*. These conditions are all that are stated as necessary to the constitution of the class of Gentiles (391). (*Sir Robert Phillimore.*) BHYAH RAM SINGH *v.* BHYAH UGUR SINGH.

(1870) 13 M. I. A. 373 (391)=14 W. R. (P. C.) 1= 5 B. L. R. (P. C.) 293=2 Suth. 330=2 Sar. 566.

———*Classes of—Sapindas and Samanodakas—Preference among,*

As regulating preference of succession amongst them, the law of succession amongst Gentiles classifies them further, as sapindas and Samanodakas ; the first it treats as prior to the second, but excludes neither, within certain wide limits (391). (*Sir Robert Phillimore.*) BHYAH RAM SINGH *v*

HINDU LAW—(*Contd.*)

Inheritance—Gentiles in the Mithakshara—(*Contd.*)

BHYAH UGUR SINGH. (1870) 13 M. I. A. 373= 14 W. R. (P. C.) 1=5 B. L. R. (P C) 293= 2 Suth. 330=2 Sar. 566.

———Seventh person—Method of arriving at—Mithakshara law. *See* HINDU LAW—INHERITANCE—PERSONS ENTITLED TO RIGHT OF—GREAT-GREAT-GREAT GRANDSON OF COMMON ANCESTOR.

(1870) 13 M. I. A. 373 (393 4).

Inheritance—Ghatwally tenures.

———General rules of Hindu law of inheritance—Inapplicability of. *See* GHATWALLY TENURE—RIGHT BY BIRTH IN. (1887) 15 I A. 18 (26-7)=15 C. 471 (480)

———Mithakshara law of inheritance—Inapplicability of. *See* GHATWALLY TENURE—RIGHT BY BIRTH IN.

(1887) 15 I.A. 18 (26-7)=15 C. 471 (480).

Inheritance—Grand-mother (paternal).

———Exclusion of—Custom of. *See* HINDU LAW—INHERITANCE—EXCLUSION FROM—CUSTOM OF—GRANDMOTHER.

———*Place assigned by Vijnaneswara to—Logic of.*

In Yagnavalkya's rule relating to the succession to the estate of a person who dies without leaving any male issue, and referred to by Vijnaneswara as "the compact series of heirs," the paternal grand-mother is not included as an heir. Vijnaneswara finds a place for her among the gotraja, on the authority of an enunciation of Manu, which he quotes in Ch. ii, S. 1, V. 7, and which runs thus : "Of a son dying childless the mother shall take the estate ; and the mother also being dead, the father's mother shall take the heritage."

According to Manu, then, if his words are to be literally construed, the paternal grandmother would take immediately after the mother. This difficulty Vijnaneswara himself recognises ; in order to reconcile the conflict between Yagnavalkya, who omits the grandmother altogether from his "compact series of heirs", and Manu, who would place her directly after the mother, he places her somewhat arbitrarily aftet the "brother's sons". The question, however, whether he intended his declaration to be imperative can be solved only by a less free translation than Mr. Colebrooke's (219). (*Mr. Ameer Ali.*) BUDDHA SINGH *v.* LALTU SINGH

(1915) 42 I A. 208=37 A. 604 (615-6)= 20 C. W. N 1=22 C. L. J. 481=13 A. L. J. 1007= 17 Bom. L. R. 1022=(1915) M. W. N. 772= 2 L W. 897=18 M. L. T. 409=30 I. C 529= 29 M L J. 434.

Inheritance—Heirs.

———*Class of—Leading member of—Mention only of, when whole class intended to be included—Mithakshara practice as to.*

In the Mithakshara itself it is by no means unusual to find that the leading member of a class is alone mentioned when it is intended to comprehend the whole class (272). (*Sir James W. Colvile.*) CHOWDHRY CHINTAMAN SINGH *v.* MUSST. NOWLUKHO KONWARI

(1875) 2 I. A 263=1 C. 153 (162)=24 W R 255= 3 Sar. 537=3 Suth. 204.

———*See also* HINDU LAW—INHERITANCE—BANDHUS—ENUMERATION OF, IN MITHAKSHARA.

———Equality among—Spirit of Hindu law. *See* HINDU LAW—INHERITANCE—EQUALITY AMONG HEIRS.

———Persons entitled to succeed as—Preference as between. *See* (1) HINDU LAW—INHERITANCE—PERSONS ENTITLED TO SUCCEED BY RIGHT OF and (2)..... PREFERENCE AS BETWEEN.

HINDU LAW—(*Contd.*)

Inheritance—Heirship—Unity of.

———Not necessary, according to Hindu law—Illustrations to principle. (*Lord Justice Turner.*) KATAMA NATCHIAR *v.* RAJAH OF SHIVAGUNGA,
(1863) 9 M. I A. 539 (609) = 2 W. R. (P. C.) 31 = 1 Suth. 520 = 2 Sar. 25.

Inheritance—Illegitimate son.

——— Inheritance by—Inheritance to. *See* HINDU LAW—ILLEGITIMATE SON.

Inheritance—Increment—Principal.

———Inseparability of. *See* HINDU LAW—PRINCIPAL—INCREMENT.

Inheritance—Joint family—Member of.

———Death without male issue of—Devolution of share of—Mithila law. *See* HINDU LAW—JOINT FAMILY—MEMBER OF—JOINT FAMILY PROPERTY—SHARE IN—DEVOLUTION OF. **(1872) 14 M.I.A 412 (415-6).**

———*Joint family property and separate property of—Devolution of—Courses of—Distinction.*

According to the Hindu law, there need not be unity of heirship (609).

The proposition that there cannot be property belonging to a member of a united Hindu family, which descends in a course different from that of the descent of a share of the property held in union is new, unsupported by authority, and at variance with principle. That two courses of descent may obtain on a part division of joint property is apparent from a passage in W. H. Macnaghten's "Hindu Law", title "Partition," Vol. I, p. 53 (608-9).

Again, it is not pretended that on the death of the acquirer of separate property, the separately acquired property falls into the common stock, and passes like ancestral property. On the contrary, it is admitted that if the acquirer leaves male issue, it will descend as separate property to that issue down to the third generation. Although, therefore, where there is male issue, the family property and the separate property could not descend to different persons, they would descend in a different way, and with different consequences; the sons taking their father's share in the ancestral property subject to all the rights of the co-parceners in that property, and his self-acquired property free from those rights. The course of succession would not be the same for the family and the separate estate; and it is clear, therefore, that, according to the Hindu law, there need not be unity of heirship (609). (*Lord Justice Turner.*) KATAMA NATCHIAR *v.* THE RAJAH OF SHIVAGUNGA.
(1863) 9 M. I. A. 539 = 2 W. R. (P C.) 31 = 1 Suth. 520 = 2 Sar. 25.

———According to the rule laid down by Sir William Macnaghten: "If at a general partition any part of the property is left joint, the widow of a deceased brother will not participate, notwithstanding the separation, but such undivided residue will go exclusively to the brother." That authority was one of those upon which this Board in the Shivagunga case decided the converse of the proposition, *viz.*, that though a family might be undivided, the separate property of any member would nevertheless go according to the law of succession to separate estate. It in fact goes to support the proposition that, whether the general *status* of the family be joint or divided, property which is joint will follow one, and property which is separate will follow another, course of succession (271). (*Sir James W. Colvile.*) CHOWDHRY CHINTAMUN SINGH *v.* MUSSAMUT NOWLUKHO KONWARI. **(1875) 2 I A. 263 = 1 C. 153 (161) = 24 W. R. 255 = 3 Sar. 537 = 3 Suth. 204.**

HINDU LAW—(*Contd.*)

Inheritance—Last full owner.

———*Succession to—Rule as to.*

The rule of Hindu law is, that in the case of inheritance, the person to succeed must be the heir of the last full owner (311). (*Lord Kingsdown.*) MUSSUMAT BHOOBUN MOYEE DEBIA *v.* RAM KISHORE ACHARJ CHOWDHRY.
(1865) 10 M. I. A. 279 = 3 W. R. (P. C.) 15 = 1 Suth. 574 = 2 Sar. 111.

Inheritance—Law applicable.

———(*See also* HINDU LAW—INHERITANCE—RULE OF.)

———*Classes different—Different laws applicable to—Law applicable in case of—Law of class to which deceased belonged.*

When there are different laws as to property applying to different classes, parties may be considered to have adopted the law as to property, whether in respect of succession *ab intestato* or in other respects, of the class to which they belong (242). (*Lord Kingsdown.*) ABRAHAM *v.* ABRAHAM. **(1863) 9 M. I. A. 195 = 1 W. R. (P. C.) 1 = 1 Suth 501 = 2 Sar. 10.**

———*Dayabhaga—Mithakshara—District in which Dayabhaga prevailed—Estate situated very early in—Transfer of, to one where Mithakshara prevailed—Applicability of Dayabhaga in case of.*

Where an estate, which was situate in a district where the Dayabhaga law prevailed, was, as early as 1795, transferred to one, where the Mithakshara law prevailed, *held*, upon a dispute as to the right to succeed to the estate, that the applicability of the Dayabhaga law to the case would depend upon either of two circumstances:—(1) The whole of the transferred district might be continued to be governed by its old law, in which case the law would be an exceptional local law, and that fact would be notorious to those who administered justice in that part of the country; or (2) the particular family, though domiciled at the date of suit in a Zillah governed by the Mithakshara law, might have continued to retain the law of the Bengal School as an exceptional family law. That fact would, however, require to be shown by evidence (925). MUSSAMAT SHEO SOONDOOREE *v.* PIRTHEE SINGH. **(1873) 2 Suth. 922 = 21 W. R. 89.**

———*Dayabhaga law—Mithakshara law—Evidence.*

In a suit brought by *K*, the plaintiff in the suit, for the recovery of a Zemindary of which the last male owner was one Raja Ajeet Singh, the question was whether the descent in the family was to be regulated by the Dayabhaga or the Mithakshara law.

K himself claimed under a deed of gift executed by *S*, the widow of Raja Ajeet Singh, and it appeared that in a long litigation in which *S* was engaged with *M*, the defendant in the suit out of which the appeal before their Lordships arose, it was, without any objection on the part of *S*, allowed by her vakils, and assumed and held by the Court that the descent of the suit Zemindary was regulated by the Sastras in use in Bengal, that the whole proceeding was conducted on that footing, and that the decision in favour of *S* was founded expressly on that ground. If further appeared that, after the death of *S*, *K* himself alleged that the suit between *M* and *S* had been decided in her favour agreeably to the Sastras and the customs of the family; and in the suit out of which the appeal arose itself it was shown that decisions affecting lands in the locality in which the suit Zemindary was situated were founded on the Sastras in use in Bengal.

Held, affirming the Court below, that the evidence was quite sufficient to support the conclusion that the Dayabhaga and not the Mithakshara, Sastras, ought to be applied to the

HINDU LAW—(*Contd.*)

Inheritance—Law applicable—(*Contd.*)

decision of the cause (320-1). (*Lord Langdale.*) RANY SRIMATY DIBEAH *v.* RANY KOOND LUTA.
(1847) 4 **M. I. A. 292**=**7 W. R. (P. C.) 44**=
1 Suth. 182=**1 Sar. 351.**

———*Dayabhaga or Mithakshara—Evidence—Sraddh of deceased—Performance of, by undivided cousin and not by widow—Effect.*

The question was whether succession to the estate of a deceased Hindu was governed by the Dayabhaga law or the Mithakshara law. The contest was between the widow of the deceased and the representatives of his first cousin. The deceased and his cousin were members of a joint Hindu family. The widow contended that the Dayabhaga law, the law of the place where the property was situate and the parties had been long resident, was applicable to the case. The representatives of the cousin contended that the Mithakshara law, the law governing the family before it came to and settled in Bengal, was applicable.

Held that, on such a question, the fact that the cousin performed the Sraddh of the deceased, unexplained, bore strongly on the queston of the right to the succession being under the Mithakshara (97). (*Sir James W. Colvile.*) SOORENDRANATH ROY *v.* MUSSUMAT HEERAMONEE BURMONEAH. (1868) **12 M.I.A. 81**=
10 W.R. (P.C.) 35=**1 B.L R. (P.C.) 26**=**2 Suth 147**=
2 Sar. 372

———*Deceased—Law applicable to.*

Heirship may be governed by the Hindu law, or by any other law to which the ancestor may be subject (237). (*Lord Kingsdown.*) ABRAHAM *v.* ABRAHAM.
(1863) **9 M.I.A. 195**=**1 W.R. (P.C.) 1**=**1 Suth. 501**=
2 Sar. 10.

———*Deceased—Law of intestate succession applicable to—Application of—Duty of Court—Examination of his conduct so as to prevent such law getting full and proper application—Permissibility.*

A particular subject can settle that in India, as in other parts of the Empire, by exercising—whatever be his religion—his power of testacy, and definitely declaring how he desires his affairs to be regulated so far as his own individual property is concerned. Where the deseased person has not done so, it is not for a court to enter upon an examination of his conduct so as to prevent the law of intestate succession applicable to his case getting its full and proper application. (*Lord Shaw.*) KAMAWATI *v.* DIGBIJAI SINGH. (1921) **48 I.A. 381 (385-6)**=**43 A. 525 (534)**=
15 L.W. 1=**4 U.P.L R. (P.C.)27**=
A.I.R. 1922 P.C. 14=**26 C. W.N. 490**=
24 Bom. L.R. 626=**(1922) M.W N. 336**=
30 M.L.T. 47=**64 I.C. 559**=**42 M.L J. 87.**

———*Deceased—Personal law of.*

According to the law administered by the Provincial Courts of British India, on the death of any owner, being absolute owner, any question touching the inheritance from him of his property is determinable in a manner personal to the last owner. This system is made the rule for Hindus and Mahomedans by positive regulation; in other cases it rests upon the course of judicial decisions (525). (*Lord Justice Knight Bruce.*) COLLECTOR OF MASULIPATAM *v.* CAVALY VENKATA NARRIANAPAH.
(1860) **8 M. I. A. 500**=**2 W. R. 59**=**1 Suth. 417**=
1 Sar. 752.

———*Decision of, depending upon ceremonies observed in family—Competency of European court for.*

It is admitted that it is utterly impossible for any European court to weight very nicely the effect of evidence of this kind as to particular ceremonies, and the weight

HINDU LAW—(*Contd.*)

Inheritance Law applicable—(*Contd.*)

which is to be due to those particular ceremonies as establishing the fact of one law prevailing or the other (290). (*Mr. Pemberton Leigh*). RANY PUDMAVATI *v.* BABOO DOOLAR SINGH (1847) **4 M. I. A. 259**=
7 W. R. (P. C.) 41=**1 Suth. 178**=**1 Sar. 348.**

———*English real property law—Analogies from—Application of—Propriety.*

Great confusion arises from applying amalogies derived from the Engligh Law of real property to the Hindu law of inheritance; and when so applied the terms by which we describe estates in land under the Engligh Law are more likely to mislead than to direct the judgment aright. (*Lord Justice Turner.*) THE COLLECTOR OF MASULIPATAM *v.* CAVALI VENCATA NARRAINAPAH.
(1861) **8 M. I. A. 529 (550)**=**2 W. R. 61**=
1 Suth. 476=**1 Sar. 820.**

———*English rules or authorities—Inapplicability of.*

In a case in which questions arose touching the right of succession to valuable property of a Hindu inhabitant of Calcutta, *held*, that the questions must be dealt with and decided according to the Hindu law prevailing in Bengal, to which alone the property in question was subject, and that little or no assistance could be derived from English rules or authorities touching the transfer of property or the right of inheritance or succession thereto (64).

Various complicated rules which have been established in England are wholly inapplicable to the Hindu system, in which property, whether moveable or immoveable, is, in general, subject to the same rule of gift or will, and to the same course of inheritance (64). (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE. (1872) **Sup. I. A. 47**=**9 B. L. R. 377**=
18 W. R. 359=**3 Sar. 82**=**2 Suth. 692.**

———Illegitimate son of native woman by European father—Succession to—Law applicable to. *See* HINDU LAW—ILLEGITIMATE SON—INHERITANCE TO.
(1870) **13 M. I. A. 277 (309).**

———Migrating family—Law applicable to. *See* HINDU LAW—MIGRATING FAMILY.

———*Property succession to which is in question—Law of place of.*

The plaintiff sued to recover possession of certain villages, to which she claimed title as widow and heires of one *D*, who died without issue. The respondent, the nephew of *D*, had been in possession of the property for upwards of eleven years before the institution of the suit. The suit property was situated in a Province governed by the law of the Benares School.

Held, that the law of the Benares School applied to the case (379-80). (*Sir James W. Colvile.*) MUSSUMAT CHEETHA *v.* BABOO MIHEAN LALL.
(1867) **11 M. I. A. 369**=**2 Sar. 303.**

———*Property succession to which is in dispute—Law of place of—Domicile of deceased—Law of place of—Test.*

In a case in which the question was as to the right of succession to moveable and immoveable property last held by a Hindu widow as the heiress of her husband, the immovable property was situated in the Districts of Tirhoot, Behar, Shahabad, and Benares, and the deceased was domiciled at Benares.

Held, that the law by which the succession to the whole was governed was that of the Western Schools (160). (*Sir James W. Colvile.*) MUSSUMAT THAKOOR DEYHEE *v.* RAI BALUK RAM. (1866) **11 M. I. A. 139**=
10 W. R. (P. C.) 3=**21 I. J. N S. 106**=
2 Suth. 49=**2 Sar. 231.**

HINDU LAW—(*Contd.*)

Inheritance—Law applicable—(*Contd.*)

———*Property succession to which is in dispute—Place of, parties being also long resident there—Law of—Presumption in favour of—Law different—Applicability of—Proof of—Onus—Quantum.*

Two grandsons, who were first cousins, formed a joint undivided Hindu family, joint in food, worship, and estate, and during their joint lives they resided continually together. One of them predeceased the other, leaving the plaintiff his childless widow. In a suit brought by her against the representatives of the survivor for the recovery of the moiety of the family properties which belonged to her husband, *held*, that the property being situate wholly in Bengal, and the family having been long resident there, the plaintiff was certainly entitled to rely on her *prima facie* title, as heiress under the general Hindu law as administered in that part of India, and that it was incumbent on the defendants to allege and prove a title displacing her *prima facie* title (90-1).

The prevalence in any part of India of a special course of descent in a family, differing from the ordinary course of descent in that place of the property of people of that class or race, stands on the footing of usage or custom of the family. It must have had a legal origin, and have continuance, and whether the property be ancestral or self-acquired, the custom is capable of attaching and of being destroyed, equally as to both (91). (*Sir James W. Colvile.*) SOORENDRONATH ROY *v.* MUSSUMAT HEERAMONEE BURMONEAH. (1868) **12 M. I. A 81 = 10 W. R. 35 = 1 B. L. R. (P. C.) 26 = 2 Suth. 147 = 2 Sar. 372.**

Inheritance—Law of.

———(*See also* HINDU LAW—INHERITANCE — LAW APPLICABLE AND HINDU LAW—INHERITANCE—RULE OF.)

ALTERATION OF.

———Validity. *See* HINDU LAW — INHERITANCE—LEGAL COURSE OF—ALTERATION OF.

AUTHORITIES ON.

———*See also* HINDU LAW—AUTHORITIES.

———Bombay—Mithakshara subject to Mayukha in case of conflict—Harmonising of both wherever reasonably possible—Necessity. *See* HINDU LAW—INHERITANCE—MITHAKSHARA—AUTHORITY OF, IN BOMBAY.

(1906) 33 I. A. 176 (187) = 30 B. 431 (442).

———*Dattaka Chandrika.*

The Dattaka Chandrika is not primarily a work dealing with rights of inheritance or with rights of co-parcenary in property acquired by birth or adoption, but it does necessarily deal with such subjects as the occasion requires (292). (*Sir John Edge.*) PERRAZU *v.* SUBBARAYUDU.

(1921) 48 I. A. 280 = 44 M. 656 (667-8) = (1921) M. W. N. 541 = 34 C. L. J. 56 = 23 Bom. L. R. 920 = 14 L. W. 270 = 3 U. P. L. R. (P. C.) 46 = 26 C. W. N. 1 = 19 A. L. J. 621 = 61 I. C. 690 = 41 M. L. J. 33.

———*Dayabhaga—Authority of, in Bengal.*

The Dayabhaga of Jimutavahana is the great authority in Bengal on the law of inheritance (50). (*Sir Edward Ryan.*) CHUOTURYA RUN MARDUN SYN *v.* SAHUB PERHULAD SYN. **(1857) 7 M. I. A. 18 = 4 W. R. 132 = 1 Suth. 313 = 1 Sar. 591.**

———Mithakshara—Authority of. *See* HINDU LAW—INHERITANCE—MITHAKSHARA.

———*Saraswati Vilasa—Southern India.*

HINDU LAW—(*Contd.*)

Inheritance—Law of—(*Contd.*)

AUTHORITIES ON—(*Contd.*)

The Saraswati Vilasa, according to the editor of the Vivada Chintamani, is another work of authority in Southern India. It frequently refers to the Smriti Chandrika and, consequently, its author must have flourished later than Devananda Bhatta (363). (*Mr. Ameer Ali.*) VEDACHELA MUDALIAR *v.* SUBRAMANIA MUDALIAR.

(1921) 48 I. A. 349 = 44 M. 753 (765) = 14 L. W. 402 = (1921) M. W. N. 669 = 2 Pat. L. T. 707 = 26 C. W. N. 159 = 24 Bom. L. R. 649 = 30 M. L. T. 198 = 4 U. P. L. R. (P. C.) 13 = A. I. R. 1922 P. C. 33 = 64 I. C. 402 = 41 M. L. J. 676.

———*Smriti Chandrika — Viramitrodaya — Southern India.*

In Southern India the Smriti Chandrika of Devananda Bhatta holds a parallel position to the Mayukha in the Bombay Presidency. Devananda Bhatta flourished before Mitra Misra, the author of the Viramitrodaya. Although the Smriti Chandrika in the Southern Presidency is regarded as the most authoritative commentary on Vijnaneswara's work, the Viramitrodaya holds as in Western India, a high position. It supplements many gaps and omissions in the earlier commentaries, and illustrates and elucidates with logical preciseness the meaning of doubtful prescriptions (362). (*Mr. Ameer Ali.*) VEDACHALA MUDALIAR *v.* SUBRAMANYA MUDALIAR. **(1921) 48 I. A. 349 = 44 M. 753 (764) = 14 L. W. 402 = (1921) M. W. N. 669 = 2 Pat. L. T. 707 = 26 C. W. N. 159 = 24 Bom. L. R. 649 = 30 M. L. T. 198 = 4 U. P. L. R. (P. C.) 13 = A. I. R. 1922 P. C. 33 = 64 I. C. 402 = 41 M. L. J. 676.**

———*Viramitrodaya—Authority of, where Mithakshara law in force.*

Viramitrodaya, the well-known commentary of Mitra Misra on the Mithakshara, is regarded as a high authority wherever the law of that school is in force (355). (*Mr. Ameer Ali.*) VEDACHALA MUDALIAR *v.* SUBRAMANYA MUDALIAR. **(1921) 48 I. A. 349 = 44 M. 753 (758) = 14 L. W. 402 = (1921) M. W. N. 669 = 2 Pat. L. T. 707 = 26 C. W. N. 159 = 24 Bom. L. R. 649 = 30 M. L. T. 198 = 4 U. P. L. R. (P. C.) 13 = A. I. R. 1922 P. C. 33 = 64 I. C. 402 = 41 M. L. J. 676.**

———Viramitrodaya—Authority of, in Southern India. *See* HINDU LAW—INHERITANCE—LAW OF—AUTHORITIES ON—SMRITI CHANDRIKA.

(1921) 48 I. A. 349 (362) = 44 M. 753 (764).

DECISION OF QUESTION OF, IN HARMONY WITH RELIGIOUS FEELING OF HINDUS.

———*Court's duty.*

Their Lordships approach this somewhat delicate subject of the Hindu law of inheritance with an unfeigned desire to decide it in harmony with the religious feeling of Hindus (390). (*Sir Robert Phillimore.*) BHYAH RAM SINGH *v.* BHYAH UGUR SINGH. **(1870) 13 M. I. A. 373 = 14 W. R. (P. C.) 1 = 5 B. L. R. (P. C.) 293 = 2 Suth. 330 = 2 Sar. 566.**

ESTATE INCONSISTENT WITH—CREATION OF.

———Validity. *See* HINDU LAW — INHERITANCE—LEGAL COURSE OF—ALTERATION OF.

FEATURE OF.

———Family ownership — Individual ownership. *See* HINDU LAW—FAMILY. **(1870) 13 M. I. A. 373 (391).**

FRAUD UPON—TRANSFER AMOUNTING TO.

———Alteration *inter vivos* to alter succession if a—Validity of. *See* MAHOMEDAN LAW—INHERITANCE—LAW OF—FRAUD UPON. **(1867) 11 M. I. A. 517 (546-7).**

HINDU LAW—(*Contd.*)

Inheritance—Law of—(*Contd.*)

NEW LAW—CREATION OF.

——*Validity.*

It is not competent to parties to create, as to property, any new law to regulate the succession to it *ab intestato* (242). (*Lord Kingsdown.*) ABRAHAM *v.* ABRAHAM.
(1863) **9 M. I. A. 195 = 1 W. R. (P. C.) 1 = 1 Suth. 501 = 2 Sar. 10.**

POINT ON, PECULIAR AND UNFAMILIAR AND VARYING WITH THE CASTE OF THE PERSONS CONCERNED—PRIVY COUNCIL APPEAL.

——Raising of point for first time in, not allowed. (*Lord Hobhouse.*) GAJAPATI RADHIKA *v.* VASUDEVA SANTA SINGARO. (1892) **19 I. A. 179 (183) = 15 M. 503 (511) = 6 Sar. 218.**

QUESTION AS TO—*Argumentum ab inconvenienti.*

——Applicability of principle of. *See Argumentum ab inconvenienti.* (1880) **7 I. A. 115 (156) = 5 C. 776 (791).**

QUESTIONS ON—DECISION OF—*Stare decisis.*

——Principle of—Applicability. *See* HINDU LAW—INHERITANCE—*Stare decisis.*

RELATIONSHIP—WORDS OF.

——Meaning of, in connection with such law—Difference in, in case of different communities. *See* RELATIONSHIP—WORDS OF. (1928) **55 I. A. 139 = 3 Luck. 76.**

RELIGION—CONNECTION BETWEEN.

——*See* HINDU LAW—INHERITANCE—RELIGION.

VEXED AND DIFFICULT SUBJECT.

——The Hindu law of succession is a vexed and difficult subject. (*Sir Robert Phillimore.*) BHYAH RAM SINGH *v.* BHYAH UGUR SINGH. (1870) **13 M. I. A. 373 (389) = 14 W. R. (P. C.) 1 = 5 B. L. R. (P. C.) 293 = 2 Suth. 330 = 2 Sar. 566.**

Inheritance—Legal course of—Alteration of.

——*Agreement having result of—Validity of.*

Parties cannot by their agreement give new rights of succession to themselves or their heirs unknown to the law (420). (*Lord Kingsdown.*) MYNA BOYEE *v.* OOTARAM. (1861) **8 M. I. A. 400 = 2 W. R. 4 = 2 M. H. C. R. 196 = 1 Suth. 452 = 1 Sar. 797.**

——These instruments do not purport to give any new quality of descent to the Talook, even if such quality were capable of being derived from the agreement of two or more owners (513-4). (*Lord Cairns.*) SRI GAJAPATHI RADHIKA PATTA MAHA DEVI GARU *v.* SRI GAJAPATHI NILAMANI PATTA MAHA DEVI GARU. (1870) **13 M. I. A. 497 = 14 W. R. (P. C.) 33 = 6 B. L. R. 202 = 2 Suth. 365 = 2 Sar. 601.**

——It follows that, at least wherever the agreements have not specifically provided for the contrary—even assuming that they could so provide—the succession to this property must be governed by the law which governs the succession to separate estate (517). (*Lord Cairns.*) SRI GAJAPATHI RADHIKA PATTA MAHA DEVI GARU *v.* SRI GAJAPATHI NILAMANI PATTA MAHA DEVI GARU.
(1870) **13 M. I. A. 497 = 14 W. R. (P. C.) 33 = 6 B. L. R. 202 = 2 Suth. 365 = 2 Sar. 601.**

——Crown—Private individual—Powers of—Distinction. *See* CROWN — GRANT BY — INHERITANCE — LEGAL COURSE OF.

——*Deed having result of—What amounts to—Validity of — Male line — Permanent devolution of property in direct—Deed providing for.*

Two brothers, *K* and *N*, subject to the Dayabaga school of the Hindu law, executed a document, by which they

HINDU LAW—(*Contd.*)

Inheritance—Legal course of—Alteration of—(*Contd.*)

purported to provide for the permament devolution of their respective properties in the direct male line, including adopted sons, with the condition that in case of failure of lineal male heirs in one branch the properties belonging to that branch should go to the other, subject to the same rule; and only in the absence of male descendants in the direct line in either branch were the properties to go to female heirs or other descendants. The document was called a will, but the preamble stated the object for which it was executed. The preamble said, "whereas body is mortal, it is impossible to say what may befall at what time, and as ruin may ensue from disputes relating to the shares arising in future amongst son, daughter, daughter's son and child less widow, unless some rules are regularly framed, and it has accordingly become necessary to prescribe a set of rules in that behalf, and hence the rules mentioned below are laid down; these shall become operative and come into force on our death."

K died, leaving him surviving, besides a son named *A*, and a daughter *D*, his brother *N*, and their mother. *A* died without any issue and the mother of *K* and *N* subsequently. The plaintiffs, the sons of *D*, instituted the suit, out of which the appeal arose, against *N*, claiming as next reversioners to *A*, their maternal uncle, the properties which originally belonged to *K*, and after him to *A*, and which had since come into the possession of *N*.

Held, reversing the High Court, that by the instrument in question it was clearly intended to vary the rule of Hindu law, and to control the devolution of the properties until the indefinite failure at some remote period of the male line of both brothers, that such an attempt to alter the mode of succession prescribed by law is illegal, and that the plaintiffs were entitled to recover the suit properties (1124-5).

There is no need for the contention that under the instrument in question there was a device in favour of *A*, with a gift over to *N*, the uncle. Their Lordships have no doubt that the sole intention of the executants in this document, as they expressly avowed in the preamble, was to alter the rule of succession in their family which they had no power to do. (*Mr. Ameer Ali.*) PURNA SASHI BHATTACHARJI *v.* KALIDHAN RAI CHOWDHURI. (1911) **38 I. A. 112 = 38 C. 603 = 14 C. L. J. 1 = 8 A. L. J. 681 = 13 Bom. L. R. 451 = 15 C. W. N. 693 = 11 I. C. 412 = 21 M. L. J. 1119 (1125).**

——*Deed resulting in—Validity of—Effect—Male line—Succession in—Females—Exclusion of—Deed providing for.*

A private individual, who attempts by gift or will to make property inheritable " otherwise than the law directs, is assuming to legislate, and the gift must fail, and the inheritance take place as the law directs (119-20).

A and *B*, two brothers, subject to the Dayabhaga school of the Hindu law, executed a document by which they purported to provide for the permanent devolution of their respective properties in the direct male line, including adopted sons, with the condition that in case of failure of lineal male heirs in one branch the properties belonging to that branch should go to the other, subject to the same rule; and only in the absence of male descendants in the direct line in either branch were the properties to go to female heirs or their descendants. In a suit instituted by the daughter's sons of *A*, claiming as next reversioners of *C*, *A's* son, who died without any issue, to recover from *B* the properties which originally belonged to *A* and after him to *C*, and which had since come into the possession of *B*, *held*, that the intention of the executants was to vary the rule of Hindu law, and to

HINDU LAW—(*Contd.*)

Inheritance—Legal course of—Alteration of—(*Contd.*)

control the devolution of the properties until the indefinite failure at some remote period of the male line of both brothers; that such an attempt to alter the mode of succession prescribed by law was illegal; and that the plaintiffs were therefore entitled to recover the suit properties (119).

Throughout the instrument there is no indication of an intention to make a gift to any person; whilst paragraph 4 clearly shows that the "sons and grandsons," who took the properties left by the executants acquired them as "full owners." There was no restriction on their powers to deal with such properties "in any way they wished." But, although they acquired the estate as absolute owners, it was not to descend in the legal channel according to the prescriptions of the Hindu law, but in accordance with the rules framed by the executants with the avowed object stated in the preamble. It was only on the indefinite failure of male issue in both branches that the female heirs or their descendants were to receive the shares prescribed for them in the Shastras. This is the general policy of the instrument (119). (*Mr. Ameer Ali.*) PURNA SASHI BHATTACHARJI *v.* KALIDHAN RAI CHOWDHURI. (1911) **38 I. A. 112 = 38 C. 603 (619-20) = 15 C. W. N. 693 = 8 A. L. J. 681 = 13 Bom. L. R. 451 = 14 C. L. J. 1 = (1911) 2 M. W. N. 403 = 10 M. L. T. 361 = 11 I. C. 412 = 21 M. L. J. 1119.**

———*Gift or will having effect of—Validity of.*

All estates of inheritance created by gift or will, so far as they are inconsistent with the general law of inheritance, are void as such (66). (*Mr. Justice Willes.*) JUTTENDRO-MOHUN TAGORE *v.* GANENDROMOHUN TAGORE. (1872) **Sup. I. A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.**

———A private individual, who attempts by gift or will to make property inheritable otherwise than the law directs, is assuming to legislate, and the gift must fail, and the inheritance take place as the law directs. This was well expressed by Lord Justice Turner in Soorjomonee Dossee's case: "A man cannot create a new form of estate or alter the line of succession allowed by law, for the purpose of carrying out his own wishes or views of policy" (65). (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDRO-MOHUN TAGORE. (1872) **Sup. I. A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.**

———Grant having effect of—Validity of—Crown—Private individual—Grants by—Distinction. *See* CROWN—GRANT BY—INHERITANCE—LEGAL COURSE OF.

———Transfer resulting in—Validity of. *See* MAHOMEDAN LAW—INHERITANCE—LAW OF—FRAUD OF. (1867) **11 M. I. A. 517 (546-7).**

Inheritance—Migrating family.

———Law applicable to. *See* under HINDU LAW—MIGRATING FAMILY.

Inheritance—Mithakshara.

———*Authority of, in all schools.*

The Mithakshara is the standard authority on the subject of inheritance in all the schools of Hindu law, from Benares to the southern extremity of the Peninsula of India (49). (*Sir Edward Ryan.*) CHUOTURYA RUN MURDUN SYN *v.* SAHUB PERHULAD SYN. (1857) **7 M. I. A. 18 = 4 W. R 132 = 1 Suth. 313 = 1 Sar. 591.**

———*Authority of, in Bombay—Conflict between it and Mayukha—Which prevails—Harmonising of both wherever reasonably possible—Necessity.*

Questions on the Hindu Law of Inheritance to property in the Island of Bombay are to be determined in accordance

HINDU LAW—(*Contd.*)

Inheritance—Mithakshara—(*Contd.*)

with the Mithakshara, subject to the doctrine to be found in the Mayukha, where the latter differs from it. But the general principle of the Courts ought to be to construe both so as to harmonise with one another wherever and so far as that is reasonably possible. (*Lord Davey.*) BAI KESSERBAI *v.* HUNSRAJ MORARJI. (1906) **33 I. A. 176 (187) = 30 B. 431 (442) = 10 C. W. N. 802 = 4 C. L. J. 9 = 8 Bom. L. R. 446 = 3 A. L. J. 484 = 1 M. L. T. 211 = 16 M. L. J. 446.**

———Authority, of, in Madras Presidency—Highest authority. (*Lord Justice Knight Bruce.*) COLLECTOR OF MASULIPATAM *v.* CAVALY VENKATA NARRAINAPPAH. (1860) **8 M. I. A. 500 (522) = 2 W. R. 59 = 1 Suth. 417 = 1 Sar. 752.**

———**Ch. II, S. 1**—*Construction of.*

The text of the Mithakshara, Ch. II, S.1 (a wedded wife, being chaste, takes the whole estate of a man, who, being separated from his co-heirs, and not subsequently reunited with them, dies leaving no male issue), taken by itself, does not carry the rights of widows to inherit beyond the cases in which their husbands have died in a state of separation from their co-heirs, and leaving no male issue; but the text is propounded as a qualification of the larger and more general proposition in favour of widows; and consequently, in construing it, their Lordships have to consider what are the limits of the qualification, rather than what are the limits of the right (607-8). (*Lord Justice Turner.*) KATAMA NATCHIAR *v.* THE RAJAH OF SHIVAGUNGA. (1863) **9 M.I.A. 539 = 2 W.R. (P.C.) 31 = 1 Suth. 520 = 2 Sar. 25.**

———**Ch. II, S. 1**—*Inapplicability of, to separate property of co-parcener.*

The very terms of the text of the Mithakshara, Ch. II, S. 1, referring to the right of widows to inherit in default of male issue, refer to cases in which the whole estate of the deceased has been his separate property, and, indeed, the whole chapter in which the text is contained, seems to deal only with cases in which the property in question has been either wholly the common property of a united family, or wholly the separate property of the deceased husband. We find no trace in it of a case in which the property in question may have been in part the common property of a united family, and in part the separate acquisition of the deceased; and it cannot, we think, be assumed that because widows take the whole estates of their husbands when they have been separated from, and not subsequently re-united with, their co-heirs, and have died leaving no male issue, they cannot, when their husbands have not been so separated, take any part of their estates, although it may have been their husband's separate acquisition. The text, therefore, does not seem to govern such a case (607-8). (*Lord Justice Turner.*) KATAMA NATCHIAR *v.* THE RAJAH OF SHIVAGUNGA. (1863) **9 M. I. A. 539 = 2 W. R. (P. C.) 31 = 1 Suth. 520 = 2 Sar. 25.**

———**Ch. II, S. 4, Art. 7**—*Brothers—Their sons—If include sisters and their sons.*

The word "brothers" in Art. 7 of S. 4 of Chapter II of the Mithakshara does not include sisters, and "their sons" in the same article do not include "sister's sons" (402-3). (*Sir James W. Colvile.*) THAKOORAIN SAHIBA *v.* MOHUN LALL. (1867) **11 M. I. A. 386 = 7 W. R. (P. C.) 25 = 1 Suth. 681 = 2 Sar. 289.**

———**Ch. II, S. 6**—"*Sons*" *in expression "sons of his own mother's sister"—Grandsons if included in.*

The word "sons" in the expression "the sons of his own mother's sister" in Ch. II, S. 6 of the Mithakshara is used in a generic sense, and includes a grandson (94). (*Sir John*

HINDU LAW—(*Contd.*)

Inheritance—Mithakshara—(*Contd.*)

Edge.) ADIT NARAYAN SINGH *v.* MAHABIR PRASAD TEWARI. (1921) 48 **I. A.** 86 = 2 **Pat. L.T.** 97 = 14 **L. W.** 20 = 25 **C. W. N.** 842 = 23 **Bom. L. R.** 692 = 6 **Pat. L.J.** 140 = 19 **A.L.J.** 208 = (1921) **M.W.N.** 153 = 33 **C.L.J.** 263 = 60 **I.C.** 251 = 40 **M. L. J.** 270.

———Full blood—Preference of, to half-blood—Scope of. *See* HINDU LAW—INHERITANCE—PERSONS ENTITLED TO RIGHT OF—PREFERENCE AS BETWEEN—PATERNAL UNCLE OF HALF-BLOOD. (1915) 42 **I. A.** 177 (183 4) = 37 **A.** 545 (556-7).

———*Inheritance under—Basis of right of – Preferential right—Test—Propinquity—Spiritual benefit.*

The Mithakshara, whilst holding that the right to inherit does not spring from the right to offer oblations, does not exclude it from consideration as a test of propinquity or nearness of blood (217). It is absolutely clear that under the Mithakshara, whilst the right of inheritance arises from sapinda-relationship, or community of blood, in judging of the nearness of blood-relationship or propinquity among the gotraja, the test to be applied to discover the preferential heir is the capacity to offer oblations. This rule has been affirmed by this Board in the following words :—"When a question of preference arises, as preference is founded on superior efficacy of oblations, that principle must be applied to the solution of the difficulty" (227-8). (*Mr. Ameer Ali.*) BUDDHA SINGH *v.* LALTU SINGH. (1915) 42 **I.A.** 208 = 20 **C.W.N.** 1 = 37 **A.** 604 (613, 623-4) = 22 **C. L. J.** 481 = 13 **A.L.J.** 1007 = 17 **Bom. L.R.** 1022 = 2 **L.W.** 897 = (1915) **M.W.N.** 772 = 18 **M.L.T.** 409 = 30 **I. C.** 529 = 29 **M. L. J.** 434.

———Inheritance under—Basis of right of – Propinquity—Spiritual benefit—Test—Dayabhaga law — Distinction. *See* HINDU LAW — INHERITANCE—SAPINDA — RELATIONSHIP OF—MEANING OF.

———*Inheritance under—Basis of right of—Sapinda-relationship, in other words, "community of blood".*

Under the Mithakshara the right of inheritance depends on sapinda-relationship, in other words, "community of blood" (354). (*Mr. Ameer Ali.*) VEDACHALA MUDALIAR *v.* SUBRAMANIA MUDALIAR. (1921) 48 **I.A.** 349 = 44 **M.** 753 (757) = 14 **L. W.** 402 = 2 **Pat. L. T.** 707 = (1921) **M. W. N.** 669 = 26 **C.W.N.** 159 = 24 **Bom. L. R.** 649 = 30 **M. L. T.** 198 = 4 **U. P. L. R.** (**P.C.**) 13 = **A. I. R.** 1922 **P.C.** 33 = 64 **I.C.** 402 = 41 **M. L. J.** 676.

———*Inheritance under – Preferential right of—Propinquity—Spiritual benefit—Test of—Applicability of—Bandhus of different classes—Competition as between.*

In families governed by the law of the Mithakshara the right of succession amongst the three classes of bandhus mentioned in chapter II, S. 6 of the Mithakshara is governed by the propinquity of the class ; accordingly a pitri bandhu does not succeed until the classes of atma bandhus and pitri bandhus are exhausted. The rule of the Mithakshara, in preferring the nearer to the remote class of bandhus, is not dependent on the individual propinquity or the efficacy of offerings to a deceased person (94-5). (*Sir John Edge.*) ADIT NARAYAN SINGH *v.* MAHABIR PRASAD TEWARI. (1921) 48 **I.A.** 86 = 2 **Pat. L.T.** 97 = 14 **L W.** 20 = 25 **C.W.N.** 842 = 23 **Bom. L.R.** 692 = 6 **Pat. L. J.** 140 = 19 **A.L.J.** 208 = (1921) **M.W.N.** 153 = 33 **C.L.J.** 263 = 60 **I.C.** 251 = 40 **M.L.J.** 270.

———Inheritance under—Preferential right of— Propinquity—Spiritual benefit—Test—Bombay Mithakshara. *See* HINDU LAW—INHERITANCE—SAPINDAS—CLASSES OF —PREFERENTIAL RIGHT IN. (1880) 7 **I.A.** 212 (234) = 5 **B.** 110 (121).

HINDU LAW—(*Contd.*)

Inheritance—Mithakshara—(*Contd.*)

———*Inheritance under—Preferential right of — Spiritual benefit—Test of—Inapplicability of, in case of claimants of equal degree and conferring equal benefit.*

Where all the contending kindred are in an equal degree remote, and where the benefits conferred are equal, though slight, the principle of selection founded on superior efficacy, is inapplicable to the solution of that question of precedence (393). (*Sir Robert Phillimore.*) BHYAH RAM SINGH *v.* BHYAH UGUR SINGH. (1870) 13 **M.I.A.** 373 = 14 **W. R.** (**P.C.**) 1 = 5 **B.L.R.** (**P.C.**) 293 = 2 **Suth.** 330 = 2 **Sar.** 566.

———*Inheritance under—Preferential right of—Test—Spiritual benefit.*

The question of preference is distinct from that of entire exclusion. When a question of preference arises, as preference is founded on superior efficacy of oblations, that principle must be applied to the solution of the difficulty. It obtains properly when a succession opens to a deceased, when the question mooted is a real one (at least in the contemplation of pious Hindus), *viz.*, who best can confer on the deceased and his ancesters not fully benefited, the benefits which the grades of oblations offer in differing degrees. Where no sexual or personal incapacity exists, no ground of entire exclusion from inheritance exists if the opposing parties confer inferior benefits, or benefits in equal degrees only. In such a case, what reason could justify a sentence of exclusion from inheritance on a claim to put a limitation on language which declares the whole class heritable, and not simply some persons found in it ? (392-3). (*Sir Robert Phillimore.*) BHYAH RAM SINGH *v.* BHYAH UGUR SINGH. (1870) 13 **M. I. A.** 373 = 14 **W. R.** (**P. C.**) 1 = 5 **B. L. R.** (**P. C.**) 293 = 2 **Suth.** 330 = 2 **Sar.** 566.

———Sapindas in. *See* HINDU LAW—INHERITANCE—SAPINDAS.

———*Scheme of—Dr. Sarvadhikari's construction of—Correctness of.*

Dr. Rajkumar Sarvadhikari's construction appears to their Lordships to rest on a logical foundation, and his views seem to be consistent and clear. In effect he says that the Mithakshara propounds a definite scheme of succession, lineal male descendants of the deceased owner down to and including the third degree, who constitute the first class of propinquous relations (the nearest sapindas), inherit in succession in the first instance. In their default the widow and daughter take by express provision of the law. The daughter's son comes in summarily. In their absence the inheritance ascends ; each ascending line begins with a female, and each has to be exhausted in accordance with the rule of propinquous sapinda-relationship before the next in order can take; so that the parents and "their three successive descendants" take first ; then the paternal grandmother and the paternal grandfather, and "their three successive descendants" come next, and so on (224). (*Mr. Ameer Ali.*) BUDDHA SINGH *v.* LALTU SINGH.

(1915) 42 **I. A.** 208 = 37 **A.** 604 (620) = 20 **C. W. N.** 1 = 22 **C. L. J.** 481 = 13 **A. L. J.** 1007 = 17 **Bom. L R.** 1022 = (1915) **M.W.N.** 772 = 2 **L.W.** 897 = 18 **M. L. T.** 409 = 30 **I. C.** 529 = 29 **M. L.J.** 434.

Inheritance—Mithila law—Maternal relations.

———*Right of, only after exhaustion of paternal relations to seventh degree.*

The Mithila law is against the claim of any relation on the mother's side till those on the father's side to the seventh degree have been exhausted (167-8).

Held, accordingly, that, under the Mithila law, the father of the respondents, who was related in the sixth degree on the father's side, was entitled to succeed to the estate of the

HINDU LAW—(*Contd.*)

Inheritance—Mithila law—Maternal relations—(*Contd.*)

deceased in preference to the appellant, who claimed to be entitled as the cousin on the mother's side. (*Mr. Baron Parke.*) RUTCHEPUTTY DUTT IHA *v.* RAJUNDER NARAIN RAE. (1839) 2 M. I. A. 132 = 2 Suth. 1 = 1 Sar. 161.

Inheritance—Mother.

———Right of. *See* under HINDU LAW—MOTHER.

Inheritance—Murderer.

———Inheritance to property of murdered — Exclusion from. *See* HINDU LAW—INHERITANCE — EXCLUSION FROM—MURDERER.

Inheritance—Obstructed inheritance.

———*Devolution of—Two courses of, under Mithakshara law—Illustrations of.*

The Mithakshara law recognises two courses of devolution in the case of what is called "obstructed inheritance"—the ancestral property descending in one channel, the self-acquired property in another. Even where the estate is impartible, this distinction in the course of descent is recognized (281).

Unless there be a custom by which self-acquired properties in a Mithakshara family become part of the ancestral estate, or unless it be shown that the person acquiring the same intended to incorporate such acquisitions with the estate, they decend by the ordinary law of inheritance. For example, where the owner of an ancestral impartible estate, possessed also of self-acquired properties, dies leaving lineal male descendants, as the inheritance is "unobstructed," both classes of property go to them; supposing, however, he were to die leaving no male progeny in the direct line, but a widow and a divided agnatic relation, in the absence of a custom the self-acquired property would go to the widow, whilst the estate would devolve on the agnatic heir. The onus of establishing a custom dehors the ordinary rule in such a case would lie on the person asserting it (281-2). (*Mr. Ameer Ali.*) MURTAZA HUSAIN KHAN *v.* MAHOMED YASIN ALI. (1916) 43 I. A. 269 = 38 A. 552 (567 8) = 14 A. L. J. 1083 = 20 M. L. T. 362 = (1916) 2 M. W. N. 555 = 4 L. W. 538 = 19 O. C 290 = 18 Bom. L. R. 884 = 25 C. L. J. 1 = 1 Pat. L. W. 122 = 21 C. W. N. 410 = 36 I. C. 299 = 31 M. L. J. 804.

———Once obstructed if always obstructed. *See* HINDU LAW—IMPARTIBLE ESTATE—SUCCESSION TO—OBSTRUCTED INHERITANCE.

(1896) 23 I. A. 128 = 19 M. 451.

———*Persons succeeding in case of—If take as tenants in common or as joint tenants.*

The proposition is by no means universally true that in cases of obstructed inheritances those who succeed take as tenants in common and not as joint tenants. Members of a joint family who succeed to self-acquired property take it jointly. Widows succeed jointly; so do daughters. (*Lord Lindley.*) RAJA CHELIKANI VENKAYAMMA GARU *v.* RAJA CHELIKANI VENKATARAMANAYAMMA.

(1902) 29 I.A. 156 (165) = 25 M. 678 (687) = 7 C. W. N. 1 = 4 Bom. L. R. 657 = 8 Sar. 286 = 12 M.L.J. 299.

———*Survivorship doctrine if applicable to.*

There is no authority for the view that, according to the Mithakshara law, the doctrine of survivorship is limited to unobstructed successions and to the succession to the joint property of re-united co-parceners. (*Lord Lindley.*) RAJA CHELIKANI VENKAYAMMA GARU *v.* RAJA CHELIKANI VENKATARAMANAYAMMA. (1902) 29 I.A. 156 (165-6) = 25 M. 678 (687-8) = 7 C.W.N. 1 = 4 Bom. L.R. 657 = 8 Sar. 286 = 12 M.L.J. 299.

HINDU LAW—(*Contd.*)

Inheritance—Obstructed inheritance—(*Contd.*)

———Unobstructed inheritance — Distinction—Mithakshara law. *See* HINDU LAW—INHERITANCE—OBSTRUCTED INHERITANCE—DEVOLUTION OF.

(1916) 43 I.A. 269 (281-2) = 38 A. 552 (567-8).

Inheritance—Persons entitled to right of.

———*Father's brother's daughter's son.*

Quære, whether a son of a daughter of a father's brother of a deceased Hindu could, under any circumstances, succeed by inheritance to the property of the deceased. He could, if at all, only succeed in the character of a distant bandhu (22). (*Sir Robert P. Collier.*) RANI ANAND KOER *v.* THE COURT OF WARDS.

(1880) 8 I. A. 14 = 6 C. 764 (772) = 8 C.L R. 381 = 4 Sar. 195 = R. & J.'s No. 63 (Oudh).

———*Grandfather's son's son's daughter's daughter's son—Mithakshara law.*

The paternal grandfather's son's son's daughter's daughter's sons of a deceased Hindu are not entitled to succeed to his estate, because they are his bhinna-gotra beyond the fifth degree, and the element of mutuality is wanting between them and the deceased (312). (*Mr. Ameer Ali.*) RAMACHANDRA MARTANDA WAIKAR *v.* VINAYAK VENKATESH KOTHEKAR. (1914) 41 I.A. 290 = 42 C. 384 (420) = 18 C.W.N. 1154 = 16 M.L.T. 447 = 10 N.L.R. 112 = (1914) M.W.N. 835 = 16 Bom.L.R. 863 = 12 A.L.J. 1281 = 20 C.L J. 573 = 25 I.C. 290 = 27 M L.J. 333.

———*Great-great-grandson of great-grandfather.*

The great-great-grandson of the great-grandfather of a deceased Hindu is an heir under the Hindu law (194).

Their Lordships observed that the objection to his title as heir, on the ground of its remoteness from the common ancestor, was plainly untenable (194). (*Sir James W. Colvile.*) KOOER GOOLAB SINGH *v.* RAO KURUN SINGH.

(1871) 14 M.I.A. 176 = 10 B.L.R. 1 = 2 Suth. 474 = 2 Sar. 722.

———*Great-great-great-grandson of common ancestor—Right of — Seventh person — Method of arriving at—Mithakshara law.*

Under the Mithakshara law, a great-great-great-grandson of a common ancestor is not excluded from inheriting as a gentile to another great-great-great-grandson on the ground that he is too remote in descent from the common ancestor.

So *held*, affirming the decision of the court below, in a case in which the defendants were in possession under alleged alienations by the widow of the last male owner.

The plaintiffs show a common ancestor, a Gotra, a community of family, a descent which extended to the deceased and themselves, and satisfy every condition of the text (391-2).

The court below supported its opinion by the authority of the decision of the Privy Council in 2 M. I. A. 133. The judgment in that case concludes, that the Bandhus do not inherit, "till those on the father's side to the seventh degree have been exhausted." As the judgment is founded in a great degree on the opinion of Mr. Harrington, and expresses no dissent from his method, of arriving at the seventh person by taking six degrees in the descending or ascending line, the court below was justified in treating this point as settled by authority, and the plaintiffs as gentiles within the degrees, and so entitled to inherit (393-4). (*Sir Robert Phillimore.*) BHYAH RAM SINGH *v.* BHYAH UGUR SINGH. (1870) 13 M.I.A. 373 = 14 W.R. (P.C.) 1 = 5 B. L. R. (P. C.) 293 = 2 Suth. 330 = 2 Sar. 566.

HINDU LAW—(*Contd.*)

Inheritance—Persons entitled to right of—(*Contd.*)

———*Maternal uncle of father.*

Held that, according to the Mithakshara law of the Benares school, the appellant, as the maternal uncle of the father of the deceased, was capable of inheriting the property of the deceased, and that his title thereto was preferable to that of the Crown (claiming by escheat). (*Sir James W. Colvile.*) GRIDHARI LAL KOY *v.* THE GOVERNMENT OF BENGAL. **(1868) 12 M. I. A. 448 (468) = 10 W.R. (P. C.) 31 = 1 B.L.R. (P. C.) 44 = 2 Suth. 159 = 2 Sar. 382.**

———*Mother's sister's grandson—Atma bandhu if an.*

Under the Mithakshara law the grandson of a mother's sister falls within the general description of an atma bandhu, a person related to the propositus himself, and is not to be excluded only because he is not mentioned among the illustrations in Ch. II, S. 6 of the Mithakshara (94). (*Sir John Edge.*) ADIT NARAYAN SINGH *v.* MAHABIR PRASAD TEWARI. **(1921) 48 I. A. 86 = 2 Pat. L. T. 97 = 14 L. W 20 = 25 C. W. N. 842 = 23 Bom. L. R. 692 = 6 Pat. L. J. 140 = 19 A. L. J. 208 = (1921) M. W. N. 153 = 33 C. L. J. 263 = 60 I. C. 251 = 40 M. L. J. 270.**

———Sister. *See* HINDU LAW—INHERITANCE—SISTER.

———Sister's descendants. *See* HINDU LAW—INHERITANCE—SISTER—DESCENDANTS OF.

(1871) 14 M. I. A. 176 (195-6).

———*Sister's son.*

The sister's son is not in the line of heirs at all.

The position that a sister's son comes within the category of the cognates or bandhus is now abandoned. It is, perhaps, a startling anomaly, that whilst among the cognates the aunt's sons are included, the sister's sons should be altogether excluded from the inheritance (401).

The sister's son does not come in as one of the earlier class of heirs known as the sapindas. (*Sir James W. Colvile.*) THAKOORAIN SAHIBA *v.* MOHUN LALL.

(1867) 11 M. I. A. 386 = 7 W. R. (P. C.) 25 = 1 Suth. 681 = 2 Sar. 289.

———A sister's son is an heir under the Hindu law and is entitled to inherit the estate of his maternal uncle (70). (*Sir James W. Colvile.*) RAJENDRO NATH HOLDAR *v.* JOGENDRO NATH BANERJEE. **(1871) 14 M. I. A. 67 = 15 W. R. (P. C.) 41 = 7 B. L. R. 216 = 2 Suth. 422 = 2 Sar. 666.**

———*Son bought.*

Under the Hindu law, a bought son cannot succeed. (*Mr. Baron Parke.*) YACHEREDDY CHINNA BASSAVAPPA *v.* YACHEREDDY GOWDAPPA. **(1835) 5 W R. (P. C.) 114 = 1 Suth. 41 (43) = 1 Sar. 84.**

———*Son-in-law.*

Under the Hindu law a son-in-law has no right of succession (38). (*Sir Richard Couch.*) SRIMATI JANOKI DEBI *v.* SRI GOPAL ACHARJIA. **(1882) 10 I. A. 32 = 9 C. 766 (772) = 13 C. L. R. 30 = 4 Sar. 417 = 7 I.J. 218.**

———*Step-mother.*

Their Lordships are further of opinion that there are no grounds for impeaching the decree in so far as it found that the appellant stood in the relation only of step-mother to *R*, and, therefore, could have no right to inherit to his estate (446-7). (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SETHUPATHY.

(1868) 12 M. I A. 397 = 10 W. R. (P. C.) 17 = 1 B L. R. (P. C.) 1 = 2 Suth. 135 = 2 Sar. 361.

———Under the Hindu law, a step-mother has no right to succeed to her step-son (30). (*Lord Robertson.*) RAI JAGATPAL SINGH *v.* RAJA JAGESHAR BAKSH SINGH. **(1902) 30 I. A. 27 = 25 A. 143 (150) = 7 C. W. N. 209 = 8 Sar. 367.**

HINDU LAW—(*Contd.*)

Inheritance—Persons entitled to right of —Preference as between.

———*Father's brother's daughter's son—Father's brother's son or son of such a son.*

A son of a daughter of a father's brother is much farther removed in the order of succession than a son of a father's brother, or a son of such a son (22). (*Sir Robert P. Collier.*) RANI ANUND KOER *v.* COURT OF WARDS.

(1880) 8 I. A. 14 = 6 C. 764 (772) = 8 C. L. R. 381 = 4 Sar. 195 = R. & J.'s No. 63 (Oudh).

———Father's sister's son—Father's brother's daughter—Bombay Presidency. *See* HINDU LAW—INHERITANCE—BANDHUS—MALE AND FEMALE BANDHUS OF EQUAL NEARNESS. **(1924) 51 I. A. 368 (376-7) = 48 B. 569.**

———*Father's sister's son—Great-grandson of great-great-great-grandfather.*

The great-grandson of the deceased's great-great-great-grandfather is by Hindu law entitled to succeed to the estate of the deceased in preference to his father's sister's son (165). (*Sir Montague E. Smith.*) THAKOOR JEEBNATH SINGH *v.* COURT OF WARDS. **(1875) 2 I. A. 163 = 15 B. L. R. 190 = 23 W. R. 409 = 3 Sar. 490 = 3 Suth. 142.**

———*Great-grandfather's grandson—Grandfather's great-grandson—Mithakshara.*

Under the Mithakshara law, as expounded in the Benares school, the grandson of the great-grandfather of a deceased Hindu, has no preferential title to the inheritance of the deceased as against the great-grandson of the grandfather of the deceased, and the grandson of his paternal uncle.

The word "putra" and its synonym employed by Vijnaneswara in connection with brothers and uncles must be understood in a generic sense as in the case of the deceased owner, and the descendants in each ascending line, up to the fixed limit, should be exhausted at any rate to the third degree before making the ascent to the line next in order of succession (227).

Further, the great-grandson of the grandfather of the deceased admittedly confers greater benefit on the deceased by the offerings he makes to the manes of the common ancestor, and is, therefore, under the Mithakshara, the preferential heir (227-8).(*Mr. Ameer Ali.*) BUDDHA SINGH *v.* LALTU SINGH. **(1915) 42 I. A. 208 = 37 A. 604 (623) = 20 C. W. N. 1 = 22 C. L. J. 481 = 13 A. L. J. 1007 = 17 Bom. L. R. 1022 = (1915) M. W. N. 772 = 2 L. W. 897 = 18 M L. T. 409 = 30 I. C. 529 = 29 M. L. J. 434.**

———*Maternal uncle—Father's sister's son's son—Mithakshara law.*

Under the law of the Mithakshara as recognised in the Dravida country, the maternal uncle of a deceased person is entitled to his inheritance in preference to the son of his (deceased's) paternal aunt's son.

The maternal uncle and the deceased were sapindas of each other; and he (the maternal uncle) is undoubtedly nearer in degree to the deceased than the son of the paternal aunt's son. The maternal uncle also offers oblations to his father and grandfather to whom the deceased was also bound to offer pinda. The deceased thus shares the merit, resulting from the maternal uncle's oblations to the manes of his ancestors, whereas the father's sister's son's son offers no pinda to the deceased's ancestors (364-5). (*Mr. Ameer Ali.*) VEDACHELA MUDALIAR *v.* SUBRAMANIA MUDALIAR. **(1921) 48 I. A. 349 = 44 M. 753 (767) = 14 L. W. 402 = (1921) M.W.N. 669 = 2 Pat. L. T. 707 = 26 C. W. N. 159 = 24 Bom. L R. 649 = 30 M. L. T. 198 = 4 U. P. L. R. (P. C.) 13 = A. I. R. 1922 P. C. 33 = 64 I. C. 402 = 41 M. L. J. 676.**

HINDU LAW—(*Contd.*)

Inheritance—Persons entitled to right of—Preference as between—(*Contd.*)

———*Maternal uncle of half-blood—Father's paternal aunt's son.*

Under the Hindu law of inheritance, a maternal uncle, though of half-blood, being an atma bandhu, is entitled to succeed in preference to the son of the father's paternal aunt, who is only a pitru bandhu. (*Lord Hobhouse.*) MUTHUSWAMI MUDALIAR *v.* SUNAMBEDU MUTHUKUMARASWAMI MUDALIAR. **(1896) 23 I. A. 83 = 19 M. 405 = 7 Sar. 45 = 6 M. L. J. 113.**

———*Mother's sister's grandson—Mother's paternal aunt's son.*

Under the Mithakshara law the grandson of a mother's sister, being an atma bandhu, succeeds in preference to the son of a mother's paternal aunt, who is only a matri bandhu (94). (*Sir John Edge.*) ADIT NARAYAN SINGH *v.* MAHABIR PRASAD TEWARI. **(1921) 48 I. A. 86 = 2 Pat. L. T. 97 = 14 L. W. 20 = 25 C. W. N. 842 = 23 Bom. L. R. 692 = 6 Pat. L.J. 140 = 19 A. L. J. 208 = (1921) M. W. N. 153 = 33 C. L. J. 263 = 60 I. C. 251 = 40 M. L. J. 270.**

———*Nephws—Brothers.*

Semble.—By the Hindu law of succession nephews cannot take by representation in competition with the surviving brothers of a deceased co-sharer (504). (*Sir James W. Colvile.*) RAMPERSHAD TEWARRY *v.* SHEOCHURN DOSS. **(1866) 10 M. I. A. 490 = 2 Sar. 177.**

———*Paternal uncle of half-blood—Son of paternal uncle of whole blood.*

Under the Mithakshara law a paternal uncle of the half-blood is entitled to inherit in preference to the son of a paternal uncle of the whole blood (183 4).

It is conceded that the author of the Mithakshara has expressly declared that brothers of the half-blood come before nephews of the whole blood, and in principle their Lordships see no reason to differentiate between the brothers of the propositus and the brothers of his father. Having regard to the general scheme of the Mithakshara, they think that the preference of the whole blood to the half-blood is confined to members of the same, or, to "sapindas of the same degrees of descent from the common ancestor" (184). (*Mr. Ameer Ali.*) GANGA SAHAI *v.* KESRI. **(1915) 42 I. A. 177 = 37 A. 545 (556-7) = 17 Bom. L. R. 998 = 13 A. L. J. 999 = 19 C.W.N. 1175 = (1915) M. W. N. 713 = 2 L. W. 837 = 18 M. L. T. 203 = 22 C. L. J. 508 = 30 I. C. 265 = 29 M. L. J. 329.**

———*Sister's son—Agnatic in seventh degree—Mithila law.*

In this case, though in the courts below the right, under the Mithila law, of an agnate in the seventh degree to succeed in preference to a sister's son was contested, the point was conceded before their Lordships. (*Lord Lindley.*) RANI SRIMATI *v.* KHAJENDRA NARAYAN SINGH. **(1904) 31 I. A. 127 = 31 C. 871 (882) = 9 C. W. N. 74 = 8 Sar. 635.**

Inheritance—Persons taking by—Duty of.

———*Ceremonies to the deceased—Performance of.*

Whatever descent prevails, and even where the State takes by escheat, the duty of some ceremonial performance to the deceased is still enjoined (390-1). (*Sir Robert Phillimore.*) BHYAH RAM SINGH *v.* BHYAH UGUR SINGH. **(1870) 13 M. I. A. 373 = 14 W. R. (P. C.) 1 = 5 B. L. R. (P. C.) 293 = 2 Suth. 330 = 2 Sar. 566.**

———Debts binding on inheritance—Payment of. *See* **HINDU LAW—INHERITANCE—DEBTS BINDING ON.** **(1909) 36 I. A. 138 (147) = 31 A. 497 (506).**

HINDU LAW—(*Contd.*)

Inheritance—Primogeniture.

———(*See also* HINDU LAW—IMPARTIBLE ESTATE—SUCCESSION TO—PRIMOGENITURE.)

CUSTOM OF.

———*District custom—Evidence of—Collector's letter—Value of.*

The custom of primogeniture is stated in two ways, first as a custom of a District so as to bring it within the Regulation X of 1800; that is to say, it is the custom of a district supposed to be a *Jungle mehal*, in Zillah *B*. Now, of the existence in any known district whatever of anything which can he predicated as a *Jungle mehal* in which this Zemindary is situated there is neither pleading nor evidence. There is nothing at all to show any custom, except a Collector's letter with respect to a custom extending to all the Zemindaries, throughout the whole Zillah *B*; and certainly it would be very strong indeed to hold, merely upon that evidence, that there was a custom proved extending to the whole of the Zillah of *B*, or to the whole of any undefined district within that Zillah (548-9). (*Lord Justice James.*) UMRITHNATH CHOWDHRY *v.* GOUREENATH CHOWDHRY. **(1870) 13 M. I. A. 542 = 15 W. R. (P. C.) 10 = 6 B. L. R. 232 = 2 Suth 381 = 2 Sar. 618.**

———*Evidence of—Gaddinashin—Custom of—Evidence of—Value of.*

The custom of gaddinashini has clearly an important bearing upon that of primogeniture, though the connection between them may not be a necessary one, in a case in which the two things are identified in the minds of witnesses and of the parties. (*Lord Hobhouse.*) THAKUR NITRPAL SINGH *v.* THAKUR JAI SINGH PAL. **(1896) 23 I. A. 147 = 19 A. 1 (10) = 7 Sar. 49.**

———The custom of gaddinashini has an important bearing on that of primogeniture, though the connection between them may not be a necessary one.

Where the evidence showed that for a period of nearly 80 years from the time of the British occupation, the enjoyment of the suit estate had been consistent with the custom of descent by primogeniture, and for the earlier and greater part of that term had been inconsistent with any other legal basis, and it appeared that in two other families in the same district, derived from the same ancestor as the parties to the suit, the same custom prevailed, *held*, reversing the judgment of the High Court, that the custom had been satisfactorily proved. (*Lord Davey.*) GARURUDHWAJA PRASHAD SINGH *v.* SAPARANDHWAJA PRASAD SINGH. **(1900) 27 I. A. 238 = 23 A. 37 = 5 C. W. N 33 = 2 Bom. L. R. 831 = 7 Sar. 724 = 10 M. L. J. 267.**

———*Evidence of—Lambardarship—Devolution of, by primogeniture in family—Evidence of—Value of.*

A lambardar represents the estate in all transactions with the Government. It is of importance that he should be of capacity for business, and it is usual in a joint family to appoint one of the elder members of the family. When it is found that the office devolves by primogeniture in a family, it seems a material circumstance to aid to the conclusion that the estate devolves in the same way in the same family. (*Lord Hobhouse.*) THAKUR NITRPAL SINGH *v.* THAKUR JAI SINGH PAL. **(1896) 23 I. A. 147 = 19 A. 1 (14) = 7 Sar. 49.**

———*Family custom—Destruction of—Sanad from Government inconsistent with custom—Acceptance by head of family of, at permanent settlement—Effect of.*

In a case in which the District Judge had found on evidence that in the family to which the litigants belonged a custom of primogeniture prevailed, that under it women

HINDU LAW—(*Contd.*)

Inheritance—Primogeniture—(*Contd.*)

CUSTOM OF—(*Contd.*)

were excluded from inheritance, and that the male relative who was in the eldest line of male descent from the last holder or his father or grand father succeeded, the appellate Court concurred with the District Judge in holding that the evidence established that the custom found by the District Judge to be an existing operative custom was at some time or other before the settlement of 1865 existing as an operative binding custom. They differed from him, however, in holding that the custom, though once existing and operative, had ceased to be so, because it had been destroyed by the acceptance by the then head of the family at the Permanent Settlement in 1865 of a sanad from the Government of India containing clauses inconsistent with the custom.

Held, that if the family custom found applied to and bound the estate the subject-matter of the suit, the head of the family for the time being could not destroy that custom or release his estate from it by becoming grantee from the Crown under such a document as the sanad. (*Lord Atkinson.*) RAO KISHORE SINGH *v.* MUSAMMAT GAHENABAI.
(1919) 12 **L. W. 730 (737, 743) = 15 N. L. R. 176 = 17 A. L. J. 1077 = 26 M. L. T. 494 = 24 C. W. N. 601 = 22 Bom. L. R. 507 = 53 I. C. 630 = 37 M. L. J. 562.**

———*Family custom—Estate not being technically known as Raj or Poliem not inconsistent with.*

It is too late to question that a custom of descent according to the law of primogeniture may exist by kolachar or family custom, although the estate may not be what is technically known either as a raj in the north of India or as a polliam in the South of India (269). (*Sir James W. Colvile.*) CHOWDHRY CHINTAMUN SINGH *v.* MUSSAMUT NOWLUKHO KONWARI. **(1875) 2 I. A. 263 = 1 C. 153 (159) = 24 W. R. 255 = 3 Sar. 537 = 3 Suth. 204.**

———*Family custom—Proof of.*

The parties to the suit belonged to a Rajput family settled for many centuries in the Nimar District (Central Provinces). The question was whether there existed in the family a custom of succession by primogeniture, the eldest son succeeding to the *gaddi* and the title of Rana, and the younger sons being entitled only to maintenance.

Held, on the evidence, reversing the Court below, that the custom had been established (464-5). (*Mr. Ameer Ali.*) MAHATAB SINGH *v.* BADAM SINGH.
(1921) 48 **I. A. 446 = 48 C. 997 = 26 C. W. N. 226 = 20 A. L. J. 443 = 64 I. C. 194 = A. I. R. 1922 P. C. 146.**

———*Family custom—Proof of—Quantum—Estate simple and single and of recent date.*

The other custom alleged is a family custom of this particular family. Of that family custom there really is no sufficient allegation, if there be any allegation at all. Their Lordships find nothing on the pleadings to raise such a custom as that, in the manner in which it ought to have been raised, if it was intended to have been pleaded and proved in this case. Even if there be anything which is sufficient to raise the plea of family custom, there is no satisfactory evidence to prove that custom. There is some trace in the letter of a Collector of a sort of general custom extending through the whole Zillah in which the suit Zemindary is situated, all the zemindaries being held by the kind of title alleged, but the genealogical tree, which is the only thing contrary which is in evidence, is certainly insufficient to found a family custom, which the Court below have held must be proved by something like what we should call in this country immemorial usage. It is a thing which cannot be predicated of a simple and single estate, the title to which dates from

HINDU LAW—(*Contd.*)

Inheritance—Primogeniture—(*Contd.*)

CUSTOM OF—(*Contd.*)

comparatively a short period of time back (549-50). (*Lord Justice James.*) UMRITHNATH CHOWDHRY *v.* GOUREENATH CHOWDHRY. **(1870) 13 M. I. A. 542 = 15 W. R. (P. C.) 10 = 6 B. L. R 232 = 2 Suth. 381 = 2 Sar. 618.**

———*Family and local custom of—Onus of proof of.*

The burden of proving a family and a local custom of primogeniture is entirely on the party setting up such a custom (550). (*Lord Justice James.*) UMRITHNATH CHOWDHRY *v.* GOUREENATH CHOWDHRY.
(1870) 13 M. I. A. 542 = 15 W. R. (P. C.) 10 = 6 B. L. R. 232 = 2 Suth. 381 = 2 Sar. 618.

———*Impartibility and inalienability — Customs of—Proof of.*

Held, on the evidence, that the appellant had failed to establish the exceptional family custom set up by him, namely, that the suit estate was descendible on a single heir male, and that it was impartible and inalienable (744-5). RAJAH RAJ KISHEN SINGH *v.* RAMJOY SURMA MOZOOMDAR. **(1872) 2 Suth. 744 = 19 W. R. 8 = 8 M. J. 151.**

———*Proof of.*

Held, on the evidence affirming the High Court, that, whatever might have been the earlier history of the suit estate, which was, at most, only a sub-tenure of some kind under the Rajah of Beerbhoom, since its resumption it was to be treated as subject to the general law of succession, and a family custom of descent by primogeniture was not established (925). MUSSAMAT SHEO SOONDOOREE *v.* PIRTHEE SINGH. **(1873) 2 Suth. 922 = 21 W. R. 89.**

———*Proof of.*

Where the question was whether the ancestral property of a Rajput family long settled in the Agra district devolved according to ordinary Mithakshara law, or was subject to the custom of primogeniture, *held*, reversing the High Court and restoring the Sub-Judge, that all the lines of evidence converged on the same point, *viz.*, the custom of primogeniture.

Perhaps no one of them would, if standing alone, be conclusive in favour of that view; but taken as a whole they were conclusive. (*Lord Hobhouse.*) THAKUR NITRPAL SINGH *v.* THAKUR JAI SINGH PAL.
(1896) 23 I. A. 147 = 19 A. 1 = 7 Sar. 49.

———*Proof of—Onus—Quantum.*

A special family custom, such as the custom of descent by primogeniture, involving a departure from the ordinary Hindu law should be properly proved (253). (*Lord Davey.*) GARURUDHWAJA PRASHAD SINGH *v.* SAPARANDHWAJA PRASAD SINGH. **(1900) 27 I. A. 238 = 23 A. 37 = 5 C. W. N. 33 = 2 Bom. L. R. 831 = 7 Sar. 724 = 10 M. L. J. 267.**

ELDEST MEMBER—PREFERENCE OF.

———Reason for. *See* **HINDU LAW—INHERITANCE—PRIMOGENITURE—ORDINARY LAW—APPLICABILITY—RULE.** **(1872) Sup. I. A. 1 (9) = 14 M. I. A. 570.**

LINEAL PRIMOGENITURE—FAMILY CUSTOM OF.

———*Evidence of—Admissions recent by members of family—Value of.*

In a case in which the question was whether the succession to the suit estate was governed by a family custom of succession by lineal primogeniture, or by the ordinary Hindu law, *held*, that much importance could not be attached to admissions made in recent years by members of the family of the parties. (*Sir Andrew Scoble.*) RAMAKANTA DAS *v.* CHOWDHURI SHAMANAND DAS. **(1908) 36 I. A. 49 = 36 C. 590 (596) = 6 M. L. T. 84 = 9 C. L. J. 499 = 13 C. W. N. 581 = 11 Bom. L. R. 530 = 6 A. L. J. 364 = 1 I. C. 754 = 19 M. L. J. 239.**

HINDU LAW—(*Contd.*)

Inheritance—Primogeniture—(*Contd.*)

LINEAL PRIMOGENITURE—FAMILY CUSTOM OF—(*Contd.*)

———*Proof of—Evidence required.*

To establish a family custom of succession by lineal primogeniture, the evidence must be clear and unambiguous (66). (*Sir Andrew Scoble.*) RAMAKANTA DAS *v.* CHOWDHURI SHAMANAND DAS. **(1908) 36 I. A. 49 = 36 C. 590 (598) = 6 M. L. T. 84 = 9 C. L. J. 499 = 13 C. W. N. 581 = 11 Bom. L. R. 530 = 6 A. L. J. 364 = 1 I. C. 754 = 19 M. L. J. 239.**

———The question was whether the succession to the suit estate was governed by a family custom of succession by lineal primogeniture, or by the ordinary Hindu law.

The family was a Brahmin family long established in Cuttack, members of which were proved to nave held the office of Chowdhuri, under both the Mogul and the Mahratta rule. The documents in the case showed that the office of Chowdhuri (chief) was held for many generations by a member of the family and that, to the holder of that office, certain lands were assessed as a part of his remuneration and that the grant was of an office only and to an individual to be held during good behaviour and revocable at the pleasure of the sovereign by whom it might be conferred, not merely on the eldest son, but on anybody. The evidence was further to the effect that, whenever the holder of the estate died leaving more than one son, the right of the eldest son was challenged in the Courts, and the litigation invariably ended in a compromise under which the younger sons obtained a share of the estate very much in excess of the maintenance to which, had the custom existed, they would have been entitled.

Held, that the evidence failed to give to the alleged custom the character of certainty, which is essential to its validity. (*Sir Andrew Scoble.*) RAMAKANTA DAS *v.* CHOWDHURI SHAMANAND DAS. **(1908) 36 I.A. 49 (70-1) = 36 C. 590 (602-3) = 6 M. L. T. 84 = 9 C. L. J. 499 = 13 C. W. N. 581 = 11 Bom. L. R. 530 = 6 A. L. J. 364 = 1 I. C. 754 = 19 M. L. J. 239.**

ORDINARY LAW—APPLICABILITY.

———*Rule—Exception—Eldest member—Preference of—Reason for.*

Succession by primogeniture is the rare exception to the ordinary rule in Hindu families taking place only upon the descent of some impartible subject, as a raj or office, and in most cases of the kind some local or family usage regulating such descent will be found (6).

The inheritance of Hindus which descend on a single heir are almost entirely confined to Zemindaries, in the nature of a raj, and to offices and *semble* it is obviously in accordance with reason and convenience that such successions should devolve upon the son, who would, in natural course, first reach manhood, and be capable of discharging the duties attaching to inheritances of the kind (9). (*Sir Montague E. Smith.*) RAMALAKSHMI AMMAL *v.* SIVANANTHA PERUMAL SETHURAYER. **(1872) Sup. I.A. 1 = 17 W.R. 553 = 12 B. L. R. 396 = 2 Suth. 603 = 3 Sar. 108 = 14 M. I. A. 570.**

———*Test—Evidence.*

The question whether an estate is subject to the ordinary Hindu Law of succession, or descends according to the rule of primogeniture, must be decided in each case according to the evidence given in it (144). (*Sir Richard Couch.*) SRIMANTU RAJA YARLAGADDA MALLIKARJUNA *v.* SRIMANTU RAJA YARLAGADDA DURGA.

(1890) 17 I.A. 134 = 13 M. 406 (423) = 5 Sar. 547.

———The question whether an estate is subject to the ordinary Hindu Law of succession or descends according to the nary Hprimogeniture must be decided in each case according to the evidence given in it (269). (*Lord Macnaghten.*) KACHI KALIYANA RENGAPPA KALAKKA THOLA UDAYAR *v.* KACHI YUVA RENGAPPA KALAKKA THOLA UDAYAR. **(1905) 32 I. A. 261 = 28 M. 508 (515) = 2 C. L. J. 231 = 10 C. W. N. 95 = 1 M.L.T. 12 = 2 A. L. J. 845 = 7 Bom. L. R. 907 = 8 Sar. 855 = 15 M. L. J. 312.**

———In order to establish that any estate is descendible otherwise than in accordance with the ordinary rules of inheritance of the Hindu law, it must be proved either that it is from its nature impartible and descendible to a single heir, or that it is so impartible and descendible by virtue of a special family custom. The nature of the estate and the existence or otherwise of a special family custom are questions of fact to be determined on the evidence available in each case. (*Lord Parker.*) VENKATA NARASIMHA APPA ROW *v.* PARTHASARATHY APPA ROW.

(1913) 41 I.A. 51 = 37 M. 199 = 18 C, W. N. 554 = (1914) M.W.N. 299 = 16 Bom. L.R. 328 = 19 C, L. J. 369 = 15 M.L.T. 285 = 12 A. L. J. 315 = 23 I. C. 166 = 26 M.L, J. 411.

Inheritance—Principal—Increment.

———Inseparability of. *See* HINDU LAW — PRINCIPAL —INCREMENT.

Inheritance—Propinquity—Spiritual benefit.

———*See* HINDU LAW — INHERITANCE — SPIRITUAL BENEFIT.

Inheritance—Religion—Connection between.

———The law of succession of the Hindus partakes greatly of their religious opinions, and is part of their system (167). (*Mr. Baron Parke.*) RUTCHEPUTTY DUTT IHA *v.* RAJUNDER NARAIN RAE. **(1839) 2 M. I. A. 132 = 2 Suth. 1 = 1 Sar. 161.**

———There is in the Hindu law so close a connection between their religion and their succession to property, that the preferable right to perform the *sraddh* is commonly viewed as governing also the question of the preferable right to succession of property ; and as a general rule they would be expected to be found in union (96-7). (*Sir James W. Colvile.*) SOORENDRONATH ROY *v*, MUSSUMAT HURAMONEE BURMONEAH. **(1868) 12 M. I. A. 81 = 10 W. R (P.C.) 35 = 1 B.L.R. (P.C.) 26 = 2 Suth. 147 = 2 Sar. 372.**

———The law of England, in the absence of custom, adopts the law of primogeniture as to inheritable freeholds, and a distribution amongst the nearest of kin as to personality, a distinction not known in Hindu Law. The only trace of religion in the history of the law of succession in England is the trust (without any beneficial interest) formerly reposed in the Church to administer personal property (64).

In the Hindu law of inheritance, on the contrary, the heir or heirs are selected who are most capable of exercising those religious rites which are considered to be beneficial to the deceased (64). (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE.

(1872) Sup. I. A. 47 = 9 B.L.R. 377 = 18 W. R, 359 = 3 Sar. 82 = 2 Suth. 692.

———The proprietary right of a son by inheritance from his father is expressly ordained, because the wealth devolving upon sons benefits the deceased, and the right of succession of other heirs to the property is also founded on competence for offering oblations at obsequies (146-7). (*Sir Barnes Peacock.*) MONIRAM KOLITA *v* KERRY KOLITANY. **(1880) 7 I.A. 115 = 5 C. 776 (781-2) = 6 C. L. R. 322 = 4 Sar. 103 = 3 Suth. 765.**

HINDU LAW—(*Contd.*)

Inheritance—Religious Succession – Spiritual preceptor—Succession to—Pupil's right of.

———*Basis of.*

In the Hindu system a peculiar and intimate relationship exists between the pupil and the guru who has to initiate him into the mysteries of the Vedic laws and rites, and under whose roof he has to pass many years of his life. This mystical relationship between a spiritual preceptor and a pupil is regarded as creating a close tie between them and is evidently the basis of the right of the former to succeed to the estate of the latter (313). (*Mr. Ameer Ali.*) RAMCHANDRA MARTAND WAIKAR *v.* VINAYAK VENKATESH KOTHEKAR. **(1914) 41 I. A. 290 = 42 C. 384 (421) = 18 C. W. N. 1154 = 16 M. L. T. 447 = 10 N. L R. 112 = (1914) M. W N. 835 = 16 Bom. L. R. 863 = 12 A.L.J. 1281 = 20 C. L. J. 573 = 25 I.C. 290 = 27 M. L. J. 333.**

———*Nihang sect—Custom among.*

The suit related to the succession to the property of one *Z*. The defendant was his son and heir according to the ordinary rule of succession. The plaintiffs alleged that *Z* was a father of the Nihang sect, and that his property consequently passed, according to the rules of religious succession, to the plaintiffs, his fellow disciples. The question was whether *Z* was a member of a religious body of Nihangs, in which the rules of succession in favour of disciples prevailed.

Held, on the evidence, affirming the High Court, that the plaintiffs had failed to prove that *Z* was a member of the sect of Nihangs, in which the rules of succession in favour of disciples prevailed. (*Lord Shand.*) MAHANT GAJRAJ PURI *v.* ACHAIBAR PURI. **(1893) 21 I.A. 17 = 16 A. 191 = 6 Sar 414.**

Inheritance—Right of.

———Basis of—Preferential right—Questions as to—Propinquity—Spiritual benefit—Tests of — Applicability. *See* HINDU LAW—INHERITANCE—SPIRITUAL BENEFIT.

———Conveyance of, or contract to convey — What amounts to. *See* HINDU LAW—WIDOW—INHERITANCE—SON. **(1870) 13 M.I.A. 585 (598-9).**

———Deed taking away—What amounts to. *See* HINDU LAW—ILLEGITIMATE SON—INHERITANCE BY. **(1861) 8 M. I. A. 400 (419-20).**

———Disclaimer of, for valuable consideration — Claim subsequent inconsistent with—Maintainability. *See* MAHOMEDAN LAW—INHERITAMCE — RIGHT OF — DISCLAIMER OF, FOR VALUABLE CONSIDERATION. **(1875) 24 W. R. 28.**

———Disclaimer of interest in property during lifetime of *propositus*—Validity of—Effect of. *See* HINDU LAW—WIDOW—INHERITANCE—SON. **(1870) 13 M.I.A. 585 (598-9).**

———Enforcement of—Estoppel — Conveyance by heir during lifetime of *propositus* of present interest in his properties—Effect. *See* HINDU LAW—WIDOW — INHERITANCE—SON. **(1870) 13 M. I. A. 585 (600).**

———Religion—Change of—Effect. *See* (1) CASTE DISABILITIES REMOVAL ACT XXI OF 1850; (2) HINDU—CONVERSION AND CONVERT; AND (3) HINDU LAW—CASTE.

———Vesting of — Disqulification subsequent to — No divesting by reason of. *See* HINDU LAW—INHERITANCE—DISQUALIFICATION SUBSEQUENT TO OPENING OF.

Inheritance—Rule of.

———*See* HINDU LAW—INHERITANCE—(1) LAW APPLICABLE AND (2) LAW OF.

HINDU LAW—(*Contd.*)

Inheritance—Rule of—(*Contd.*)

———Contravention of—Construction of deed resulting in—Permissibility. *See* DEED—CONSTRUCTION OF—INHERITANCE. **(1870) 13 M. I. A. 497 (509).**

———*Decision or work of authority—Rule not directly laid down in—Deduction of rule in case of—Mode of.*

The High Court in their judgment declare that "no work of authority or decision" had been cited or found directly giving the rule of descent. If it really be that the rule of succession is not directly declared in books of authority, or in decided cases, then it must be deduced from those rules which are settled, and the principles on which they are founded (6). (*Sir Montague E. Smith.*) RAMALAKSHMI AMMAL *v.* SIVANANTHA PERUMAL SETHURAYAR. **(1872) Sup. I. A. 1 = 17 W. R. 553 = 12 B. L. R. 396 = 2 Suth. 603 = 3 Sar. 108 = 14 M. I. A. 570.**

———*Decisions uniform—Rule laid down in—Unsettling of, on novel interpretation of old and obscure texts—Propriety.*

Their Lordships would have an insuperable objection, by a decision founded on a new construction of the words of the Mithakshara, to run counter to that which appears to them to be the current of modern authority. To alter the law of succession as established by a uniform course of decisions, or even by the dicta of received treatises, by some novel interpretations of the vague and often conflicting texts of the Hindu Commentators, would be most dangerous, inasmuch as it would unsettle existing titles (403). (*Sir James W. Colvile.*) THAKOORAIN SAHIBA *v.* MOHUN LALL. **(1867) 11 M. I. A. 386 = 7 W. R. (P. C.) 25 = 1 Suth. 681 = 2 Sar. 289.**

———Their Lordships think that after the series of decisions which have occurred in Bengal and Madras, it would be unsafe to open them by giving effect to arguments founded on a different interpretation of old and obscure texts (32).

N. B.—In this case the question was whether under the law of the Mithakshara the estate which a daughter inherited from her father was a limited and a restricted estate only, or was an estate of the nature of stridhun. (*Sir Montague E. Smith.*) CHOTAY LALL *v.* CHUNNO LALL. **(1878) 6 I. A. 15 = 4 C. 744 (755-6) = 3 C. L. R. 465 = 3 Sar. 880 = 3 Suth. 572.**

———Foundation of—Manu's text. *See* HINDU LAW—INHERITANCE—SAPINDAS—RULE REGARDING. **(1921) 48 I. A. 86 (92).**

———*Madras Reg. XXV of* 1802—*Sanad in common form under—Acceptance of—Effect.*

It must be taken to be settled that the acceptance of a Sanad in common form under Regulation XXV of 1802 does not of itself and apart from other circumstances avail to alter the succession to an hereditary estate (269). (*Lord Macnaghten.*) KACHI KALIYANA RENGAPPA KALAKKA THOLA UDAYAR *v.* KACHI YUVA RENGAPPA KALAKKA THOLA UDAYAR. **(1905) 32 I. A. 261 = 28 M. 508 (515) = 2 C.L. J. 231 = 10 C. W. N. 95 = 1 M. L. T. 12 = 2 A. L. J. 845 = 7 Bom. L. R. 907 = 8 Sar. 855 = 15 M. L. J. 312.**

———*See also* HINDU LAW—IMPARTIBLE ESTATE—NATURE AND INCIDENTS OF—MADRAS REG. XXV OF 1802.

———*Nature of property and of deceased's interest in it—Rule dependent upon.*

The law of succession follows the nature of the property and of the interest in it of the deceased (610). (*Lord Justice Turner.*) KATAMA NATCHIAR *v.* THE RAJAH OF SHIVAGUNGA. **(1863) 9 M. I. A. 539 = 2 W. R. (P. C.) 31 = 1 Suth. 520 = 2 Sar. 25.**

HINDU LAW—(*Contd.*)

Inheritance—Rule of—(*Contd.*)

———Ordinary law—Primogeniture. *See* HINDU LAW—INHERITANCE—PRIMOGENITURE.

———*Survivorship and spiritual benefit—Two leading rules.*

There are two principles on which the rule of succession according to the Hindu law appears to depend : the first is that which determines the right to offer the funeral oblation, and the degree in which the person making the offering is supposed to minister to the spiritual benefit of the deceased ; the other is an assumed right of survivorship (610). (*Lord Justice Turner.*) KATAMA NATCHIAR *v.* THE RAJAH OF SHIVAGUNGA. **(1863) 9 M. I. A. 539 = 2 W. R. (P. C.) 31 = 1 Suth. 520 = 2 Sar. 25.**

———As laid down in the Shivagunga case, there are in the Hindu law two leading rules of inheritance,—that founded on the religious duty and superior efficacy of oblation and sacrifice ; and that of survivorship. Where the latter rule cannot apply, the former must be resorted to (541). (*Lord Chelmsford.*) NEELKISTO DEB BURMONO *v.* BEERCHUNDER THAKOOR. **(1869) 12 M. I. A. 523 = 12 W. R. (P. C.) 21 = 3 B. L. R. (P. C.) 13 = 2 Suth. 243 = 2 Sar. 523.**

Inheritance—Sapindas.

———*Classes of—Preferential right in—Test—Bombay Mithakshara.*

By the law of the Mithakshara, as interpreted and accepted in Western India, the preferential right to inherit in the classes of sapindas is to be determined by family relationship or the community of corporal particles, and not alone by the capacity of performing funeral rites. It may happen that, in some instances, the same person would be the preferential heir, whichever of these tests was adopted (234) (*Sir Montague E. Smith.*) LULLOOBHOY BAPOOBHOY *v.* CASSIBAI. **(1880) 7 I. A. 212 = 5 B. 110 (121) = 7 C. L. R. 445 = 4 Sar. 164 = 3 Suth. 795.**

———*Classes of, in Mithakshara—Samana-gotra sapindas and Bhinna-gotra sapindas.*

Sapinda relations are, by the Mithakshara, divided into two groups, namely, samana-gotra sapindas (blood relations of the same gotra or stock) and bhinna-gotra sapindas (consanguineous relations belonging to another gotra), in other words blood relations connected through females who have passed into other families or gotras. The bhinna-gotra sapindas on whom the law confers the right of inheritance are the inheriting bandhus (354). (*Mr. Ameer Ali.*) VEDACHELA MUDALIAR *v.* SUBRAMANIA MUDALIAR. **(1921) 48 I. A. 349 = 44 M. 753 (757) = 14 L. W. 402 = (1921) M. W. N. 669 = 2 Pat. L.T. 707 = 26 C. W. N. 159 = 24 Bom. L. R. 649 = 30 M. L. T. 198 = 4 U. P. L. R. (P. C.) 13 = A. I. R. 1922 P. C. 33 = 64 I. C. 402 = 41 M. L. J. 676.**

———*Definition of, in Mithakshara—Marriage—Definition as to.*

Vijnaneswara (in the Acharakanda of the Mithakshara) and Nilakantha (in his Sanskara Mayukha) were, no doubt, treating in these passages of sapinda relationship in connection with marriage ; but no further definition of sapindas is given in those parts of their respective books which treat of inheritance. The learned Judges below have inferred, in the absence of any indication to the contrary, that the above-mentioned definitions were intended by the authors of the Mithakshara and the Mayukha to apply wherever in those books sapindaship was treated of, and consequently where it was treated of in relation to the right to inherit (233). (*Sir Montague E. Smith.*) LULLOOBHOY BAPOOBHOY *v.* CASSIBAI. **(1880) 7 I. A. 212 = 5 B. 110 (120) = 7 C. L. R. 445 = 4 Sar. 164 = 3 Suth. 795.**

HINDU LAW—(*Contd.*)

Inheritance—Sapindas—(*Contd.*)

———In the third chapter of the Acharakanda Vijnaneswara lays down the rules relating to the forbidden degrees of kindred, and there he defines his theory of relationship (300). In those passages he was laying down rules for the limitation of sapinda-relationship generally (302). Those limitations of Vijnaneswara on Sapinda-relationship are not confined to marriage, impurity, and exequial rites, but relate to inheritance also (304). (*Mr. Ameer Ali.*) RAMCHANDRA MARTAND WAIKAR *v.* VINAYAK VENKATESH KOTHEKAR. **(1914) 41 I.A. 290 = 42 C. 384 (407, 409, 410-1) = 18 C. W. N. 1154 = 16 M. L. T. 447 = 10 N. L. R. 112 = (1914) M. W. N. 835 = 16 Bom. L. R. 863 = 12 A. L. J. 1281 = 20 C. L. J. 573 = 25 I. C. 290 = 27 M. L. J. 333.**

———*Enumeration of, in Mithakshara—Not exhaustive.*

That the mention in the Mithakshara of certain members of the family as gotraja-sapindas is not exhaustive, and that others than those expressly mentioned may be included in the class, may be inferred from the following passage in pl. 3 of C. 2, S. 5 of the Mithakshara :—" On failure of the paternal grandmother, gotraja-sapindas, namely, "grandfather *and the rest*, inherit the estate." It would seem, also, though the grandmother and great-grandmother are also expressly mentioned, that the wives of the remoter ancestors in the direct ascending line up to the seventh degree would likewise succeed to their descendants as sapindas. The reasons for the decision of this Board that the enumeration of bandhus contained in the Mithakshara is not exhaustive are applicable to the enumeration of the sapindas (236). (*Sir Montague E. Smith.*) LULLOOBHOY BAPOOBHOY *v.* CASSIBAI. **(1880) 7 I. A. 212 = 5 B. 110 (123) = 7 C. L. R. 445 = 4 Sar. 164 = 3 Suth. 795.**

———*Female—Right of, to inherit as Gotraja-Sapinda—Bombay Mithakshara—Widow of paternal first cousin—More remote collateral male line—Preference.*

Held that, by the Hindu law of inheritance prevailing in Western India, the widow of a paternal first cousin of a deceased Hindu became by her marriage his Gotraja-Sapinda and was entitled to succeed to his estate in preference to male Gotraja-Sapindas who were seventh in descent from the common ancestor of them and the deceased, which common ancestor was sixth in ascent from the deceased (239). (*Sir Montague E. Smith.*) LULLOOBHOY BAPOOBHOY *v.* CASSIBAI. **(1880) 7 I. A. 212 = 5 B. 110 (126) = 7 C. L. R. 445 = 4 Sar. 164 = 3 Suth. 795.**

———*Great-grandson of great-great-great-grandfather—Sapinda or Samanodaka.*

Quaere, whether the great-grandson of the great-great-great-grandfather of the deceased is a Sapinda or a Samanodaka (165). (*Sir Montague E. Smith.*) THAKOOR JEEBNATH SINGH *v.* COURT OF WARDS. **(1875) 2 I. A. 163 = 15 B. L. R. 190 = 23 W. R. 409 = 3 Sar. 490 = 3 Suth. 142.**

———Relationship of, in Mithakshara—Meaning of—Community of blood. (*Mr. Ameer Ali.*) VEDACHALA MUDALIAR *v.* SUBRAMANYA MUDALIAR. **(1921) 48 I. A. 349 (354) = 44 M. 753 (757) = 14 L. W. 402 = (1921) M. W. N. 669 = 2 Pat. L. T. 707 = 26 C. W. N. 159 = 24 Bom. L. R. 649 = 30 M.L.T. 198 = 4 U. P. L. R. (P. C.) 13 = A. I. R. 1922 P. C. 33 = 64 I. C. 402 = 41 M. L. J. 676.**

———*Relationship of—Meaning of, in Dayabhaga and Mithakshara—Distinction.*

Jimutavahana, the author of the Dayabhaga, considers sapinda-relationship to mean " Community in the offering of funeral oblations " Vijnaneswara, the author of

HINDU LAW—(*Contd.*)

Inheritance—Sapindas—(*Contd.*)

the Mithakshara, construed sapinda-relationship to arise from community of blood, or, to use the quaint language of Hindu writers, " Community of particles of the same body" (298). (*Mr. Ameer Ali.*) RAMCHANDRA MARTAND WAIKAR *v.* VINAYAK VENKATESH KOTHEKAR.
(1914) 41 I. A. 290 = 42 C. 384 (404-5) = 18 C. W. N. 1154 = 16 M. L. T. 447 = 10 N. L. R. 112 = (1914) M. W. N. 835 = 16 Bom. L. R. 863 = 12 A. L. J. 1281 = 20 C. L. J. 573 = 25 I. C. 290 = 27 M. L. J. 333.

———Under the Mithakshara the sapinda-relationship arises " between two people through their being connected by particles of one body," namely, that of the common ancestor, in other words, from community of blood in contra-distinction to the Dayabhaga notion of " community in the offering of religious oblations" (217). (*Mr. Ameer Ali.*) BUDDHA SINGH *v.* LALTU SINGH.
(1915) 42 I. A. 208 = 37 A. 604 (613) = 20 C. W. N. 1 = 22 C. L. J. 481 = 13. A. L. J. 1007 = 17 Bom. L. R. 1022 = (1915) M. W. N. 772 = 2 L. W. 897 = 18 M. L. T. 409 = 30 I. C 529 = 29 M. L. J. 434.

———*Relationship of—Seventh degree—Continuation of each line to, by Mr. Harrington—Correctness of.*

Mr. Harrington, the well-known author of the Analysis, and one of the most erudite judges of the old Sudder Court of Bengal, declares that the succession of the Samanagotra sapindas extends " in this manner " to " the seventh degree " (221) Perhaps Mr. Harrington's view with regard to the continuation of each line of heirs to the seventh degree is open to the objection that it contravenes the rule of Manu: ' To three (ancestors) water must be offered, to three funeral cake is given, the fourth (descendant is) the giver of these (oblations), the fifth has no connection with them." It is not, however, necessary for the purposes of this case to consider whether the principle suggested by him (Mr. Harrington) is correct or not (225). (*Mr. Ameer Ali.*) BUDDAH SINGH *v.* LALTU SINGH. (1915) 42 I. A. 208 = 37 A. 604 (617, 621) = 20 C. W N. 1 = 22 C. L. J. 481 = 13 A. L. J. 1007 = 17 Bom. L R. 1022 = (1915) M. W. N. 772 = 2 L. W. 897 = 18 M. L. T. 409 = 30 I. C. 529 = 29 M. L. J. 434.

———*Rule regarding—Basis of—Manu's Text.*

The text of Manu " the property of a near sapinda shall be that of a near sapinda " is the foundation of the rules of inheritance of the Hindus (92). (*Sir John Edge.*) ADIT NARAYAN SINGH *v.* MAHABIR PRASAD TEWARI.
(1921) 48 I. A. 86 = 2 Pat. L. T. 97 = 14 L. W. 20 = 25 C. W. N. 842 = 23 Bom. L. R. 692 = 6 Pat. L. T. 140 = 19 A. L. J. 208 = (1921) M. W. N. 153 = 33 C. L. J. 263 = 60 I. C. 251 = 40 M. L. J. 270.

———Wife—Sapinda of husband and his family. *See* HINDU LAW—HUSBAND AND WIFE—WIFE.

Inheritance—Self-acquired or separate property.

———Devolution of. *See* HINDU LAW—INHERITANCE—ANCESTRAL AND SELF-ACQUIRED OR SEPARATE PROPERTIES.

Inheritance—Sister.

———*Descendants of—Right of—Mithakshara.*

While observing that the sister and her descendants found no place in the tables of succession, according to the law of the Mitakshara, their Lordships declined to decide the question of their right as the point was not raised in the Court below (1956). (*Sir James W. Colvile.*) KOOER GOOLAB SINGH *v.* RAO KURUN SINGH.
(1871) 14 M. I. A. 176 = 10 B. L. R. 1 = 2 Suth. 474 = 2 Sar. 722.

———*Father's brother's son—Preference—Bombay school.*

According to the law of inheritance prevailing in Bombay, sisters succeed to the estate of their deceased brother in preference to their father's brother's sons (538). (*Lord Justice Knight Bruce.*) VENAYECK ANUNDROW *v.* LUXUMEEBAEE. (1864) 9 M. I. A. 516 = 3 W. R. 41 (P. C.) = 1 B. H. C. R. 117 = 1 Suth. 540 = 2 Sar. 58.

———*Right of.*

Sisters, *ex concessis*, are excluded from the inheritance (402). (*Sir James W. Colvile.*) THAKOORAIN SAHIBA *v.* MOHUN LALL. (1867) 11 M. I. A. 386 = 7 W. R. (P C.) 25 = 1 Suth 681 = 2 Sar. 289.

———*Right of, under Bombay school—Marriage and receipt of marriage portion—Effect.*

There is no ground either in principle or otherwise for the argument that, according to the Bombay school, the marriage of the sisters and their marriage portions excluded them from participating in the inheritance of their deceased brother (538-9). (*Lord Justice Knight Bruce.*) VENAYECK ANUNDROW *v.* LUXUMEEBAEE. (1864) 9 M. I. A. 516 = 3 W. R. 41 (P. C.) = 1 B. H. C. R. 117 = 1 Suth. 540 = 2 Sar. 58.

———*Right of, to succeed as bandhu.*

Quaere, whether the sisters of a deceased Hindu have a right to succeed to his estate as bandhoos (8). In any event they can only succeed after the Sapindas have been exhausted (18). (*Sir James W. Colvile.*) RAJAH VELLANKI VENKATA KRISHNA ROW *v.* VENKATARAMALAKSHMI NARASAYYA. (1876) 4 I. A. 1 = 1 M. 174 (185) = 26 W.R. 21 = 3 Sar. 669.

Inheritance—Sons.

ANCESTRAL AND SELF-ACQUIRED PROPERTIES OF FATHER—SUCCESSION TO.

———Courses and incidents of—Distinction. *See* HINDU LAW—INHERITANCE—JOINT FAMILY—MEMBER OF.
(1863) 9 M. I. A. 539 (609).

FIRST-BORN SON.

———*Preference of—Divisible and indivisible inheritances—Applicability to.*

One great rule of religion binding upon every Hindu is the duty of having a son, not only for the sake of the spiritual benefits he obtains for himself by his birth, but because he thereby discharges the pious debt he owes to his ancestors. And, as a consequence naturally flowing from this law, the first-born son is, throughout the books of authority, treated as pre-eminent amongst his brothers, and held to be entitled to many special privileges.

It will be found, from numerous authorities and instances, that, although the father's property, by the general rule, descends upon all his sons, yet, whenever it becomes necessary to make a distinction, precedence is given to the first-born.

Thus Manu, after laying down the cardinal rule of succession that brothers divide the paternal property among them, adds, " the eldest brother may take entire possession of the patrimony ; and the others may live under him as they lived under their father. unless they choose to be separated."

" By the eldest, at the moment of his birth, the father having begotten a son, discharges a debt to his own progenitors. The eldest son, therefore, ought, before partition, to manage the whole patrimony."

HINDU LAW—(*Contd.*)

Inheritance—Sons—(*Contd.*)

FIRST-BORN SON—(*Contd.*)

" That son alone, by whose birth alone he discharges his debt, and through whom he attains immortality, was begotten from a sense of duty.

The general doctrines above alluded to are also found in other old authorities, and are treated as part of the foundation of the Hindu law of succession by modern writers and compilers (6-7).

The doctrines above referred to, though occurring in passages treating of divisible inheritances, apply also to the case of an inheritance which is from its nature indivisible, and can therefore go to one only of several sons. In that case also, the first-born son, by reason of his general pre-eminence, should be preferred to his younger brother (7). (*Sir Montague E. Smith.*) RAMALAKSHMI AMMAL *v.* SIVANANTHA PERUMAL SETHURAYAR.

(1872) **Sup. I. A. 1 = 14 M. I. A. 570 = 17 W. R 553 = 12 B. L. R. 396 = 2 Suth. 603 = 3 Sar. 108.**

———*Preference of—Mothers different of same caste and class—Sons of—Applicability to case of*

It was not disputed that in the case of several sons by the same mother, the first-born would be preferred to his younger brothers in the case of an inheritance which is from its nature indivisible; but it was contended that where there were sons by different wives the priority of marriage and not of birth was to be regarded. No authority whatever was cited to support this contention, certainly none as regards the sons by any wives after the first. On the contrary, there is a good deal of authority pointing to the conclusion that there is no distinction, except seniority of brith, amongst the sons of wives of the same caste and class.

Thus Manu says, " a younger son being born of a first marriage after an elder son had been born of a wife last married *but of a lower class*, it may be a doubt *in that case* how the division shall be made."

The doubt thus suggested whether, even in the case of a wife of a lower class, there would be inequality of division amongst the sons, raises a strong presumption that there would be none where the mothers were of the same class. But the matter does not rest on presumption, for S. 125 runs thus :—

" As between sons born of wives equal in their class, and without any other distinction, there can be no seniority in right of the mother ; *but the seniority ordained by law is according to birth* "

It is true the writer is in this section treating of partible successions, but he is at the same time proclaiming the privileges to which the eldest son is entitled, and one of them he had just declared in a preceding section (119) thus ;—

" Let them never divide the value of a single goat or sheep ; a single goat or sheep, remaining after an equal distribution, belongs to the first-born."

Now, when it is said that the single goat or sheep is to belong to one son, it is apparently for the same reason that a zemindary so descends, *viz.*, that the subject is in its nature impartible, and, therefore, the rule that is laid down with reference to one impartible subject, *viz.*, that "it belongs to the first-born," appears by reasonable and just implication to be the rule applicable to all such subjects. And which of several sons is to be deemed the first-born is declared by S. 125 above cited, " there can be no seniority in right of the mother, but the seniority ordained by law is according to birth" (7-8). (*Sir Montague E. Smith.*) RAMALAKSHMI AMMAL *v.* SIVANANTHA PERUMAL SETHURAYAR. **(1872) Sup. I. A. 1 = 14 M. I. A. 570 = 17 W. R. 553 = 12 B. L. R. 396 = 2 Suth. 603 = 3 Sar. 108.**

HINDU LAW—(*Contd.*)

Inheritance—Sons—(*Contd.*)

FIRST-BORN SON—(*Contd.*)

———*Status of.*

It is by the brith of his first-born son that a Hindu discharges the duty which he owes to his ancestors and obtains spiritual benefits for himself, and, therefore, it is to that son that pre-eminence should be given (109). (*Lord Davey.*) JAGADISH BAHADUR *v.* SHEO PARTAB SINGH.

(1901) **28 I. A. 100 = 23 A. 369 (380) = 5 C. W. N. 802 = 3 Bom. L. R. 298 = 8 Sar. 19 = 11 M. L. J. 178**

RIGHT OF, UNDER DAYABHAGA LAW.

———Basis of—Exclusion from inheritance— Grounds. *See* HINDU LAW—INHERITANCE—EXCLUSION FROM—SON. (1880) **7 I. A. 115 (146-7) = 5 C. 776 (781-2).**

UNDIVIDED FATHER—SUCCESSION TO—PRINCIPLE APPLICABLE TO.

———*Inheritance or survivorship—Bombay Mithakshara.*

It is not altogether clear upon the authorities how far the principle of inheritance as well as that of survivorship applies to a succession by an undivided son to his father in a case governed by the Mithakshara law of Bombay (191). (*Sir James W. Colvile.*) LAKSHMAN DADA NAIK *v.* RAMACHANDRA DADA NAIK. (1880) **7 I. A. 181 = 5 B. 48 (59) = 7 C. L. R. 320 = 4 Sar. 173 = 3 Suth. 778.**

WIVES DIFFERENT—SONS OF—PREFERENCE.

———*Younger son of first wife—Elder son by subsequent wife.*

Quære, whether according to the general Hindu law the son by the first wife would succeed before an elder brother by a subsequent wife (9). (*Sir Montague E. Smith.*) RAMALAKSHMI AMMAL *v.* SIVANANTHA PERUMAL SETHURAYAR. (1872) **Sup. I. A. 1 = 14 M. I. A. 570 = 17 W. R. 553 = 12 B. L. R. 396 = 2 Suth. 603 = 3 Sar. 108,**

YOUNGER SONS—EXCLUSION OF.

———Custom of. *See* HINDU LAW—INHERITANCE—EXCLUSION FROM—CUSTOM OF—SONS YOUNGER.

Inheritance—Sovereign—Public and private property of.

———*Devolution of—Distinction.*

It is very probable that there is a distinction between the public and private property of a Hindu Sovereign, and that although during his life, if he be an absolute monarch, he may dispose of all alike, yet on his death some portions of his property, termed his private property, will go to one set of heirs, and the Raj with that portion of the property which is called public, will go to the succeeding Rajah (537). (*Lord Kingsdown.*) SECRETARY OF STATE IN COUNCIL OF INDIA *v.* KAMACHEE BOYE SAHABA.

(1859) **7 M. I. A. 476 = 13 Moo. P. C. 22 = 7 W. R (Eng.) 722 = 4 W. R. 42 = 1 Suth. 373 = 1 Sar. 684.**

Inheritance—Spiritual benefit.

———Dayabhaga—Basis of scheme of. *See* HINDU LAW—INHERITANCE—BROTHERS— FULL BROTHER—PREFERENCE OF, TO HALF-BROTHER.

(1877) **4 I.A. 147 (152).**

———Preferential right to confer—Preferential right to property if governed by. *See* HINDU LAW—INHERITANCE—SRADDH. (1868) **12 M. I. A. 81 (96-7).**

———Propinquity—Tests of—Applicability of, to questions of right to inherit and of preferential right of inheritance—Dayabhaga—Mithakshara—Distinction. *See* HINDU LAW—INHERITANCE — MITHAKSHARA — INHERITANCE UNDER.

HINDU LAW—(*Contd.*)

Inheritance—Spiritual Preceptor.

———Succession to—Pupil's right of. *See* HINDU LAW—INHERITANCE—RELIGIOUS SUCCESSION.

Inheritance—Sraddh—Performance of—Preferable right of.

———*Preferable right of succession governed by.*

There is in the Hindu law so close a connection between their religion and their succession to property, that the preferable right to perform the *Sraddh* is commonly viewed as governing the question of the preferable right to succession of property ; and as a general rule they would be expected to be found in union (96-7). (*Sir James W. Colvile.*) SOORENDRANATH ROY *v.* MUSST. HURAMONEE BURMONEAH. **(1868) 12 M.I.A. 81 = 10 W.R. (P. C.) 35 = 1 B. L. R. (P. C.) 26 = 2 Suth. 147 = 2 Sar. 372.**

Inheritance—Stare decisis—Applicability of principle of.

———*See* HINDU LAW—INHERITANCE - RULE OF—DECISIONS UNIFORM. **(1867) 11 M. I. A 386 (403).**

———*See* HINDU LAW—AUTHORITIES—INTERPRETATION OF—*Stare decisis.*

———These decisions are not decisions running over a long period of years, which might in that case be considered to have declared the law with regard to the succession to property, and which under such circumstances their Lordships would have been unwilling to disturb ; but they are decisions of a recent date and coming very nearly together (151). (*Sir Montague E. Smith.*) SHEO SOONDARY *v.* PIRTHEE SINGH. **(1877) 4 I. A. 147 = 3 Suth. 411 = 3 Sar. 724 = Bald. 119.**

———Courts ought not to unsettle a rule of inheritance affirmed by a long course of decisions, unless, indeed, it is manifestly opposed to law and reason (32). (*Sir Montague E. Smith.*) CHOTAY LALL *v.* CHUNNO LALL. **(1878) 6 I. A. 15 = 4 C. 744 (755-6) = 3 C. L. R. 465 = 3 Sar. 880 = 3 Suther. 572.**

———If there were any construction of the text (of the Mayukha) laid down by authority binding on the courts of Bombay, or if there were any established practice or usage in the application of the text, their Lordships would follow it without hesitation, though it might not commend itself to their judgment. But no such authority has been referred to, and there is no evidence of any such practice or usage. Their Lordships therefore are at liberty, and are bound, to act on the opinion which they have formed. (*Lord Davey.*) BAI KESSERBAI *v.* HUNSRAJ MORARJI. **(1906) 33 I. A. 176 (197) = 30 B. 431 (452) = 10 C. W. N. 802 = 4 C. L. J. 9 = 8 Bom. L. R. 446 = 3 A. L. J. 484 = 1 M. L. T. 211 = 16 M. L. J. 446.**

Inheritance—Survivorship.

———*See* HINDU LAW—SURVIVORSHIP.

Inheritance—Transfer—Devolution of property by.

———Distinction. *See* HINDU LAW—TRANSFER OF PROPERTY. **(1872) Sup. I. A. 47 (64).**

Inheritance—Unobstructed inheritance.

———Obstructed inheritance—Distinction. *See* HINDU LAW—INHERITANCE — OBSTRUCTED INHERITANCE—DEVOLUTION, ETC. **(1916) 43 I. A. 269 (281-2) = 38 A. 552 (567-8).**

———*Son's inheritance to self-acquisitions of father if.*

It may be that where sons succeed to the self-acquired property of their father, the inheritance as to them is unobstructed. (*Lord Lindley.*) RAJA CHELIKANI VENKAYAMMA GARU *v.* RAJA CHELIKANI VENKATAKAMANA-

HINDU LAW—(*Contd.*)

Inheritance—Unobstructed inheritance—(*Contd.*)

YAMMA. **(1902) 29 I. A. 156 (165) = 25 M. 678 (687) = 7 C. W. N. 1 = 4 Bom. L. R. 657 = 8 Sar. 286 = 12 M.L. J. 299.**

———Survivorship doctrine not confined to. *See* HINDU LAW—INHERITANCE— OBSTRUCTED INHERITANCE—SURVIVORSHIP DOCTRINE, ETC. **(1902) 29 I. A. 156 (165-6) = 25 M. 678 (687-8).**

Inheritance—Vesting of—Disqualification subsequent to.

———No divesting by reason of. *See* HINDU LAW—INHERITANCE — DISQUALIFICATION SUBSEQUENT TO OPENING OF.

Inheritance—Widow.

———*See* HINDU LAW—WIDOW—INHERITANCE.

Inheitance - Woman.

———*See* HINDU LAW—INHERITANCE—FEMALES.

Inheritance—Yagnavalkya's text relating to succession to sonless Hindu.

———Yagnavalkya's text relating to the succession to the estate of a person who dies without leaving any male issue runs thus :—"The wife, and the daughters also, both parents, brothers likewise, and their sons, gentiles, a pupil, and a fellow-student, on failure of the first among these, the next in order is indeed heir of one who has departed for heaven leaving no male issue. This rule extends to all persons and classes" (214-5). (*Mr. Ameer Ali.*) BUDDHA SINGH *v.* LALTU SINGH. **(1915) 42 I. A. 208 = 37 A. 604 (611) = 20 C. W. N. 1 = 22 C. L. J. 481 = 13 A. L. J. 1007 = 17 Bom. L. R. 1022 = (1915) M. W. N. 772 = 2 L. W. 897 = 18 M. L. T. 409 = 30 I. C. 529 = 29 M. L. J. 434.**

Interest.

DAMDAPUT—RULE AS TO—APPLICABILITY.

———The peculiar Hindu rule of damdaput is applicable to matters of contract. (*Viscount Sumner.*) HARIRAM *v.* MADAN GOPAL. **(1928) 33 C. W. N. 493 = 49 C. L. J. 335 = 27 A. L. J. 406 = 114 I. C. 565 = 31 Bom. L. R. 710 = A. I. R. 1929 P. C. 77 = 57 M. L. J. 581.**

———*Restriction on—Interference with.*

In India, amongst the Hindus, the restriction as to interest by their law was, that interest stopped when it equalled the loan. The interference with the rate of interest is, therefore. a thing of positive law, and cannot be extended beyond the provisions of the Regulation XV of 1793 (Bengal). (*Lord Chelmsford.*) SHAH MUKHUN LALL *v.* BABOO SREE KISHEN SINGH. **(1868) 12 M. I. A. 157 (187) = 11 W. R. (P. C.) 19 = 2 B. L. R. (P. C.) 44 = 2 Suth. 190 = 2 Sar. 403.**

Joint family—Normal condition of.

———*Commensality.*

Commensality is the normal condition of an undivided Hindu family (420). (*Sir James W. Colvile.*) MUSST. ANUNDEE KOONWUR *v.* KHEDOO LAL. **(1872) 14 M. I. A. 412 = 18 W.R. 69 = 3 Sar. 50 = 2 Suth. 591.**

Joint family—Normal condition of Hindu Society.

———*Management of concerns of family — Right of, in whom vested.*

The joint and undivided family is the normal condition of Hindu society. An undivided Hindu family is ordinarily joint not only in estate, but in food and worship ; therefore not only the concerns of the joint property, but whatever relates to their commensality and their religious duties

HINDU LAW—(*Contd.*)

Joint family—Normal Condition of Hindu Society—(*Contd.*)

and observances, must be regulated by its members, or by the manager to whom they have expressly or by implication delegated the task of regulation (191). (*Sir James W. Colvile.*) SRI RAGHUNADHA *v.* SRI BROZO KISHORO. **(1876) 3 I. A. 154 = 1 M. 69 (81) = 25 W. R. 291 = 3 Sar. 583 = 3 Suth. 263.**

Joint family—Ordinary sense of.

——The ordinary sense in which the term "joint family" is used in the Hindu law is a family of which the father was, in his lifetime, the head, and the sons, in a sense, parceners in birth, by an inchoate though alterable title. (*Lord Kingsdown.*) MYNA BOYEE *v.* OOTARAM. **(1861) 8 M. I. A. 400 (420) = 2 W. R. 4 = 2 M. H. C.R. 196 = 1 Sar. 797 = 1 Suth. 452.**

Joint family—Business of.

BOOKS OF—ENTRIES IN.

——Binding character of, on member of joint family and partner in firm. *See* ACCOUNT BOOKS—HINDU JOINT FAMILY. **(1866) 10 M. I. A. 490 (508).**

FATHER—FIRM OF JOINT FAMILY CARRIED ON AND MANAGED BY.

——Adjudication of, or of father manager of firm—Effect of, on minor sons partners of firm. *See* PRESIDENCY TOWNS INSOLVENCY ACT OF 1909, SS. 17, 2, 52—HINDU JOINT, ETC. **(1924) 52 I. A. 22 (27) = 6 Lah 1.**

FATHER AND SONS—BUSINESS CARRIED ON BY—CONTINUATION OF, BY SONS AFTER FATHER'S DEATH.

——*Business joint family business or not—Presumption—Onus of proof—Business continued under same name—Effect.*

B and his sons constituted a joint Hindu family. *B* and his sons carried on business under a firm name. It has not been proved that the sons of *B* after he died separated. Consequently it is to be assumed, unless the contrary has been proved, that the business which was carried on under the same firm name has continued to be a joint family business. (*Sir John Edge.*) LALA JAI NARAIN *v.* LALA UJAGAR LAL. **21 L. W. 162 = 29 C. W. N. 775 = (1925) M. W. N. 13 = A.I.R. 1925 P.C. 11 = 85 I. C. 2 = 27 Bom. L. R. 713 = (1924) 48 M. L. J. 236 (239).**

MANAGER OF FAMILY.

——*Ancestral business carried on by—New business started by—Distinction between, as source of partnership relations.*

The distinction between an ancestral business and one started like the present after the death of the ancestor as a source of partnership relations is patent. In the one case these relations result by operation of law from a succession on the death of an ancestor to an established business, with its benefits and its obligations. In the other they result ultimately on contractual arrangement between the parties. (*Sir Lawrence Jenkins.*) SANYASI CHARAN MANDAL *v.* KRISHNADHAN BANERJI. **(1922) 49 I.A. 108 (114 5) = 49 C. 560 (567 8) = 30 M. L. T. 228 = 20 A. L. J. 409 = 24 Bom. L.R. 700 = 35 C.L.J. 498 = (1922) M.W.N. 364 = 26 C.W.N. 954 = 16 L.W. 536 = A.I.R. 1922 P.C. 237 = 67 I.C. 124 = 43 M.L.J. 41.**

Business by—Ancestral or not—Concurrent findings as to—P. C's interference with. **(1922) 49 I.A 108 (114) = 49 C. 560 (567).**

——*Joint family business carried on by—Contract in respect of, in name of manager—Suit to enforce—Junior members not necessary parties to—Joinder of them after period of limitation—Suit not barred on ground of.*

HINDU LAW—(*Contd.*)

Joint family—Business of—(*Contd.*)

MANAGER OF FAMILY—(*Contd.*)

There is no principle of law and no custom according to which the managing members of a Hindu joint family intrusted with the management of a business must be held incompetent to enforce at law the ordinary business contracts they are entitled to make or discharge in their own names. In a suit brought to enforce such a contract, the defendant is, of course, entitled to insist on all the persons with whom he expressly contracted being made parties to the suit. Where that is done within the period allowed for the institution, and, on the defendant's application, the other members are added after the expiry of the period of limitation for the suit, the suit is not barred under S. 22 of the Limitation Act.

The other members of the family are not necessary parties to the suit at all. (*Lord Robson.*) KISHEN PARSHAD *v.* HAR NARAIN SINGH. **(1911) 38 I.A. 45 = 33 A. 272 = 15 C.W.N. 321 = 8 A. L. J. 256 = 9 M. L. T. 343 = 13 C.L.J. 345 = 13 Bom. L. R. 359 = 9 I.C. 739 = (1911) 2 M.W.N. 395 = 21 M.L.J. 378.**

——*Joint family business carried on by—Debts incurred in—Mortgage or sale of family property for discharging—Manager's power of.*

Where a joint Hindu family has succeeded to what is known as a joint family business—that it is to say, a business carried on with joint family funds for the benefit of the joint family, the properties of the joint family, both moveable and immovable, including the shares of minor members of the family, are liable for debts incurred in carrying on the business, aud it is within the power of the managing member in a proper case to sell immovable as well as the movable property of the family for the purpose of discharging such debts or enabling the business to be carried on (214). (*Sir John Wallis.*) NIAMAT RAI *v.* DIN DAYAL. **(1927) 54 I.A. 211 = 8 Lah. 597 = 4 O. W. N. 537 = (1927) M.W N. 453 = 25 A.L.J. 599 = 45 C. L. J. 548 = 28 Punj. L. R. 463 = 8 Pat. L. T. 647 = 26 L. W. 442 = 9 Lah. L.J. 496 = 39 M.L.T. 345 = 29 Bom. L. R. 886 = 101 I. C. 373 = A. I. R. 1927 P. C. 121 = 52 M. L. J. 729.**

——*Joint family business carried on by—Junior members' rights in.*

Where the managing members of a joint Hindu family carry on a business in the interests of the family and are entrusted with the power of making contracts, giving receipts, and compromising or discharging claims ordinarily incidental to the business, the other members of the family are incompetent to interfere in the business of the contract entered into by the managing members in pursuance of such authority, or to give a receipt under it, but are merely interested in its profits (52). (*Lord Robson.*) KISHEN PERSHAD *v.* HARI NARAIN SINGH. **(1911) 38 I. A. 45 = 8 A.L.J. 256 = 15 C. W. N. 321 = 33 A. 272 (276-7) = 9 M.L.T. 343 = 13 C. L. J. 345 = 13 Bom. L. R. 359 = (1911) 2 M.W.N. 395 = 9 I.C. 739 = 21 M.L.J. 378.**

——*Joint family business carried on by—Loss—Business resulting in—Closing of—Carrying on of, with money raised by mortgage or sale of family property—Discretion of manager as to—Lender or purchaser not under duty to go into those questions.*

Where a joint family business carried on by the manager has recently resulted in loss, it is for the manager to decide whether it would be better to close down the business or to put more money into it by raising money, and, in the latter case, whether the money required should be raised by mortgage instead of by sale. It would be unreasonable to require a lender or purchaser to go into questions of this

HINDU LAW—(*Contd.*)

Joint family—Business of—(*Contd.*)

MANAGER OF FAMILY—(*Contd.*)

kind, as to which he would rarely be in a position to form a sound opinion (216-7). (*Sir John Wallis.*) NIAMAT RAI *v.* DIN DAYAL. **(1927) 54 I.A. 211 = 8 Lah. 597 = 4 O. W. N. 537 = 1927 M. W. N. 453 = 25 A. L. J. 599 = 45 C. L. J. 548 = 28 Punj. L. R. 463 = 8 Pat. L.T. 647 = 26 L.W. 442 = 9 Lah. L. J. 496 = 39 M. L. T. 345 = 29 Bom. L. R. 886 = 101 I.C. 373 = A. I. R. 1927 P. C. 121 = 52 M. L. J. 729.**

———*Joint family business carried on by—Mortgage for purposes of—Validity.*

In the case of a family business carried on by the manager of an undivided family estate, the manager has a certain power of pledging assets for the requirements of the business. Even in such a case the validity of a motgage by the manager of a family business without the concurrence of the other members of the family, or when some of those members are minors, depends on proof that the mortgage was necessarily entered into in order to pay the debts of the business. The touchstone of the authority is necessity (192). (*Lord Davey.*) SHAM SUNDER LAL *v.* ACHHAN KUNWAR. **(1898) 25 I. A. 183 = 21 A. 71 (82-3) = 2 C. W. N. 729 = 7 Sar. 417.**

———*New business started by—Debts borrowed for—Liability of other members for — Minor members—Adult members parties to or connected with transaction—Other adult members—Distinction.*

Defendants 1 to 3, with their youngest brother, who was a minor and was not a party to the suit, constituted a joint Hindu family carrying on various businesses. The 1st defendant was the eldest brother and manager of the family business. He and the 2nd defendant started and carried on a brewery business, which was not a business of the joint family, borrowed money from the respondents for the purpose, and executed an agreement in their favour in respect of the amount so borrowed.

In a suit brought on the basis of the said agreement, it appeared that the 3rd defendant, who had not signed the agreement and had not been consulted about it, had, however, accepted it as binding upon him, and derived benefits under it and consequently accepted it, with liability to perform it.

Held, that the agreement could not be regarded as a contract of the joint family, and that the minor brother, when he came of age, could repudiate it, so far as he and his interest in the joint family property were concerned, and that his interests in the joint family property could not be affected by the suit ; but that the agreement was binding on defendants 1 and 2,who were parties to it, and on 3rd defendant, who had accepted it as a contract ; and that they could not escape their liability to perform it or to pay damages for the non-performance of it by showing that they had no property except that which was property of the joint family in which their minor brother was equally interested with them. (*Sir John Edge.*) SADASIVA MUDALIAR *v.* HAJEE FAKIR MAHOMED SAIT.

17 L. W. 288 = 32 M. L. T. (P. C.) 99 = 27 C.W.N. 677 = 37 C.L J. 569 = A.I.R. 1922 P.C. 397 = 72 I. C. 48 = (1922) 44 M. L. J. 396 (496-7).

———*New business started by—Liability of minor members in respect of.*

The Karta of a joint Hindu family is not competent to impose on a minor co-parcener the risks and liabilities of a new business started by himself (115). (*Sir Lawrence Jenkins.*) SANYASI CHARAN MANDAL *v.* KRISHNADHAN

HINDU LAW—(*Contd.*)

Joint family—Business of—(*Contd.*)

MANAGER OF FAMILY—(*Contd.*)

BANERJI. **(1922) 49 I. A. 108 = 49 C. 560 (568) = 30 M. L. T. 228 = 20 A. L. J. 409 = 24 Bom. L. R. 700 = 35 C.L.J. 498 = (1922) M.W.N. 364 = 26 C. W. N. 954 = 16 L. W. 536 = A. I. R. 1922 P.C. 237 = 67 I. C. 124 = 43 M. L. J. 41.**

MEMBER OF FAMILY—BUSINESS CARRIED ON BY.

———*Family business or individual business of member himself—Evidence—Maintenance of member out of family funds up to starting of business—Effect.*

The question of whether a man who, happening to be a member of a joint Hindu family, carried on his business, whatever it was, personally for his own benefit without detriment to the joint family fund, or carried on such business as a member of the joint family, is a question of fact to be determined on the evidence. No inferences can be drawn from the fact that until he began to so carry on his business he was maintained by the joint family funds. As a member of the joint family he was entitled to be maintained at the expense of the joint family, and to receive an ordinary education suitable to a person of his position, as was any other member of the family (53). (*Sir John Edge.*) METHARAM RAMRAKHIOMAL *v.* REWACHAND RAMRAKHIOMAL. **(1917) 45 I. A. 41 = 45 C. 666 (684-5) = 16 A.L.J. 281 = 20 Bom. L.R. 566 = (1918) M. W. N. 587 = 22 C. W. N. 377 = 4 P. L. W. 197 = 22 M. L. T. 218 = 7 L. W. 361 = 27 C. L. J. 345 = 44 I. C. 269 = 34 M. L. J. 327.**

———*Profits of, and purchases therewith—Joint family property or self-acquisition—Evidence.*

D, who had a nucleus of joint family property the income of which was nearly half a lakh, carried on for some years a business of extracting and selling mica. The question was whether the profits of that business and the properties purchased with them ought to be held to be the self-acquired properties of *D*.

It appeared in one instance at least that the land from which the mica was extracted was ancestral family property. It appeared also that the moneys paid for wages and other expenses of winning the mica were supplied out of the general income of *D*, and that the profits were devoted to the general maintenance of the family and the education of his son.

Held that, from whatever source some of the lands from which the mica was gotten might have been acquired, the mica business was dealt with as part of the joint family property, and that the profits thereof and the properties purchased with such profits were joint family property (746). (*Sir Walter Phillimore.*) RADHAKANT LAL *v.* NAZMA BEGUM. **(1917) 45 C. 733 = 22 C. W. N. 649 = 27 C. L. J. 632 = 16 A. L. J. 537 = 5 P. L. W. 72 = 23 M. L. T. 392 = (1918) M. W. N. 386 = 20 Bom. L. R. 724 = 45 I. C. 806 = 35 M. L. J. 99.**

MEMBERS OF FAMILY—PARTITION BETWEEN—BUSINESS CARRIED ON AFTER.

———*Relationship in regard to—Partnership under contract.*

One of four brothers, who formed a joint Hindu family and carried on a family business, separated from the others, and by that transaction the latter also became divided from each other. Thereafter the business was carried on, but the profits were carried to separate accounts of the three remaining brothers in equal shares.

Held that, after the separation of the brothers, the business became an ordinary partnership subject to the

HINDU LAW—(*Contd.*)

Joint family—Business of—(*Contd.*)

MEMBERS OF FAMILY—PARTITION BETWEEN—BUSINESS CARRIED ON AFTER—(*Contd.*)

Contract Act. (*Lord Dunedin.*) JATTI *v.* BANWARI LAL. (1923) **50 I. A. 192 (195) = 4 Lah. 350 = 21 A. L. J. 582 = A. I. R. 1923 P. C. 136 = 18 L. W. 273 = (1923) M. W. N. 687 = 28 C. W. N. 785 = 25 Bom. L. R. 1256 = 33 M. L. T. 283 = 74 I. C. 462 = 45 M. L. J. 355.**

PARTNERSHIP—BUSINESS CARRIED ON BY FAMILY IN.

———Father manager of partnership—Adjudication of—Effect of, on minor members who are partners of firm. *See* PRESIDENCY TOWNS INSOLVENCY ACT OF 1909, SS. 17, 2, 52. (1924) **52 I. A. 22 = 6 Lah. 1.**

Joint family—Co-parcenary in.

———*Conversion of member to Christianity—Parcenership put an end to by.*

Parcenership under the Hindu law may be put an end to by severance which that law recognises and creates, *viz.*, by a member becoming a convert to Christianity (237). (*Lord Kingsdown.*) ABRAHAM *v.* ABRAHAM. (1863) **9 M. I. A. 195 = 1 W. R. (P. C.) 1 = 1 Suth. 501 = 2 Sar. 10.**

———*English law co-parcenary—Distinction.*

The thing called co-parcenary in Hindu law is not identical with co-parcenary as understood in English law. Thus, in the ordinary case of the death of a member of a joint family under the Mithakshara law, his right accresces to the other members by survivorship, while, under the English law, if a co-parcener dies his or her right does not accresce to the other co-parceners, but goes to his or her own heirs (211). (*Lord Dunedin.*) BAIJNATH PRASHAD SINGH *v.* TEJ BALI SINGH. (1921) **48 I. A. 195 = 43 A. 228 (243) = 23 Bom. L. R. 654 = 3 U. P. L. R. (P. C.) 35 = 29 M. L. T. 358 = (1921) M. W. N. 300 = 19 A. L. J. 317 = 2 P. L. T. 257 = 33 C. L. J. 388 = 60 I. C. 534 = 40 M. L. J. 387.**

———*Members of family — Co-parcenaryship between, and survivorship following upon it—Self-acquisition of united member—No survivorship in.*

According to the principles of Hindu law, there is co-parcenaryship between the different members of a united family, and survivorship following upon it. There is community of interest and unity of possession between all the members of the family, and upon the death of any one of them the others may well take by survivorship that in which they had during the deceased's lifetime a common interest and a common possession. But the law of partition shows that as to the separately-acquired property of one member of a united family, the other members of that family have neither community of interest nor unity of possession. The foundation, therefore, of a right to take such property by survivorship fails; and there are no grounds for postponing the widow's rights to any superior right of the co-parceners in the undivided property (611). (*Lord Justice Turner.*) KATAMA NATCHIAR *v.* THE RAJAH OF SHIVAGUNGA. (1863) **9 M. I. A. 539 = 2 W. R. (P. C.) 31 = 1 Suth. 520 = 2 Sar. 25.**

———*Partition—Severance effected by—Parcenership put an end to by.*

Under the Hindu law parcenership may be put an end to by a severance effected by partition (237). (*Lord Kingsdown.*) ABRAHAM *v.* ABRAHAM. **(1863) 9 M. I. A. 195 = 1 W. R. (P. C.) 1 = 1 Suth. 501 = 2 Sar. 10.**

———*Partition not putting an end to co-parcenary rights in property unknown to Hindu law.*

HINDU LAW—(*Contd.*)

Joint family—Co-parcenary in—(*Contd.*)

A separation between members of a joint Hindu family followed by a partition between them of the ancestral property which would not put an end to their co-parcenary rights in the property is unknown to the law (283). (*Sir John Edge.*) EKRADESHWAR SINGH *v.* JANESHWARI BAHUASIN. (1914) **41 I.A. 275 = 42 C. 582 (599) = (1914) M.W.N. 807 = 25 I.C. 417 = 16 M.L.T. 382 = 1 L.W. 863 = 18 C.W.N. 1249 = 12 A.L.J. 1217 = 17 Bom. L.R. 18 = 21 C.L.J. 9 = 27 M.L.J. 373.**

———*Status of undivided family—Parcenership growing out of—Creature of, and governed only by, Hindu law.*

Parcenership, as expressing the rights and obligations growing out of the *status* of an undivided family, is the creature of, and must be governed by, the Hindu law (237). (*Lord Kingsdown.*) ABRAHAM *v.* ABRAHAM. (1863) **9 M. I. A. 195 = 1 W. R. (P. C.) 1 = 1 Suth. 501 = 2 Sar. 10.**

JOINT FAMILY—FATHER.

ADJUDICATION OF, AS AN INSOLVENT.
ADOPTION IN HIS LINE—AGREEMENT STIPULATING AGAINST.
ALIENATION BY.
ANCESTRAL PROPERTY.
BUSINESS CARRIED ON BY.
COMPANY LIMITED.
COMPROMISE BY.
CONTRACT FOR SALE OF FAMILY PROPERTY BY.
DEBT OF.
DECREE AGAINST—EXECUTION OF.
FAMILY ARRANGEMENT EFFECTING PARTITION OF FAMILY PROPERTY BY.
FIRM OF JOINT FAMILY CARRIED ON AND MANAGED BY.
GIFT BY.
GIFT TO—ANCESTRAL IMMOVABLE PROPERTY SUBJECT TO MITHAKSHARA LAW.
ILLEGITIMATE SON—MAINTENANCE OF.
INSOLVENCY OF.
JOINT FAMILY PROPERTY—STRANGER—ALLOTMENT TO.
LEASE BY.
MORTGAGE BY.
PARTITION BY.
PARTY-DEFENDANT IN SUIT—SON JOINED AS LEGAL REPRESENTATIVE ON HIS DEATH—LIABILITY OF.
PROPERTY HELD UNDER GRANT BY—RE-GRANT OF, IN HIS LITETIME TO HIS ELDEST SON—NATURE OF PROPERTY IN THAT SON'S HANDS.
PROPERTY IN NAME OF—BENAMI FOR SON—PLEA BY HIM OF.
SALE BY.
SELF-ACQUISITIONS OF.
SON.
STRANGER—ALLOTMENT OF FAMILY PROPERTY TO.
WILL BY.

Joint family—Father—Adjudication of, as an insolvent.

———Effect of, on minor members—Firm—Family carrying on business in partnership as a—Father manager of firm. *See* PRESIDENCY TOWNS INSOLVENCY ACT OF 1909, SS. 17, 2, 52. (1924) **52 I.A. 22 = 6 Lah. 1.**

———Property vesting in assignee by reason of. *See* PRESIDENCY TOWNS INSOLVENCY ACT OF 1909, SS. 17, 2, 52. (1924) **52 I.A. 22 = 6 Lah. 1.**

HINDU LAW—(*Contd.*)

Joint family—Father—Adoption in his line—Agreement stipulating against.

———*Binding nature of, as between parties—Binding nature of, on son then in existence.*

S and *K* were two brothers owning a joint estate governed by the Mithakshara law. They entered into an agreement which provided as follows :—"As to the immoveable property belonging to us both, the said immovable property shall, in case of the failure of aurasa (self-begotten) male issue in either of these two lines, *i.e.*, either for yourself or in your line of aurasa sons or in my line of aurasa sons, be put in possession of the other line, but it shall not be alienated by making adoption and the like."

At the date of the agreement *S* had a son *G*. The question was whether *S*, the father, could not by the agreement so bind the estate that an adopted son of his son *G* should not take by descent.

Held that the father of *G* could not bind his son, who was then in existence, not to adopt, or legally stipulate that if he should adopt, the son so adopted should not inherit (99).

Quære, whether the said agreement was or was not binding between the parties who made it (99). (*Sir Barnes Peacock.*) SRI RAJA RAO VENKATA MAHAPATI SURYA RAO BAHADUR *v.* THE HON. SRI RAJA RAO VENKATA MAHAPATI GANGADHARA RAMA RAO BAHADUR.

(1886) 13 I.A. 97 = 9 M. 499 (505) = 4 Sar. 725.

Joint family—Father—Alienation by.

———After-born son's right to dispute. *See* HINDU LAW—JOINT FAMILY—FATHER—SALE BY—AFTER-BORN SON'S RIGHT TO DISPUTE.

———Ancestral property — Alienation of. *See* under HINDU LAW—JOINT FAMILY—FATHER—ANCESTRAL PROPERTY.

———Antecedent debt justifying. *See* HINDU LAW—JOINT FAMILY — FATHER — DEBT OF—ANTECEDENT DEBT.

———"Benefit to estate"—Meaning of, in the rule laid down in Hunooman Pershad's case and other cases that follow it. *See* HINDU LAW—EXPRESSIONS IN—MEANING OF —BENEFIT TO ESTATE, ETC.

(1917) 44 I.A. 147 = 40 M. 709.

———*Binding character of, against sons—Law as to—Debts incurred by father—Binding character of—Manager other than father—Rule in cases of.*

On the question of the binding character of a debt incurred or an alienation of family property made by the father or other manager of a joint Hindu family as against the other members, their Lordships summed up the result of the authorities as follows :—

(1) The managing co-parcener of a joint undivided estate cannot alienate or burden the estate *qua* manager except for purposes of necessity.

(2) If he is the father and the reversioners are the sons he may, by incurring debt, so long as it is not for an immoral purpose, lay the estate open to be taken in execution proceeding upon a decree for payment of that debt.

(3) If he purports to burden the estate by mortgage, then unless that mortgage is to discharge an antecedent debt, it would not bind more than his own interest.

(4) Antecedent debt means antecedent in fact as well as in time, that is to say. that the debt must be truly independent and not part of the transaction impeached.

(5) There is no rule that this result is affected by the question whether the father, who contracted the debt or burdens the estate, is alive or dead. (*Lord Dunedin.*) RAJA BRIJ NARAIN RAI *v.* MANGALA PRASAD RAI.

(1923) 51 I.A. 129 (139) = 46 A. 95 = 21 A. L. J. 934 = 19 L. W. 72 = 33 M.L.T. (P.C.) 457 =

HINDU LAW—(*Contd.*)

Joint family—Father—Alienation by—(*Contd.*)

28 C.W.N. 253 = A.I.R. 1924 P.C. 50 = (1924) M.W.N. 68 = 1 P.L.R. 1924 = 10 O. & A.L.R. 82 = 26 Bom. L.R. 500 = 5 Pat. L.T. 1 = 41 C.L.J. 232 = 2 Pat. L.R. 41 = 10 O.L.J. 107 = 77 I.C. 689 = 46 M.L.J. 23.

———*Binding character of, against sons—Question as to—*Stare decisis*—Principle of—Applicability.*

In such a matter as the present it is above all things necessary *stare decisis*, not to unsettle what has been settled by a long course of decisions. (*Lord Dunedin.*) RAJA BRIJ NARAIN RAI *v.* MANGALA PRASAD RAI.

(1923) 51 I.A. 129 (137) = 46 A. 95 = 21 A.L.J. 934 = 19 L. W. 72 = 33 M.L.T. (P.C.) 457 = 28 C.W.N. 253 = A.I.R. 1924 P.C. 50 = (1924) M.W.N. 68 = 1 P.L.R. 1924 = 10 O. & A.L.R. 82 = 26 Bom. L.R. 500 = 5 Pat. L.T. 1 = 41 C.L.J. 232 = 2 Pat. L.R. 41 = 10 O.L.J. 107 = 77 I.C. 689 = 46 M.L.J. 23.

———Debt of father—Alienation for. *See* HINDU LAW—JOINT FAMILY—FATHER—DEBT OF.

———Invalid alienation—Validity of, to extent of father's share—Bengal and North-West Provinces—Mithakshara law in. *See* HINDU LAW—JOINT FAMILY—FATHER—MORTGAGE BY—INVALID MORTGAGE—VALIDITY OF, TO EXTENT OF FATHER'S SHARE.

———Invalidity of — Decree declaring — Son's rights under—Partition decree in favour of son against father, without actual partition pursuant to it—Son not entitled to physical possession of unalienated balance being moiety of the whole. *See* HINDU LAW—JOINT FAMILY—PARTITION—FATHER AND SON—DECREE FOR, ETC.

(1922) 44 M.L.J. 728 (731).

———Maternal grandfather's property inherited by father—Alienation of—Restraint upon—Ancestral property—Restraint upon alienation of – Rule as to—Applicability of. *See* HINDU LAW—DAUGHTER'S SON—MATERNAL GRANDFATHER'S PROPERTY INHERITED BY—ALIENATION OF.

(1882) 9 I.A. 128 (143) = 6 M. 1 (17).

———*Self-acquired immovables—Alienation of—Power of—Conflicting principles as to—Modern tendency.*

The subject (father's powers over self-acquired immoveables) is one of those in which, from the earliest times, there have been two conflicting principles of law; one favouring the perpetual integrity and the fixed succession of family property, and the other the free use of such property for the circumstances of the day. The controversies and conflicting decisions on the father's powers of mortgage and sale, on the payment of his debts out of the inheritance, and on the testamentary power, will occur to everybody who is familiar with Indian litigations of the past half-century or so. On each of those subjects there has been a growing tendency, coincident with the growth of commerce, to give more effect to the latter of the two principles, namely, the use of property by the living generation, or its living heads (71). (*Lord Hobhouse.*) RAO BALWANT SINGH *v.* RANI KISHORI. **(1898) 25 I.A. 54 = 20 A. 267 (288) = 2 C.W.N. 273 = 7 Sar. 279.**

———*Self-acquisition—Alienation of—Son's consent to—Necessity—Mithakshara law.*

Quære, whether under the Mithakshara law a Hindu could not dispose of his self-acquired property away from his son without the son's consent.

Held that, where the son did give his consent to such disposition, it was no objection to the disposition that the son was at the time in debt. RAJAH BISHEN PERKASH NARAIN SINGH *v.* BAWA MISSER. **(1873) 2 Suth. 878 = 20 W. R. 137 = 12 B. L. R. 430 = 3 Sar. 272.**

HINDU LAW—(*Contd.*)

Joint family—Father—Alienation by—(*Contd.*)

———*Self-acquisition—Alienation of—Son's consent to—Necessity—Mithila Law.*

Under the Mithila law, self-acquired property can be given by its owner at his pleasure. *Held*, therefore, that, under that law, a Hindu could validly give away his self-acquired property to his grandsons (son's sons) without his son's consent. RAJAH BISHEN PERKASH NARAIN SINGH *v.* BAWA MISSER. **(1873) 2 Suth. 878 = 20 W. R. 137 = 12 B. L. R. 430 = 3 Sar. 272.**

———Son's suit to set aside—Examination of father in—Party responsible for. *See* HINDU LAW—JOINT FAMILY—FATHER—SALE BY—SON'S SUIT TO SET ASIDE—EXAMINATION OF FATHER IN.

———Validity of—Tests—Hunooman Pershad Panday's case—Principles of—Applicability. *See* HINDU LAW—MINOR—GUARDIAN OF—ALIENATION BY—HUNOOMAN PERSHAD PANDAY'S CASE.

(1880) 8 I. A. 8 (11) = 6 C. 843 (847.)

———Will—Alienation by. *See* HINDU LAW—JOINT FAMILY—FATHER—WILL BY.

Joint Family—Father—Ancestral Property.

ALIENATION OF.
DEBT OF FATHER—LIABILITY OF ESTATE IN SON'S HANDS FOR.
FAMILY ARRANGEMENT EFFECTING PARTITION OF.
FATHER AND SONS—RIGHTS OF.
GIFT OF.
GIFT OF PROPERTY TO FATHER AS.
ILLEGITIMATE SON'S MAINTENANCE—ASSIGNMENT FOR.
LEASE OF.
MATERNAL GRANDFATHER—PRORERTY INHERITED FROM.
MORTGAGE OF.
MUTATION OF NAMES IN FAVOUR OF ELDEST SON IN RESPECT OF, ON DEATH OF FATHER—EFFECT OF.
ONUS OF PROOF OF PROPERTY BEING.
PARTITION OF.
PARTITION WITH BROTHER.
PROOF OF PROPERTY BEING.
RELEASE OF INTEREST IN, UNDER ERRONEOUS IMPRESSION THAT IT WAS SELF-ACQUISITION OF HIS OWN FATHER.
REVENUE SALE OF, AGAINST FATHER—PURCHASE BY GOVERNMENT AT.
SALE OF.
SON'S RIGHT BY BIRTH IN.
STRANGER—ALLOTMENT TO.
WILL BEQUEATHING.
WILL EFFECTING PARTITION OF.
WILL RESTRICTING SON'S INTEREST IN, TO A LIFE ESTATE, AND LIMITING IT OVER TO AN ADOPTED SON OF HIS OWN IF SON LEFT NO MALE ISSUE.

Alienation of.

———*Restraint upon—Basis of—Mithakshara law.*

The inability of the father to make an alienation of ancestral property under the Mithakshara law arises from the proprietary right of the sons. "Among unseparated kinsmen, the consent of all is indispensably requisite, because no one is fully empowered to make an alienation, since the estate is in common" (63). (*Sir Richard Couch.*) RANI SARTAJ KUARI *v.* RANI DEORAJ KUARI.

(1887) 15 I. A. 51 = 10 A. 272 (286) = 5 Sar. 139.

———Restraint upon—Rule of—Applicability to property inherited from maternal grandfather. *See* HINDU LAW—

HINDU LAW—(*Contd.*)

Joint family—Father—Ancestral Property—(*Contd.*)

ALIENATION OF—(*Contd.*)

JOINT FAMILY—FATHER—MATERNAL GRANDFATHER'S PROPERTY INHERITED BY. **(1882) 9 I. A. 128 (143) = 6 M. 1 (17).**

———*Validity of—No legitimate son at the time.*

Quære, whether, under the Mithakshara law, a father who has no child born to him is or is not competent to alienate the whole or part of the ancestral estate; whether the rights of unborn children are so preserved by the Mithakshara as to render such an alienation unlawful (164). *Quære*, whether a father, having no legitimate son, is by the Mithakshara law incompetent to alienate ancestral estate to a stranger (165). (*Sir James W. Colvile.*) RAJA PARICHAT *v.* ZALIM SINGH. **(1877) 4 I. A. 159 = 3 C. 214 (219-20) = 3 Sar. 728 = 3 Suth. 436.**

DEBT OF FATHER—LIABILITY OF ESTATE IN SON'S HANDS FOR.

———*See* HINDU LAW—JOINT FAMILY—FATHER—DEBT OF—SON'S PIOUS OBLIGATION FOR.

FAMILY ARRANGEMENT EFFECTING PARTITION OF.

———*See* HINDU LAW—JOINT FAMILY—FATHER—ANCESTRAL PROPERTY—PARTITION OF.

FATHER AND SONS—RIGHTS OF.

———Dayabhaga Law. *See* HINDU LAW—JOINT FAMILY—FATHER—SON—RIGHTS OF, AGAINST FATHER—DAYABHAGA LAW. **(1888) 15 I. A. 51 (64-5) = 10 A. 272 (287-8).**

GIFT OF.

———Validity of. *See* under HINDU LAW—JOINT FAMILY—FATHER—GIFT BY.

GIFT OF PROPERTY TO FATHER AS.

———What amounts to. *See* HINDU LAW—ADOPTION—ADOPTED SON—ADOPTIVE FATHER—GIFT OF PROPERTY TO, ETC. **(1881) 8 I. A. 215 (228).**

ILLEGITIMATE SON'S MAINTENANCE—ASSIGNMENT FOR.

———*Validity of, against subsequently-born legitimate son—Mithakshara law—Twice-born classes.*

A deceased Hindu governed by the Mithakshara law and having no legitimate son at the time, assigned part of his ancestral estate for the maintenance of his illegitimate son. On the assignment being impugned by a subsequently-born legitimate son, *held*, that the assignment did not fall within the prohibition, if any, that a father, having no legitimate son, is by the Mithakshara law incompetent to alienate ancestral estate to a stranger, and that the assignment was valid (165).

The deceased was a person belonging to one of the twice-born classes, and his illegitimate son had therefore a right to maintenance. Therefore, in assigning maintenance to his illegitimate son, the deceased was acting in the performance of a legal obligation (165). (*Sir James W. Colvile.*) RAJAH PARICHAT *v.* ZALIM SINGH.

(1877) 4 I. A. 159 = 3 C. 214 (219-20) = 3 Sar. 728 = 3 Suth. 436.

LEASE OF.

———*See* HINDU LAW—JOINT FAMILY—FATHER—LEASE BY.

MATERNAL GRANDFATHER—PROPERTY INHERITED FROM.

———Ancestral or not. *See* HINDU LAW—ANCESTRAL PROPERTY—MATERNAL GRANDFATHER.

HINDU LAW—(*Contd.*)

Joint family —Father —Ancestral Property—(*Contd.*)

MORTGAGE OF.

———*See* HINDU LAW — JOINT FAMILY — FATHER—MORTGAGE BY.

MUTATION OF NAMES IN FAVOUR OF ELDEST SON IN RESPECT OF, ON DEATH OF FATHER—EFFECT OF.

———Exclusion of other members merely by reason of. *See* HINDU LAW—ANCESTRAL PROPERTY—MUTATION OF NAMES, ETC. **(1926) 53 I. A. 220 (227-8)=48 A. 259.**

ONUS OF PROOF OF PROPERTY BEING.

———*Son's suit to set aside sale of property by father.*

The suit was to set aside a deed of sale made by the plaintiffs' father to the defendants and certain other persons as purchasers, on the ground that the lands, the subject-matter of the sale, were, in the view of the Hindu Law, ancestral, and that the sale was not necessary, and was for a fictitious consideration and in fraud of the rights of the plaintiffs' father, as next heir and reversioner on the death of the widow of *D*, the deceased owner. The question was whether the lands were ancestral.

Held, that the onus was on the plaintiffs to prove that the lands were ancestral. (*Lord Collins.*) ATAR SINGH *v.* THAKER SINGH. **(1908) 35 I. A. 206 (210-1)=35 C. 1039 (1045)=4 M. L. T. 207=8 C. L. J. 359=12 C. W. N. 1049=10 Bom. L. R. 790=128 P. W. R. 1908=42 P. R. 1910=6 I. C. 721=18 M. L. J. 379.**

PARTITION OF.

———*Family arrangement effecting, or will—Test—Forfeiture for bad behaviour—Power of—Reservation in deed of—Scope and effect of.*

The father and manager of a joint Hindu family governed by the Mithakshara law executed a document, called a will, which recited that, "my three sons are at present fully qualified to conduct the business. Therefore in order to avoid a dispute after my death I have at present, while in a sound state of body and mind, and of my own freewill and accord, divided the property among my sons, heirs, as follows. The document gave the details of the division, and provided that, "If I at any time come back from pilgrimages and find mismanagement or character of any one bad then I shall have power to cancel this will which shall be enforced from the date of its execution." The document concluded as follows :—" All the three sons were put in separate possession of the estate in the beginning of the fusli year. I have no other heir having a right besides those mentioned in this will. I have therefore executed this will in order that it may serve as evidence."

Held, that the document was not a "will," because it differed from a will in the crucial characteristic that it was intended to speak from the date at which it was written and not from a future date, *viz.*, the death of the writer. The document was, in fact, and was intended to be viewed as a record of a family arrangement then and there made and carried into effect partitioning the family estate among those interested.

The provision in the document reserving power to the father to cancel the document in certain contingencies was not sufficient to prevent the partition operating *in præsenti*. The highest effect that could be given to the provision was that it evidenced a contractual condition which the sons accepted in order to obtain the partition which gave them immediate possession of the property, and the provision amounted at the most to the contractual acceptance of a power of forfeiture in case of bad behaviour which would not be sufficient to prevent the partition operating *in præsenti*. But the true interpretation of the provision is probably that it was merely put in as a threat in order to keep the sons in good behaviour, and that it could not have been enforced specifically, or even at all (35 A. at 352). (*Lord Moulton*) BRIJRAJ SINGH *v.* SHEODAN SINGH. **(1913) 40 I A. 161 (167-8)=35 A. 337 (346)=19 I. C. 826=17 C. W. N. 949=11 A. L. J. 698=(1913) M. W. N. 515=14 M. L. T. 11=18 C. L. J. 57=15 Bom. L. R. 652=25 M. L. J. 188.**

———*Sons—Partition with—After-born son's rights in case of—Dayabhaga—Mithakshara.*

In the case of a partition between father and sons it is laid down in the books that if a son born after the partition of ancestral estate does not out of the residue of his father's estate get a share equal to what his brothers had obtained, the other brothers must contribute to a share out of their portions. This rule is to be found in the Dayabhaga, which is a Bengal authority, but it refers to Vishnu and Yagnyavalkya authorities on which the Mithakshara is founded (179). (*Sir Arthur Hobhouse.*) RAI BISHEN CHAND *v.* ASMAIDA KOER. **(1884) 11 I. A. 164=6 A. 560 (574)=4 Sar. 512.**

———*Sons—Partition with—Father's share at—General rule as to—Effect on, of custom of division patnibhaga.*

Upon a partition during the father's lifetime, the general rule of Hindu law is that he gets a share equal to that of one son, so that at a partition between a father and his five sons, the father's share, under the putra bhaga rule, will be one-sixth. *Quaere* as to the effect of a custom of division putnibhaga upon this general rule. (*Lord Phillimore.*) PALANIAPPA CHETTIAR *v.* ALAYAN CHETTI. **(1921) 48 I. A. 539 (552)=44 M. 740 (752)=(1921) M. W. N. 687=30 M. L. T. 208=26 C. W.N. 417=15 L. W. 521=4 U. P. L. R. (P. C.) 21=64 I. C. 439=A. I. R. 1922 P. C. 228.**

———*Son's right to compel—Immoveable and moveable properties—Distinction.*

The material texts of the Mithakshara are to be found in the 27th and following slokas of the first section of the first chapter. It was argued that, because in the third sloka of the above section it is said that the wealth of the father becomes the property of his sons, in right of their being his sons, and that "that is an inheritance not liable to obstruction," their rights in the family estate must be taken to be only inchoate and imperfect during their father's life, and in particular that they cannot, without his consent, have a partition even of immoveable ancestral property. There was some authority in favour of this proposition, notwithstanding the texts to the contrary which are to be found in the Mithakshara itself (*see* slokas 5, 7, 8, 11 of S. 5 of the first Chapter). But it seems to be now settled law in the Courts of the three Presidencies that a son can compel his father to make a partition of ancestral immoveable property. The decisions do not seem to go beyond *ancestral* immoveable property (100). (*Sir James W. Colvile.*) SURAJ BUNSI KOER *v.* SHEO PROSHAD SINGH. **(1879) 6 I. A. 88=5 C. 148 (164-5)=4 C. L. R. 226=4 Sar. 1=3 Suth. 589.**

———Stranger—Allotment of share to. *See* HINDU LAW—JOINT FAMILY—FATHER—JOINT FAMILY PROPERTY—STRANGER.

———*Unequal partition among sons by way of family arrangement—Power to make—Son's consent to—Binding nature of, as against his sons—Effect of.*

HINDU LAW—(*Contd.*)

Joint family — Father — Ancestral Property—(*Contd.*)

PARTITION OF—(*Contd.*)

Where the father and manager of a joint Hindu family executed a document which, though called a will, was in fact a record of a family arrangement then and there made and carried into effect partitioning the family estate among those interested (giving himself no share but allotting a double share to his eldest son), and the said arrangement was accepted and acted upon by his sons, *held*, that the acceptance of the arrangement by the sons bound not only them but also their sons, as the former would be representing in the transaction their respective branches of the family, and that the effect of the transaction was, in the circumstances of the case, to create a partition of the joint ancestral property. (*Lord Moulton.*) BRIJ RAJ SINGH *v.* SHEODAN SINGH.
(1913) 40 I. A. 161 (167 8) = 35 A. 337 (346) = 19 I. C. 826 = 17 C. W. N. 949 = 11 A. L. J. 698 = (1913) M. W. N. 515 = 14 M. L. T. 11 = 18 C. L. J. 57 = 15 Bom. L. R. 652 = 25 M. L. J. 188.

———*Will — Partition among members of family by—Validity of—Consent of members to—Necessity.*

Under the Hindu law, the father and manager of a joint Hindu family has no right to make a partition of ancestral property by will among the members of the family except with their consent. (*Lord Moulton.*) BRIJ RAJ SINGH *v.* SHEODAN SINGH. **(1913) 40 I. A. 161 (167-8) = 35 A. 337 (346, 351-2) = 19 I. C. 826 = 17 C. W. N. 949 = 11 A. L. J. 698 = (1913) M. W. N. 515 = 14 M. L. T. 11 = 18 C. L. J. 57 = 15 Bom. L. R. 652 = 25 M. L. J. 188.**

———*Will—Unequal partition among sons by—Power of —Bombay Mithakshara.*

Under the Mithakshara law, as received in Bombay, a father cannot by will make an unequal distribution of ancestral property, whether moveable or immoveable, between his sons (189-90). (*Sir James W. Colvile.*) LAKSHMAN DADA NAIK *v.* RAMACHANDRA DADA NAICK.
(1880) 7 I. A. 181 = 5 B. 48 (56-7) = 7 C. L. R. 320 = 4 Sar. 173 = 3 Suth. 778.

PARTITION WITH BROTHER.

———*Property got at—Ancestral between father and his sons*

The share which a Hindu takes at a partition between himself and his brothers is undoubtedly ancestral property, as between him and his sons, who from the moment of their birth acquire an interest in it (70). (*Sir Andrew Scoble.*) LAL BAHADUR *v.* KANHAIA LAL. **(1907) 34 I. A. 65 = 29 A. 244 (254) = 2 M. L. T. 147 = 5 C. L J. 340 = 11 C. W. N. 417 = 9 Bom. L. R 597 = 4 A. L. J. 227 = 9 Sar. 200 = 17 M. L. J. 228.**

———*Property acquired after—Nature of, between father and his sons—Presumption—Onus of proof—Nucleus considerable of ancestral property after partition admitted.*

It was contended that any property acquired by *D* after the partition with his brothers was acquired by him "without the aid of ancestral funds, and with his own separate earnings," and that he therefore had the right to dispose of it as self-acquired property as against his sons. It is, however, admitted that *D* and his sons lived together as a joint Hindu family, and it is established that there was a considerable nucleus of ancestral property in his hands after the partition. The onus was therefore on the respondent (*D's* eldest son to whom *D* bequeathed his properties) to prove that *D's* subsequently acquired property was his separate estate (70-1). (*Sir Andrew Scoble.*) LAL BAHADUR *v.* KANHAIA LAL. **(1907) 34 I. A. 65 = 29 A. 244 (254 5) = 2 M. L. T. 147 = 5 C. L. J. 340 = 11 C. W. N. 417 = 9 Bom. L. R. 597 = 4 A. L. J. 227 = 9 Sar. 200 = 17 M. L. J. 228.**

HINDU LAW—(*Contd.*)

Joint family — Father — Ancestral Property—(*Contd.*)

PARTITION WITH BROTHER—(*Contd.*)

———*Release of interest in joint family property under erroneous impression that it was self-acquisition of his own father—Test—Deed—Construction—Deed of latter description—Effect of—No partition thereby—Binding nature of deed on party himself and on his son.*

A Hindu, who, with his two sons *M* and *P*, formed a joint Hindu family, allotted a part of the family estate to *P* as a provision for his maintenance, and *P* thereupon lived separately from his father and brother. *P* did not know that his father and *M* had any property which was ancestral, and in which he had an interest. He did not know that the property which was allotted to him was part of the joint family estate. The father then made a will bequeathing the rest of the family property to *M*. After the father's death, that is in 1907, *P* executed a deed, called a deed of release. It was really more in the nature of a series of recitals or admissions that the whole of the property was the separately acquired property of the father, that the father had made a will by virtue of which *M* had become full owner of the property after his father's death; that the father had given certain property to *P* during his lifetime, and that *P* had been living separately from his father and *M*; that *M* had given *P* certain additional property in consequence of his poverty; and finally, the document stated that *P* and his heir had no interest in the moveable and immoveable property acquired by *M* or his father, and that *M* was the full owner of all the property except that which had been given to *P*. It was found that prior to the date of that deed there had been no partition of the joint family properties.

In a suit brought by *P's* sons, making, *inter alia*, *P*, a defendant, who, however, died pending the suit, *held*, that the deed of 1907 did not operate either as a separation of status or as a partition of joint family property; that the renunciation by *P* was not binding upon his sons, and that, even if it was binding upon *P* himself, his renunciation enured not solely to the benefit of *M's* branch but to all the surviving co-parceners.

The deed proceeded upon the basis that there was no joint family and no joint family property. The basis was that all the property, including that which was in *P's* possession had been separately acquired, and that all the property except that in possession of *P* belonged to *M*. There is no suggestion in any part of the deed that the parties were proceeding upnn the basis that there was a joint family of which they were members, or that they were taking part in a division of the joint family property (420). (*Sir Lancelot Sanderson.*) MUKUND DHARMAN BHOIR *v.* BALKRISHNA PADMANJI. **(1927) 54 I. A. 413 = 29 Bom. L. R. 1496 = 46 C. L. J. 413 = 39 M. L. T. 521 = 105 I. C. 703 = 4 O. W. N. 845 = A. I. R. 1927 P. C. 224 = 53 M. L. J. 463.**

PROOF OF PROPERTY BEING.

———*Son's suit to set aside father's sale of property.*

In a suit to set aside a deed of sale made by the plaintiffs' father on the ground that the lands, the subject-matter of the sale, were, in the view of the Hindu law, ancestral, and that the sale was not necessary, and was for a fictitious consideration and in fraud of the rights of the plaintiff's father, as next heir and reversioner on the death of the widow of *D*, the deceased owner, the question was whether the lands, the subject-matter of the sale, were ancestral.

There was really no evidence that the lands in question came to *D* by descent at all. There was evidence that he acquired some lands in the district by purchase from the owners, and there was a probability that he acquired others

HINDU LAW—(*Contd.*)

Joint family — Father — Ancestral Property—(*Contd.*)

PROOF OF PROPERTY BEING—(*Contd.*)

by the abandonment of other persons, who might have been collateral, and in that way, might have become possessed of lands which, by the custom of the Punjab, would be regarded as ancestral. But there was no evidence whatever defining the boundaries of those portions of land respectively.

Held, that the plaintiffs had failed to prove that the lands, the subject-matter of the sale, were ancestral lands within the meaning of the Hindu law. (*Lord Collins.*) ATAR SINGH *v.* THUKAR SINGH. **(1908) 35 I. A. 206 (210) = 35 C. 1039 (1045) = 4 M. L. T. 207 = 8 C. L. J. 359 = 12 C. W. N. 1049 = 10 Bom. L. R. 790 = 128 P. W. R. 1908 = 42 P. R. 1910 = 6 I. C. 721 = 18 M. L. J. 379.**

RELEASE OF INTEREST IN, UNDER ERRONEOUS IMPRESSION THAT IT WAS SELF-ACQUISITION OF HIS OWN BROTHER.

———Effect of—No partition by means of—Binding nature of release on himself and on his son—Benefit of release to whom enures. *See* HINDU LAW — JOINT FAMILY—FATHER—ANCESTRAL PROPERTY— PARTITION WITH BROTHER—RELEASE OF, ETC.

(1927) 54 I.A. 413 (420) = 53 M. L. J. 463.

REVENUE SALE OF, AGAINST FATHER—PURCHASE BY GOVERNMENT AT.

———*Grant of portion of property by Government to third parties—Alteration of, on ground of his consent to grant being secured by fraud—Father's right of—Right by birth in, of subsequently-born son.*

Property which was originally ancestral property of the family of *G*, was sold for arrears of revenue and was purchased by the Government. After the Government thus became the absolute owners of the property, they granted it in equal shares to *G* and his co-sharers. *G's* son, who was born subsequent to the date of the said grant, alleged that, in consenting to the grant being made to two of those three co-sharers, *G* was imposed upon by the third of them.

Held that, supposing that *G* was so imposed upon, and that there was some right in him to procure an alteration of the grant, that was not such an interest as a son would by his birth acquire a share in (196).

Whatever the nature of the right might be, whether it could be enforced by a suit or by a representation to the Government, it does not come within the rule of the Mithakshara which gives a son, upon his birth, a share in the ancestral estate of his father (196). (*Sir Richard Couch.*) CHAUDHRI UJAGUR SINGH *v.* CHAUDHRI PITAM SINCH. **(1881) 8 I. A. 190 = 4 A. 120 (130) = 4 Sar. 275.**

———*Grant thereof by Government to father and others—Son born subsequent to—Right by birth of, in portion of property granted to third parties.*

Property, which was the ancestral property of the family of *G*, became, by reason of the sale thereof for arrears of revenue and of its purchase at that sale by the Government, the absolute property of the Government. Thereupon, the Government resolved to make a grant thereof to *G* and three others, his co-sharers, in four equal shares. Two years afterwards, all the four sharers appeared and caused to be recorded what was called a village administration paper, in which it was stated that they were entitled to the property in the shares of five biswas each. The plaintiff, the son of *G*, was born only subsequently to the grant by the Government and to the date of the said village administration paper.

Held, that whatever right the plaintiff might have, under the Mithakshara law, governing the family to ancestral property, it could not be said that at the time of his birth there was any ancestral property of which he could acquire a share except the five biswas (196).

HINDU LAW—(*Contd.*)

Joint family — Father — Ancestral Property—(*Contd.*)

REVENUE SALE OF, AGAINST FATHER—PURCHASE BY GOVERNMENT AT—(*Contd.*)

The grant being a grant by the Government—which had the absolute power to dispose of the property in any way it thought fit—only of five biswas, that was all the interest which *G* had, and his son could not acquire a share in any other (196). (*Sir Richard Couch.*) CHAUDHRI UJAGUR SINGH *v.* CHAUDHRI PITAM SINGH.

(1881) 8 I. A. 190 = 4 A. 120 (130) = 4 Sar. 275.

SALE OF.

———*See* HINDU LAW—JOINT FAMILY—FATHER—SALE BY.

SON'S RIGHT BY BIRTH IN.

———*Debt contracted by father before birth—Decree for, and attachment in execution also before birth—Sale of ancestral property, after birth, to pay off that debt and to get rid of execution—Right by birth if prevails against.*

Before the birth of the plaintiff, his father, who was governed by the Mithila law, contracted a debt, neither illegal nor immoral, upon which a decree was obtained, and the right and share of the father in ancestral property was attached in execution of that decree. To pay off that debt and to get rid of the execution, the father executed a sale-deed, after the birth of the plaintiff, conveying ancestral property.

The plaintiff contended that, as he had been born by the time the sale-deed was executed, he acquired such an interest in the property as prevented it from being made liable for the debt which his father had contracted, and that he was therefore entitled to have the deed of sale set aside.

Held, that the plaintiff did not gain such an interest in the property by birth as prevented it from being liable to pay the debt which his father had contracted, and that he was not therefore entitled to set aside the deed of sale (330). (*Sir Barnes Peacock.*) GIRDHAREE LALL *v.* KANTOO LALL. **(1874) 1 I. A. 321 = 14 B. L. R. 187 = 22 W. R. 56 = 3 Sar. 380.**

———*Interdiction of father's alienation—Right of—Mithakshara and Dayabhaga—Distinction.*

The great distinction between the doctrine of the Mithakshara in regard to heritage and that of the Dayabhaga, the law in Bengal, is found in Chapter I, Section 1, Verse 27, where it is said that property in the paternal or ancestral estate is by birth and the father is subject to the control of his sons and the rest in regard to the immoveable estate, whether acquired by himself or inherited from his father or other predecessor (61). (*Sir Richard Couch.*) RANI SARTAJ KUARI *v.* RANI DEORAJ KUARI.

(1887) 15 I. A. 51 = 10 A. 272 (284-5) = 5 Sar. 139.

———*Mithakshara law.*

Under the law of the Mithakshara each son upon his birth takes a share equal to that of his father in ancestral immoveable estate (99-100). (*Sir James W. Colvile.*) SURAJ BUNSI KOER *v.* SHEO PROSHAD SINGH.

(1879) 6 I. A. 88 = 5 C. 148 (164) = 4 C. L. R. 226 = 4 Sar. 1 = 3 Suth. 589.

———Mithakshara rule as to—Ghatwally tenure—Inapplicability to. *See* GHATWALLY TENURE—RIGHT BY BIRTH IN. **(1887) 15 I. A. 18 (26-7) = 15 C. 471 (480).**

———Rule as to—Applicability—Revenue sale of ancestral property against father—Purchase by Government at—Grant of portion of property by Government to third parties—Alteration of, on ground of his consent to grant being

HINDU LAW—(*Contd.*)

Joint family — Father — Ancestral Property—(*Contd.*)

SON'S RIGHT BY BIRTH IN—(*Contd.*)

secured by fraud—Father's right of—Right by birth in, of subsequently-born son. *See* HINDU LAW—JOINT FAMILY—FATHER—ANCESTRAL PROPERTY—REVENUE SALE OF, ETC. **(1881) 8 I. A. 190 (196) = 4 A. 120 (130).**

———Rule as to—Applicability of—Revenue sale of ancestral property against father and purchase thereof by Government—Grant of property by Government to father and others in shares—Subsequently-born son's right as regards shares allotted to others. *See* HINDU LAW—JOINT FAMILY—FATHER—ANCESTRAL PROPERTY—REVENUE SALE OF, ETC. **(1881) 8 I. A. 190 (196) = 4 A. 120 (130).**

STRANGER—ALLOTMENT TO.

———*See* HINDU LAW—JOINT FAMILY—FATHER—JOINT FAMILY PROPERTY—STRANGER—ALLOTMENT TO.

WILL BEQUEATHING.

———Family arrangement effecting partition—Test—Deed—Construction. *See* HINDU LAW—JOINT FAMILY—FATHER—ANCESTRAL PROPERTY — PARTITION OF—FAMILY ARRANGEMENT. **(1913) 40 I. A. 161 (167 8) = 35 A. 337 (346).**

———Immovable property—Ancestral property being—Bequest of, by person having sons or other male descendants—Validity—Mithakshara law—Benares law. *See* HINDU LAW—JOINT FAMILY—FATHER—WILL BY—IMMOVEABLE PROPERTY. **(1867) 12 M. I. A. 1 (38-40).**

———*Validity of, against previously adopted son.*

V, a Hindu, who owned ancestral property, adopted a son. After the adoption of that son, and while that son was still alive, *V* made a will disposing of the ancestral property in a particular way.

Held, that the will was null and void and inoperative according to Hindu law (23 4). (*Lord Wrenbury.*) VENKATANARAYANA PILLAI *v.* SUBBAMMAL.

(1915) 43 I. A. 20 = 39 M. 107 = 18 Bom. L. R. 372 = 20 C. W. N. 234 = 3 L. W. 177 = (1916) 1 M. W. N. 97 = 19 M. L. T. 147 = 32 I. C. 373 = 12 A. L. J. 178 = 23 C. L. J. 366 = 29 M. L. J. 851.

———*Validity against son of.*

A Hindu has no right to dispose by will of ancestral property belonging to the joint family of himself and his sons (70). (*Sir Andrew Scoble.*) LAL BAHADUR *v.* KANHAIA LAL. **(1907) 34 I. A. 65 = 29 A. 244 (254) = 2 M. L. T. 147 = 5 C. L. J. 340 = 11 C. W. N. 417 = 9 Bom. L. R. 597 = 4 A. L. J. 227 = 9 Sar. 200 = 17 M. L. J. 228.**

———*Validity of, against sons' claim to maintenance.*

Quære, as to how far the testamentary power as to ancestral property can supersede the sons' claim to maintenance. (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE. **(1872) Sup. I. A. 47 (82) = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.**

WILL EFFECTING PARTITION OF.

———*See* HINDU LAW—JOINT FAMILY—FATHER—ANCESTRAL PROPERTY—PARTITION OF—WILL.

WILL RESTRICTING SON'S INTEREST IN, TO A LIFE ESTATE, AND LIMITING IT OVER TO AN ADOPTED SON OF HIS OWN IF SON LEFT NO MALE ISSUE.

———*Validity of.*

Qnære, whether under his testamentary power of disposition a Hindu can restrict the interest of his son in his ancestral and other estate to a life interest, or can limit it over (if

HINDU LAW—(*Contd.*)

Joint family — Father — Ancestral Property—(*Contd.*)

WILL RESTRICTING SON'S INTEREST IN, TO A LIFE ESTATE, AND LIMITING IT OVER TO AN ADOPTED SON OF HIS OWN IF SON LEFT NO MALE ISSUE—(*Contd.*)

his son left no issue male, or such issue male failed) to an adopted son of his own (311). (*Lord Kingsdown.*) MUSSUMAT BHOOBUN MOYEE DEBIA *v.* RAM KISHORE ACHARJ CHOWDHRY. **(1885) 10 M. I. A. 279 = 3 W. R. (P. C.) 15 = 1 Suth. 574 = 2 Sar. 111.**

Joint Family—Father—Business carried on by.

———*See* HINDU LAW—JOINT FAMILY—BUSINESS OF.

Joint Family—Father—Company limited.

———*Will conveying all properties to a, whose registration was procured by him—Son's suit to set aside—Suit subsequent by him for declaration of invalidity of incorporation of company—Maintainability.*

Plaintiff's father procured the registration of a limited company and conveyed all his properties to the said company. Plaintiff first brought a suit to set aside his father's will which deprived him of his father's estate. On the same being dismissed he brought a second suit for a declaration of the invalidity of the incorporation of the company. All the facts on which the second suit was based were known to the plaintiff and were stated at length in the proceedings of the first suit. No further evidence would have been needed. Nothing was wanting in the first suit except the addition of an issue on the point of incorporation.

Held, that the alleged invalidity of the incorporation of the company was a matter which might and ought to have been made a ground of attack in the former suit, and, not having been raised therein, the question was *res judicata* under S. 13, Expl. II, Civil Procedure Code of 1882. (*Lord Macnaghten.*) MOOSA GOOLAM ARIFF *v.* EBRAHIM GOOLAM ARIFF. **(1912) 39 I. A. 237 (245 6) = 16 I. C. 70 = 23 M. L. J. 215.**

Joint family—Father—Compromise by.

———Adopted son—Compromise binding on—Authority to enter into—Proof of. *See* CIVIL PROCEDURE CODE OF 1908, O. 23, R. 3—COMPROMISE—CONSTRUCTION.

(1927) 53 M. L. J. 345.

———*Decree—Claim under—Compromise of—Decree in them existing son's suit declaring invalidity of, and remitting son to his rights under compromised decree—Effect of—Son subsequently born—Right of, to share in fund due under compromised decree.*

V, together with his four sons, formed a joint Hindu family, governed by the Mithakshara law. *V* died, survived by his sons, and in 1881 the joint family was dissolved, and a division of the joint estate took place, leaving the great part of it in the hands and under the control of *T*, one of the sons of *V*, who was the manager of the family. In 1886, a suit was brought by *A*, the son of *L*, another of the sons of *V*, against *T*, for the purpose of ascertaining the extent of the family assets remaining in his hands, for the necessary accounts, partition, and other relief, and to that suit all the members of the family, including *R*, one of the sons of *V*, and *G*, the then only son of *R*, were parties. Two decrees were made in that suit, one on 21st October, 1896, and the other on 17th August, 1897, and by them *T* was declared as liable to pay to *R* and his branch of the family certain sums of rupees.

On 21st November, 1897, a compromise was entered into between *R*, purporting to act both for himself and as guardian of his minor son *G*, and *T*. It consisted in releasing *T* from all liability to make the payments directed by the decrees aforesaid to be made, payments which were on the face of them considerable in extent ; and the only considera-

HINDU LAW—(*Contd.*)

Joint family—Father—Compromise by—(*Contd.*)

tion mentioned was that *T* would agree not to prosecute an appeal which he then had on foot against those decrees.

G attained his majority in 1906 and instituted a suit against *T* and *R* seeking to recover the monies mentioned in the decrees of October 1896 and August 1897 as "the undivided son" of *R*. That suit went upon appeal to the Privy Council, and it was held by the Privy Council that the compromise of November, 1897, did not bind, and could not bind, the infant *G*, who ought to be remitted to his original rights under the decrees of October, 1896 and August, 1897, and the case was remitted to deal with the remaining issues on that footing. Two further sons were born to *R* before the case came on for hearing on remand, and they were added as defendants after the remand.

At the hearing on remand, the High Court regarded the order of the Privy Council as rendering the compromise binding on *R*'s then existing share and held *G* and the after-born sons to be entitled only to the remaining half-share.

Held, that the view of the High Court was wrong, that, in fact, the order of the Privy Council only declared the compromise was not binding on *G*, who was remitted to all his original rights under the compromised suits, and that in the events that happened that entitled the whole family to share in the whole fund (97-8).

The agreement of November, 1897, did not purport to be a release of individual rights or shares in the fund at all ; it did not purport to effect any division of the joint family estate that then existed between *R* and his son *G* in the subject-matter of those decrees. On the contrary, what it purported to do was to release the whole of the debts that were then owing to the joint family in consideration of *T*, not prosecuting his appeals (98).

Now it has been held by this Board that that attempted arrangement failed so far as the infant was concerned ; and, if it failed so far as the infant was concerned, their Lordships think that in the events that have happened it must also be regarded as failing wholly to convey any of the joint estate at all ; and that for the following reasons : *R*, unless he was attempting to divide the joint family, could only deal with this property with the consent of his son or in his capacity as manager of the estate. In his capacity as manager of the estate he was only able to deal with it for certain limited purposes, and none of those purposes are, or can be, suggested as the consideration why these considerable sums were released. It follows, therefore, that the attempt to alienate, or to release, from the estate those substantial portions of the joint family property failed, and that there was no efficacy given to the arrangement that was then contemplated (98).

Semble, if *G* had predeceased his father, and there had been no further members of the joint family, *R* might not have been in a position to dispute the arrangement (98-9). (*Lord Buckmaster.*) VENKATA ROW *v.* TULJARAM ROW. **(1921) 49 I.A. 91 = 45 M. 298 (305-6) = 26 C. W. N. 646 = 30 M. L. T. 272 = 20 A. L. J. 833 = (1922) M. W. N. 392 = 24 Bom. L. R. 1191 = 36 C. L. J. 319 = 4 U. P. L. R. (P.C.) 33 = 74 I. C. 765 = A. I. R. 1922 P. C. 69 = 43 M. L. J. 298.**

———Disputed claim—Compromise of—Stranger—Allotment of share to, pursuant to such compromise—Power of. *See* HINDU LAW—JOINT FAMILY—PARTITION—FATHER—STRANGER—ALLOTMENT OF SHARE TO—POWER OF—COMPROMISE OF, ETC. **(1913) 40 I. A. 213 = 40 C. 966 (980).**

———Invalidity of, against them only son—Death of that son—Father's right to dispute validity of compromise in case of—Father sole member of family at the time. *See* HINDU

HINDU LAW—(*Contd.*)

Joint family—Father—Compromise by—(*Contd.*)

LAW—JOINT FAMILY—FATHER—COMPROMISE BY—DECREE. **(1921) 49 I. A 91 (98-9) = 45 M. 298 (305-6).**

———*Suit to which minor son party—Compromise of—Leave of court under O. 32, R. 7, C. P. C.—Necessity—Father himself guardian* ad litem *of minor—Different person guardian* ad litem—*Distinction.*

No doubt a father or managing member of a joint Hindu family may, under certain circumstances and subject to certain conditions, enter into agreemeents which may be binding on the minor members of the family. But where a minor is party to a suit and a next friend or guardian has been appointed to look after the rights and interests of the infant in and concerning the suit, the acts of such next friend or guardian are subject to the control of the Court.

Where the father or managing member of a joint Hindu family is himself the next friend or guardian *ad litem* of a minor co-parcener his powers as such father or managing member are controlled by the provisions of S. 462, Civil Procedure Code, and he cannot do any act in his capacity as father or managing member which he is debarred from doing as next friend or guardian without leave of the Court.

Quære, as to how far the acts of a father or managing member may affect a minor, who is a party to the suit represented by another person as next friend or guardian *ad litem*. (*Mr. Ameer Ali.*) GANESH ROW *v.* TULJARAM ROW. **(1913) 40 I. A. 132 (138-9) = 36 M. 295 (302-3) = 17 C. W. N. 765 = 11 A. L. J. 589 = 18 C. L. J. 1 = 15 Bom. L. R. 626 = 14 M. L. T. 1 = 19 I. C. 515 = (1913) M. W. N. 575 = 25 M. L. J. 150.**

Joint Family—Father—Contract for sale of family property by.

———*Necessity for, immediate payment of purchase-money for discharge of existing incumbrances—Contract in fact entered into not calculated to secure that end and likely to result in property being wiped off altogether—Validity against sons of.*

In a case in which immediate payment of the purchase price was the prime necessity, a Hindu father and managing member of a joint Hindu family entered into a contract for the sale of joint family property, which contract bound him to sell at a fixed price property of apparently increasing value in circumstances which gave the purchasers the privilege of indefinitely postponing completion of the purchase and payment of the price, with the further privilege, if it so suited them, of repudiating the bargain altogether on the ground that a prior contract for the sale of the same property had been entered into by the father and that, so long as that contract subsisted, he could not make out a title. The existence of the earlier contract in the event showed that the subsequent contract was deprived of all value as a solvent of the family's financial difficulties at its date, and was converted into an arrangement not materially more beneficial than one by which the father, at the end of 3 years, became bound to hand over to the mortgagees (to pay whom the contract was entered into) for, in effect nothing, the entire equity of redemption in the mortgaged property.

Held, that such a transaction was entirely beyond the power of the father as karta of the joint family, and was not binding on his sons (151). (*Lord Blanesburgh.*) RAM CHARAN LONIA *v.* BHAGWAN DAS MAHESHRI.

(1926) 53 I. A. 142 = 48 A. 443 = 24 A. L. J. 622 = 3 O. W. N. 783 = 31 C. W. N. 198 = (1926) M. W. N. 503 = 38 M. L. T. (P. C.) 18 = 95 I. C. 898 = A. I. R. 1926 P. C. 68.

HINDU LAW—(*Contd.*)

Joint family—Father—Contract for sale of family property by—(*Contd.*)

———*Specific performance of—Decree for, execution of sale-deed by Court pursuant to decree, and possession given to purchaser, who paid off mortgage on property—Setting aside of contract in son's suit for that purpose—Terms of.*

In a case in which a Hindu father and the manager of a joint family entered into a contract for the sale of family property to discharge a mortgage subsisting on the property, a decree for specific performance of the contract was obtained against the father alone. A formal sale-deed was executed by the Court in favour of the purchaser, and he was, under an order of Court, placed in possession of the property. He subsequently paid off the mortgage on the property. Afterwards the undivided sons of the vendor sued for a decree that the contract to sell entered into by their father was beyond his power as karta of the joint family, and was not binding on the plaintiffs. They did not, however, impeach the mortgage. It was held that the contract was beyond the power of the father as the karta of the joint family and was not binding on the plaintiffs.

Held, that the contract should be set aside only upon terms; that the purchaser should have the full benefit of the mortgage paid off by him as a mortgage, that his possession of the property, although unwarranted as purchaser, should not—it having been taken under an order of the Court—be treated as that of a mortgagee in possession with all the burdens of such a possession; and that the mortgage should for that purpose be treated as a usufructuary mortgage—and the possession of the purchaser be treated as possession thereunder—with the result that during that possession he would be entitled to no interest, but on the other hand would not be accountable for profits (152). (*Lord Blanesburgh.*) RAM CHARAN LONIA *v.* BHAGWAN DAS MAHESHRI.

(1926) 53 I. A. 142 = 48 A. 443 = 24 A. L. J. 622 = 3 O. W. N. 783 = 31 C. W. N. 198 = (1926) M. W. N. 503 = 38 M. L. T. (P. C.) 18 = 95 I. C. 898 = A. I. R. 1926 P. C. 68.

Joint family—Father—Debt of.

ANCESTRAL PROPERTY IN SON'S HANDS.
ANCESTRAL PROPERTY SOLD FOR—SON'S SUIT TO RECOVER.
ANTECEDENT DEBT.
BINDING CHARACTER OF, AGAINST SONS.
IMMORAL NATURE OF—EVIDENCE OF.
PROCEEDINGS AGAINST FATHER ALONE FOR.
SON DIVIDED—LIABILITY OF.
SON'S LIABILITY FOR, TO EXTENT OF ASSETS INHERITED BY HIM FROM FATHER.
SON'S PIOUS OBLIGATION FOR.
SUIT AGAINST SON FOR RECOVERY OF—DECREE IN.

ANCESTRAL PROPERTY IN SON'S HANDS.

———Liability of, for debt. *See* HINDU LAW—JOINT FAMILY—FATHER — DEBT OF — SON'S PIOUS OBLIGATION FOR.

ANCESTRAL PROPERTY SOLD FOR—SON'S SUIT TO RECOVER.

———Onus on him. *See* HINDU LAW—JOINT FAMILY—FATHER—DEBT OF — SON'S PIOUS OBLIGATION FOR—SALE OF ANCESTRAL ESTATE FOR DEBT, ETC.

(1879) 6 I. A. 88 (106) = 5 C. 148 (170-1).

ANTECEDENT DEBT.

———*Alienation for—Power of—Extension of—Impropriety of.*

The Mithakshara law has given to the father, in his capacity of manager and head of the family, certain powers with reference to the joint family property. He is at liberty

HINDU LAW—(*Contd.*)

Joint family—Father—Debt of—(*Contd.*)

ANTECEDENT DEBT—(*Contd.*)

to affect or to dispose of the joint family property in respect of purposes denominated necessary purposes. The principle in regard to this is analogous to that of the power vested in the head of a religious endowment or mutt, or of the guardian of an infant. In all of the cases where it can be established that the estate itself that is under administration demanded, or the family interests jnstified, the expenditure, then those entitled to the estate are bound by the transaction. This is neither inconsistent with nor an exception to the fundamental rule of the Mithakshara. For where estate or family necessity exists, that necessity rests upon the co-parceners as a whole, and it is proper to imply a consent of all of them to that act of the one which such necessity has demanded. The correct and general principle therefore is that if the debt is not for the benefit of the estate, then the manager has no power either of mortgage or sale of that estate in order to meet such a debt. An exception has, however, been made to cover the case of mortgage or sale by the father in consideration of an antecedent debt. The exception should not be extended and should be very carefully guarded. It is founded on the necessity of protecting the rights of third persons, say the purchasers of the property who have taken their title for onerous consideration and in good faith. (*Lord Shaw.*) SAHU RAM CHANDRA *v.* BHUP SINGH.

(1917) 44 I. A. 126 = 39 A. 437 = 21 C. W. N. 698 = 26 C. L. J. 1 = 1 Pat. L. W. 557 = (1917) M. W. N. 439 = 22 M. L. T. 22 = 6 L. W. 213 = 19 Bom. L. R. 498 = 39 I. C. 280 = 33 M. L. J. 14.

———*Contract for a loan, which never was completed, to pay off a previous debt otherwise discharged not an—Doctrine of "antecedent debt" already carried far.*

The father and managing member of a joint Hindu family entered into a contract for the sale of family property to one *U* for the discharge of an antecedent debt. A sale-deed was actually drawn up in his favour for a consideration of Rs. 13,000, the amount of the antecedent debt. Thereupon *D* instituted a suit and obtained a decree for pre-emption in respect of the sale-deed so executed by the father. By the time *D* got the decree the antecedent debt to discharge which the sale-deed in favour of *U* had been executed had been discharged. The father executed, after the decree, a sale-deed conveying the property to *D* for the sum of Rs. 13,000; and the said sum was appropriated by the father to his own use and for purposes not binding on the family.

Held, that the sale to *D* was not for an antecedent debt and was not binding on the undivided sons of the alienor.

The doctrine of "antecedent debt" has been carried for; if the sale in this case should be held to be for an antecedent debt, it would mean that a contract for a loan, which never was completed, to pay off a previous debt otherwise discharged, would become "an antecedent debt." The contention is, on the face of it, absurd. (*Mr. Ameer Ali.*) JAWAHIR SINGH *v.* UDAI PARKASH.

(1925) 53 I. A. 36 = 48 A. 152 = 24 A. L. J. 97 = (1926) M. W. N. 197 = 3 O. W. N. 365 = 43 C. L. J. 374 = 28 Bom. L. R. 851 = 30 C. W. N. 698 = A. I. R. 1926 P. C. 16 = 93 I. C. 216 = 50 M. L. J. 344.

———Doctrine of, already carried far. *See* HINDU LAW—JOINT FAMILY—FATHER—DEBT OF—ANTECEDENT DEBT—CONTRACT FOR A LOAN, ETC.

(1925) 53 I. A. 36 = 48 A. 152.

———*Meaning and test of.*

The expression "antecedent debts of a father" means those debts which have been incurred irrespective of

HINDU LAW—(*Contd.*)

Joint family—Father—Debt of—(*Contd.*)

ANTECEDENT DEBT—(*Contd.*)

the credit obtainable from immoveable assets which do not personally belong to him but are joint family property. To give true effect to the doctrine of antecedency in time, there must be also real dissociation in fact between the debt and the alienation in consideration thereof. Wherever such antecedency is found to be unreal and is merely a cover for what is essentially a breach of trust, on the part of the father, the courts must deny effect to a mortgage so brought into existence. The correct view is that joint family property cannot be effectively sold or charged in such a manner as to bind the issue of the father except where the sale or charge has been made in order to discharge an obligation not only antecedently incurred, but incurred wholly apart from the ownership of the joint estate or the security afforded or supposed to be available by such joint estate. (*Lord Shaw.*) SAHU RAM CHANDRA *v.* BHUP SINGH.

(1917) 44 I.A. 126 = 39 A. 437 = 21 C.W.N. 698 = 26 C.L.J. 1 = 1 P. L.W. 557 = (1917) M.W.N. 439 = 22 M.L.T. 22 = 6 L.W. 213 = 19 Bom. L.R. 498 = 39 I.C. 280 = 33 M.L.J. 14.

———*See also* HINDU LAW—JOINT FAMILY—FATHER—DEBT OF—ANTECEDENT DEBT—MORTGAGE INVALID, ETC. **(1922) 49 I.A. 228 (234-5) = 44 A. 368 (373-4).**

———Antecedent debt means antecedent in fact as well as in time, that is to say, that the debt must be truly independent and not part of the transaction impeached. (*Lord Dunedin.*) BRIJ NARAIN RAI *v.* MANGALA PRASAD RAI.

(1923) 51 I.A. 129 (139) = 46 A. 95 = 21 A.L.J. 934 = 19 L.W. 72 = 33 M.L.T. (P.C.) 457 = 28 C.W.N. 253 = A.I.R. 1924 P.C. 50 = (1924) M.W.N. 68 = 1 P.L.R. 1924 = 10 O. & A.L.R. 82 = 26 Bom. L.R. 500 = 5 Pat. L.T. 1 = 41 C.L.J. 232 = 2 Pat. L.R. 41 = 10 O.L.J. 107 = 77 I.C. 689 = 46 M.L.J. 23.

———*Mortgage executed to discharge prior mortgages if for an—No evidence to show purpose of loan raised under prior mortgages or that debt thereunder was incurred wholly irrespective of family property.*

On 4th March, 1908, *S*, the father and manager of a joint Hindu family, mortgaged to the appellant and another ancestral and joint family property. The whole of the money raised under that mortgage was employed in paying off two earlier mortgages on the same property. There was nothing to show for what purpose the money raised by the two earlier mortgages had been used or that the debt then incurred was incurred wholly irrespective of the family property.

Held, reversing the Courts below, that the mortgage of 4th March, 1908, was made in order to pay off an antecedebt debt, namely, the two older mortgages and consequently bound the estate.

The case of *Sahu Ram* must not be taken to decide more than what was necessary for the judgment, namely, that the incurring of the debt was there the creation of the mortgage itself and that there was no antecedency either in time or in fact. Moreover, if proper attention is paid to the word "incurred", their Lordships think that it will be seen to be a proper interpretation of the sentence which has caused the doubts. (*Lord Dunedin.*) RAJA BRIJ NARAIN RAI *v.* MANGALA PRASAD RAI.

(1923) 51 I.A. 129 (136-7) = 46 A. 95 = 21 A.L.J. 934 = 19 L.W. 72 = 33 M.L.T. (P.C.) 457 = 28 C.W.N. 253 = A.I.R. 1924 P.C. 50 = (1924) M.W.N. 68 = 1 P.L.R. 1924 = 10 O. & A.L.R. 82 = 26 Bom. L.R. 500 = 5 Pat. L.T. 1 = 41 C.L.J. 232 = 2 Pat. L.R. 41 = 10 O.L.J. 107 = 77 I.C. 689 = 46 M.L.J. 23.

HINDU LAW—(*Contd.*)

Joint family—Father—Debt of—(*Contd.*)

ANTECEDENT DEBT—(*Contd.*)

———*Mortgage invalid at its date if can be an.*

It was argued that although by the rules of the Mithakshara law a mortgage is at its date an invalid deed in so far as purporting to encumber the joint family property, yet when it purports to become the consideration for a sale it then becomes a just and a legal consideration on the principle of "antecedent debt." The family property could not be affected by such an invalid mortgage, but it could be sold next year or next day to the mortgagee for an "antecedent" debt, namely, the mortgage debt itself! Thus by turning the "antecedent debt" simply into a debt "antecedent" to the sale, the whole doctrine of antecedent debt is reduced *ad absurdum*, the principle of the Mithakshara law is circumvented, and the rights of the junior members of a Hindu family are no longer protected, but can be easily destroyed. Their Lordships cannot hold that this is in accordance with law.

As to the matter of the antecedency of debts, it is clear beyond question that the antecedency is antecedency to the mortgage itself. And it is more than that—it is disconnection with the mortgage in fact as well as in law. In no other way can the law of Indian joint family property protect itself against being undermined.

Joint family estate cannot be effectively sold or charged in such a manner as to bind the issue of the father, except where the sale or charge has been made in order to discharge an obligation not only antecedently incurred, but incurred wholly apart from the ownership of the joint estate or the security afforded or supposed to be available by such joint estate. The exception in favour of alienation for antecedent debts applies only to the case where the father's debts have been incurred irrespective of the credit obtainable from immovable assets which do not personally belong to him, but are joint family property. (*Lord Shaw.*) CHET RAM *v.* RAM SINGH. **(1922) 49 I.A. 228 (234-5) = 44 A. 368 (373-4) = 16 L.W. 89 = 31 M.L.T. 50 = (1922) M.W.N. 455 = 3 P.L.R. 1922 = 24 Bom. L.R. 1231 = 27 C.W.N. 150 = 21 A.L.J. 114 = 37 C.L.J. 79 = 3 P.L.T. 363 = 4 U.P.L.R. (P.C.) 64 = A.I.R. 1922 P.C. 247 = 67 I.C. 569 = 43 M.L.J. 98.**

———*Sale if for—Mortgage with possession for term invalid—Sale within period fixed for amount due under, and for another sum not used for family purpose or necessity—Effect.*

A joint Hindu family governed by the Mithakshara law of the N.-W. Provinces consisted of *A*, his two sons and his three grandsons by the said sons. In 1904, *A* executed a mortgage over the family property for Rs. 8,000. The debt of Rs. 8,000 was, with the possible exception of Rs. 1,000, neither incurred nor used for family purposes or necessity, nor was it an antecedent debt.

The mortgage of 1904, was, by its terms, a usufructuary mortgage, and was for the period of ten years running from its date. It was stipulated that possession and occupation should be given to the mortgagee in lieu of interest and that the mortgage was redeemable on payment of the principal amount at any time after the expiry of the ten years fixed.

Notwithstanding the ten years' provision of the usufructuary mortgage, *A* within 3 years from its date sold his equity of redemption in the property to the mortgagees for Rs. 13,500. Rs. 8,000 out of the Rs. 13,500 represented the amount due under the usufructuary mortgage, and the balance was received in cash. The said balance was neither incurred nor used for any family purpose or necessity. There was thus no legal necessity for either transaction,

HINDU LAW—(*Contd.*)

Joint family—**Father**—**Debt of**—(*Contd.*)

ANTECEDENT DEBT—(*Contd.*)

though it was not proved that the monies thereby raised were applied to immoral purposes.

After the death of *A*, his grandsons aforesaid sued to recover the property from the vendees, making their fathers formal defendants.

Held, affirming the High Court, that there was no antecedent debt such as would render either the mortgage or the sale binding upon the plaintiffs, and that they were entitled to recover the property. (*Lord Shaw.*) CHET RAM *v.* RAM SINGH. **(1922) 49 I.A. 228 = 44 A. 368 (373 5) = 16 L.W. 89 = 31 M.L.T. 50 = (1922) M.W.N. 455 = 3 P.L.R. 1922 = 24 Rom. L.R. 1231 = 27 C.W.N. 150 = 21 A.L.J. 114 = 37 C.L.J. 79 = 3 Pat. L,T. 363 = 4 U.P.L.R. (P. C.) 64 = A.I.R. 1922 P. C. 247 = 67 I.C. 569 = 43 M.L.J. 98.**

BINDING CHARACTER OF, AGAINST SONS.

———Law as to. *See* HINDU LAW—JOINT FAMILY—FATHER—ALIENATION BY—BINDING CHARACTER OF, AGAINST SONS—LAW AS TO. **(1923) 51 I.A. 129 (139) = 46 A. 95.**

———Question as to—*Stare decisis*—Principle of—Applicability. *See* HINDU LAW—JOINT FAMILY—FATHER—ALIENATION BY—BINDING CHARACTER OF, AGAINST SONS—QUESTION AS TO. **(1923) 51 I.A. 129 (137) = 46 A. 95.**

IMMORAL NATURE OF—EVIDENCE OF.

———*General evidence of immorality not enough—Evidence connecting debt with immorality necessary.*

A general charge of immorality against the father is not sufficient to prove that the debts for which he executed a mortgage of joint family property were incurred for immoral purposes, and, in the absence of evidence to connect the debts with his immorality, the sons will be held bound by the mortgage. (*Lord Macnaghten.*) SRI NARAIN *v.* LALA RAGHUBANS RAI. **(1912) 17 C.W.N. 124 = (1913) M.W.N. 768 = 17 I.C. 729 = 25 M.L.J. 27.**

PROCEEDINGS AGAINST FATHER ALONE FOR.

———*Sons' rights in case of, when debt not immoral.*

Sufficient care has not always been taken to distinguish between the question how far the entirety of the joint estate is liable to answer the father's debt, and the question how far the sons can be precluded by proceedings taken by or against the father alone from disputing that liability. Destructive as it may be of the principle of independent coparcenary rights in the sons. the decisions have for some time established the principle that the sons cannot set up their rights against their father's alienation for an antecedent debt, or against his creditors' remedies for their debts, if not tainted with immorality (17-8). (*Lord Hobhouse.*) MUSSAMUT NANOMI BABUASIN *v.* MODUN MOHUN. **(1885) 13 I.A. 1 = 13 C. 21 (35) = 4 Sar. 682.**

SON DIVIDED—LIABILITY OF.

———*Will by father bequeathing property to stranger.*

R managed during his lifetime a bank, in which he and his divided brother *M* had shares. After the death of *R*, *M* instituted a suit against his sons for an account of *R's* dealings with that bank, and for the recovery of the balance found to have been due by *R*.

R's sons alleged that they and their father became divided in 1823, under an arrangement by which he gave them a portion of his property and they relinquished in his favour all right to the remainder. They further alleged that after the said partition *R* bequeathed all his property to one *H*.

HINDU LAW—(*Contd.*)

Joint family—**Father**—**Debt of**—(*Contd.*)

SON DIVIDED—LIABILITY OF—(*Contd.*)

They, therefore, contended that *H* was the real representative of *R* and was liable for his dealings with the bank in question, and that they were not *R's* representatives and were not liable for his debts. *H* was not a party to the suit.

Quaere, whether, assuming the legality of the separation and testacy, the residuary legatee under *R's* will could be made liable for his debts, without making the executor, if there was or could be one, of the residuary legatee, a party (196). (*Dr. Lushington.*) BABOO JANOKEY DOSS *v.* BINDABUN DOSS. **(1843) 3 M. I. A. 175 = 1 Sar. 263.**

SON'S LIABILITY FOR, TO EXTENT OF ASSETS INHERITED BY HIM FROM FATHER.

———A Hindu son is liable for the debts due from his father to the extent of the assets which descended to him from his father, and all the right and interest of the son in the property which descended to him from his father becomes assets in his hands, and that right and interest, if not duly administered in payment of his father's debts, is liable as against the son to be attached and sold in execution of the amount that may be decreed against him (145). (*Sir Barnes Peacock.*) MUTTAYAN CHETTIAR *v.* SANGILI VIRA PANDIA CHINNATAMBIAR. **(1882) 9 I.A. 128 = 6 M. 1 (18-9) = 12 C. L. R. 169 = 4 Sar. 354.**

SON'S PIOUS OBLIGATION FOR.

———Basis and extent of—Original Hindu law—Law as established by British Indian Courts. *See* HINDU LAW—DEBT—LIABILITY FOR, OF SONS, GRANDSONS, ETC. **(1926) 53 I.A. 204 (211-2) = 48 A. 518.**

———*Debt tainted with immorality—Debt not so tainted—Distinction.*

On this important question of the liability of the joint estate for the debts of the father not tainted with immorality their Lordships think that there is now no conflict of authority (18). (*Lord Hobhouse.*) MUSSAMUT NANOMI BABUASIN *v.* MODUN MOHUN. **(1885) 13 I.A. 1 = 13 C. 21 (35) = 4 Sar. 682.**

———Destructive as it may be of the principle of independent co-parcenary rights in the sons, the decisions have for some time established the principle that the sons cannot set up their rights against their father's alienation for an antecedent debt, or against his creditor's remedies for their debts, if not tainted with immorality (17-8). (*Lord Hobhouse.*) MUSSAMUT NANOMI BABUASIN *v.* MODUN MOHUN. **(1885) 13 I.A. 1 = 13 C. 21 (35) = 4 Sar. 682.**

———*Enforceability of, during father's lifetime.*

In this case the suit was brought by a Hindu son to set aside a deed of sale of ancestral property executed by his father, and to recover possession of the whole of the property alienated. The law applicable to the case was the Mithila law, which was very similar to the law administered under the Mithakshara. The father was alive and was made a defendant in the suit. The sale was found to be for an antecedent debt, and the debt was found to be neither illegal nor immoral. Though the father was alive, their Lordships upheld the sale on the footing that the son was under a pious obligation to pay a debt of his father which was neither illegal nor immoral, and that the ancestral property, including the son's share, was liable for such debt (328, 331-2). (*Sir Barnes Peacock.*) GIRDHAREE LALL *v.* KANTOO LALL. **(1874) 1 I. A. 321 = 14 B.L.R. 187 = 22 W. R. 56 = 3 Sar. 380.**

———While the father remains in life the attempt to affect the sons' shares and grandsons' shares in the (family) property in respect merely of their pious obligation to pay off

HINDU LAW—(*Contd.*)

Joint family—Father—Debt of—(*Contd.*)

SON'S PIOUS OBLIGATION FOR—(*Contd.*)

their father's debts, and not in respect of the debt having been truly incurred for the interest of the estate itself, which they with their father jointly own, that attempt must fail. (*Lord Shaw.*) SAHU RAM CHANDRA *v.* BHUP SINGH. **(1917) 44 I. A. 126 = 39 A. 437 = 21 C.W. N. 698 = 26 C.L.J. 1 = 1 Pat. L. W. 557 = (1917) M. W. N. 439 = 22 M.L. T. 22 = 6 L. W. 213 = 19 Bom. L. R. 498 = 39 I.C. 280 = 33 M. L. J. 14.**

———There are some observations in Sahu Ram's case which are not necessary for the judgment but which their Lordships are bound to say that they do not think can be supported. Founding upon them the learned counsel in this case argued in the court below that no liability of the sons, based on the pious obligation to pay the father's debt, could be made available to the creditor while the father was still alive. If the point was open, there would be much to be said in favour of a position which seems consonant with common sense. But a long train of authorities have settled the question. Instances of sale being permitted when the father for whose debt the sale was made was still alive may be found in several reported cases. (*Lord Dunedin.*) RAJA BRIJ NARAIN RAI *v.* MANGALA PRASAD RAI. **(1923) 51 I. A. 129 (138) = 46 A. 95 = 21 A. L. J. 934 = 19 L.W. 72 = 33 M. L.T. (P. C.) 457 = 28 C. W.N. 253 = A.I.R. 1924 P. C. 50 = (1924) M. W. N. 68 = 1 P. L. R. 1924 = 10 O. & A. L. R. 82 = 26 Bom. L. R. 500 = 5 Pat. L. T. 1 = 41 C. L. J. 232 = 2 Pat. L. R. 41 = 10 O. L. J. 107 = 77 I.C. 689 = 46 M. L. J. 23 (30-1).**

———*Freedom from—Test—Nature of debt or nature of estate sought to be made liable.*

Though an estate be ancestral, it may, under the Hindu law, be charged for some purposes against the heir, for the father's debt, by the father. Unless the debt was of such a nature that it was not the duty of the son to repay it, the discharge of it, even though it affected ancestral estate, would still be an act of pious duty in the son. By the Hindu law, the freedom of the son from the obligation to discharge the father's debt, has respect to the nature of the debt, and not the nature of the estate, whether ancestral or acquired by the creator of the debt. (*Lord Justice Knight Bruce.*) HUNOOMANPERSAUD PANDAY *v.* MUSSUMAT BABOOEE MUNRAJ KOONWEREE. **(1856) 6 M. I. A. 393 (421) = 18 W. R. 81 = 2 Suth. 29 = 1 Sar. 552 = Sevestre 253 N.**

———Ancestral property which descends to a father under the Mithakshara law is not exempted from liability to pay his debts because a son is born to him. It would be a pious duty on the part of the son to pay his father's debts, and it being the pious duty of the son to pay his father's debts, the ancestral property, in which the son as the son of his father acquires an interest by birth, is liable to the father's debts. The freedom of the son to discharge the father's debt has respect to the nature of the debt and not to the nature of the estate, whether ancestral or acquired by the creator of the debt (331).

If the debt of the father had been contracted for an immoral purpose, the son might not be under any pious obligation to pay it, and he might possibly object to those estates which had come to the father as ancestral property being made liable to the debt (331). (*Sir Barnes Peacock.*) GIRDHAREE LALL *v.* KANTOO LALL. **(1874) 1 I.A. 321 = 14 B.L.R. 187 = 22 W. R. 56 = 3 Sar. 380.**

———*Madras Presidency—Applicability to, of principle of Kantoo Lall's case.*

Kantoo Lall's case, which held that a son is under a pious obligation to pay his father's debt where such debt is

HINDU LAW—(*Contd.*)

Joint family—Father—Debt of—(*Contd.*)

SON'S PIOUS OBLIGATION FOR—(*Contd.*)

neither immoral nor vicious, applies to the Madras Presidency quite as much as it does to the other Presidencies (144).

Held, therefore, that in the Madras Presidency the sons' interest taken by heritage from the father was not exempted from liability for the payment of his father's debts (144). (*Sir Barnes Peacock.*) MUTTAYAN CHETTIAR *v.* SANGILI VIRA PANDI CHINNATAMBIAR. **(1882) 9 I. A. 128 = 6 M. 1 (16-7) = 12 C. L. R. 169 = 4 Sar. 354.**

———*Mithila law—Debt contracted by father with another member of family—Son's pious obligation not affected by fact of.*

The proposition that no member of a Hindu joint family subject to the law of the Mithila school is bound to pay the debt of an ancestor which was contracted jointly by the ancestor with another member of the joint family is a startling one. Assuming that it was a debt which, if contracted by the father or grandfather alone, it was the pious duty of the son or of the grandson to pay, it is difficult to understand on what principle of the law of the Mithila school it was not a debt which it was the pious duty of the son or grandson to pay if it were contracted jointly with another who was a member of the joint family.

Held, accordingly, affirming the High Court, that a debt which was charged by a bond on the joint property of the family by each of the heads of the then four branches of the joint family, and other members of the family, who were their sons or grandsons was binding on the joint family property. (*Sir John Edge.*) SOURENDRA MOHAN SINHA *v.* HARI PRASAD SINHA. **(1925) 52 I. A. 418 (438) = 5 Pat. 135 = 42 C. L. J. 592 = 24 A. L. J. 33 = 1926 M. W. N. 49 = 7 Pat. L. T. 97 = A. I. R. 1925 P. C. 280 = 91 I. C. 1033 = 50 M. L. J. 1.**

———Mortgage invalid by father — Enforceability of, against sons on ground of their pious obligation. *See* HINDU LAW—JOINT FAMILY — MORTGAGE BY—INVALID MORTGAGE — ENFORCEABILITY OF, AGAINST SONS, ETC.

———*Right by birth of son in ancestral estate under Mithakshara law—Conflict between.*

There is no question that considerable difficulty has been found in giving full effect to each of two principles of the Mithakshara law, one being that a son takes a present vested interest jointly with his father in ancestral estate, and the other that he is legally bound to pay his father's debts, not incurred for immoral purposes, to the extent of the property taken by him through his father. It is impossible to say that the decisions on this subject are on all points in harmony, either in India or here (17). (*Lord Hobhouse.*) MUSSAMUT NANOMI BABUASIN *v.* MODUN MOHUN. **(1885) 13 I. A. 1 = 13 C. 21 (35) = 4 Sar. 682.**

———*Sale of ancestral estate for debt either privately by father or in execution of decree against him—Son's suit to recover—Onus on him*—Bona fide *execution purchaser—Duty of.*

The case of Muddun Thakoor *v.* Kantoo Lall is undoubtedly an authority for these propositions:—1st. That where joint ancestral property has passed out of a joint family, either under a conveyance executed by a father in consideration of an antecedent debt, or in order to raise money to pay off an antecedent debt, or under a sale in execution of a decree for the father's debt, his sons, by reason of their duty to pay their father's debts, cannot recover that property, unless they shew that the debts were contracted

HINDU LAW—(*Contd.*)

Joint family—Father—Debt of—(*Contd.*)

SON'S PIOUS OBLIGATION FOR—(*Contd.*)

for immoral purposes, and that the purchasers had notice that they were so contracted; and 2ndly, that the purchasers at an execution sale, being strangers to the suit, if they have not notice that the debts were so contracted, are not bound to make inquiry beyond what appears on the face of the proceedings (106). (*Sir James W. Colvile.*) SURAJ BUNSI KOER *v.* SHEO PROSHAD SINGH. **(1879) 6 I. A. 88 = 5 C. 148 (170-1) = 4 C. L. R. 226 = 4 Sar. 1 = 3 Suth. 589.**

SUIT AGAINST SON FOR RECOVERY OF—DECREE IN.

———*Form of.*

In a suit brought against the defendant, then the Zemindar of Sivagiri, for the recovery of the amount payable by the defendant's deceased father (from whom the defendant inherited the Zemindary of Sivagiri) to the plaintiff under a razinama decree, *held*, that the proper decree to be passed was "to decree and declare that the defendant, as the son and heir and legal representative of his father, the late Zemindar of Sivagiri, do pay to the plaintiff, out of the property which was of the late Zemindar, and which came to the defendant by heritage 'the amount due to the plaintiff with interest,' and, further to declare that, so far as the defendant is concerned, all the right, title and interest, which descended to him from his father and came to him by heritage are liable, so far as they had not been administered in payment of his father's debts, to be attached and sold in execution of the amount for which it shall be declared that the defendant is liable" (145-6). (*Sir Barnes Peacock.*) MUTTAYAN CHETTIAR *v.* SANGILI VIRA PANDIA CHINNATAMBIAR. **(1882) 9 I. A. 128 = 6 M. 1 (18-9) = 12 C. L. R. 169 = 4 Sar. 354.**

Joint family—Father—Decree against—Execution of.

ATTACHMENT IN.

INTENTION OF CREDITOR TO PROCEED ONLY AGAINST FATHER'S SHARE IN.

SALE IN—DEBT FOUNDATION OF.

SALE IN—FATHER'S SHARE ACQUIRED BY PURCHASER AT.

SALE IN—INTEREST PASSING UNDER—ENTIRE ESTATE.

SALE IN—INTEREST PASSING UNDER—FATHER'S SHARE ONLY.

SALE IN—INTEREST PASSING UNDER—QUESTION AS TO.

SALE IN—PURCHASE AT, WITH KNOWLEDGE OF SON'S CLAIM, AND SUBJECT TO RESULT OF SUIT BY HIM.

SALE IN—PURCHASER AT—DUTY OF.

SALE IN—SON'S SUIT AGAINST EXECUTION CREDITOR AND PURCHASER — NON-BINDING NATURE OF DEBT—EVIDENCE OF, SUFFICIENT AGAINST EXECUTION CREDITOR.

SALE IN—SON'S SUIT FOR CONFIRMATION OF POSSESSION OF PROPERTY SOLD—DECREE TO BE PASSED IN, ON ITS BEING FOUND THAT PURCHASER ACQUIRED ONLY FATHER'S SHARE IN PROPERTY SOLD.

SALE IN—SON'S SUIT TO RECOVER ENTIRE PROPERTY SOLD FROM PURCHASER AT—DECREE TO BE PASSED IN, ON ITS BEING FOUND THAT PURCHASER ACQUIRED ONLY FATHER'S SHARE IN PROPERTY SOLD.

SALE OF ENTIRETY OF FAMILY ESTATE IN—SON NOT MADE PARTY TO PROCEEDINGS—REMEDY OF.

SALE OF ENTIRETY OF FAMILY ESTATE IN—SON'S SUIT IMPEACHING DECREE AND SALE ON GROUND OF IMMORALITY OF DEBT—FAILURE TO PROVE SAME.

HINDU LAW—(*Contd.*)

Joint family—Father—Decree against—Execution of—(*Contd.*)

STAY OF—SECURITY BOND GIVEN BY FATHER AS A CONDITION OF, UNDERTAKING TO ACCOUNT IN EXECUTION FOR MESNE PROFITS NOT AWARDED BY DECREE.

ATTACHMENT IN.

———*Death of father before—Creditor's rights in case of—Decree debt one not binding on sons.*

It seems to be clear upon the authorities that if the debt of the father had been a mere bond debt, not binding on the sons by virtue of their liability to pay their father's debts, and no sufficient proceedings had been taken to enforce it in the father's lifetime, his interest in the property would have survived on his death to his sons, so that it could not afterwards be reached by the creditor in their hands (108-9). (*Sir James W. Colvile.*) SURAJ BUNSI KOER *v.* SHEO PROSHAD SINGH. **(1879) 6 I. A. 88 = 5 C. 148 (173) = 4 C. L. R. 226 = 4 Sar. 1 = 3 Suth. 589.**

———*Sale pursuant to—Death of father between dates of—Creditor's rights in case of—Sale not binding on son.*

In execution of a decree obtained against a Hindu governed by the Bengal Mithakshara on a mortgage bond executed by him, mouzah *B*, one of the mortgaged properties, was attached and was advertised for sale. After the attachment but before the actual sale, the mortgagor died, and the sale was held subsequently, the lot sold being described as "the eight anna share of the judgment-debtor in mouzah *B*, part of the mortgaged property."

Before, however, the execution purchasers were put into possession, the undivided sons of the mortgagor sued for the confirmation of their possession in the eight annas of mouzah *B*, and to have the mortgage, the decree thereon, and the sale in execution thereof, set aside. The sale was found not to affect the son's interests in the joint ancestral estate. The question was whether the sons were entitled to any and what relief as regards the father's share in the mouzah *B*, in view of the fact that the father had died before the sale in execution.

Held, that, at the time of the father's death, the execution proceedings under which mouzah *B* had been attached and ordered to be sold had gone so far as to constitute, in favour of the judgment-creditor, a valid charge upon the land, to the extent of *A's* undivided share and interest therein, which could not be defeated by his death before the actual sale; that the effect of the execution sale was to transfer to the respondents the undivided share in eight annas of mouzah *B*, which had formerly belonged to *A*, in his lifetime; and that, notwithstanding his death, the respondents were entitled to work out the rights which they had thus acquired by means of a partition (109). (*Sir James W. Colvile.*) SURAJ BUNSI KOER *v.* SHEO PROSHAD SINGH. **(1879) 6 I. A. 88 = 5 C. 148 (174) = 4 C. L. R. 226 = 4 Sar. 1 = 3 Suth. 589.**

INTENTION OF CREDITOR TO PROCEED ONLY AGAINST FATHER'S SHARE IN.

———Evidence of. *See* HINDU LAW—JOINT FAMILY—FATHER—DECREE AGAINST—EXECUTION OF—SALE IN—INTEREST PASSING UNDER—FATHER'S SHARE ONLY—RIGHT, TITLE AND INTEREST OF FATHER.

SALE IN—DEBT FOUNDATION OF.

———*Lease of family lands by father in consideration of loan—Ouster wrongful by father of lessee under—Decree for mesne profits obtained by lessee against father on ground of — Sale in execution of—Original loan or receipt of mesne profits for which decree was given foundation of.*

HINDU LAW—(*Contd.*)

Joint family—Father—Decree against—Execution of—(*Contd.*)

SALE IN—DEBT FOUNDATION OF—(*Contd.*)

One Mrs. *C*, complaining that *G*, the head of joint Hindu family, had wrongfully ousted her from land held under lease from him, sued him to recover possession and mesne profits. The lease had been granted as part of an arrangement under which *G* took a loan of Rs. 45,000 from Mr. *C*, the predecessor in title of Mrs. *C*. In the suit of Mrs. *C*, a decree was made according to the prayer of her plaint, and the sum of Rs. 32,318 was awarded to her for mesne profits. In satisfaction of that decree a portion of the family ancestral land was brought to sale by execution proceedings.

In a suit by *G's* son to set aside the execution sale, a discussion arose as to the nature of the debt for which the property was sold, whether the debt originated in the loan of Rs. 45,000, or in *G's* receipt of the mesne profits for which the decree was given.

Held, that the new debt for which the decree was made was the foundation of the sale (18-9). (*Lord Hobhouse.*) MUSSAMUT NANOMI BABUASIN *v.* MODUN MOHUN.

(1885) 13 I. A. 1 = 13 C. 21 (36) = 4 Sar. 682.

SALE IN—FATHER'S SHARE ACQUIRED BY PURCHASER AT.

———Ascertainment of—Mode of—Proceedings necessary for. *See* HINDU LAW—JOINT FAMILY—FATHER—DECREE AGAINST — EXECUTION OF—SALE IN—(1) SONS' SUIT TO RECOVER ENTIRE PROPERTY SOLD FROM PURCHASER ; AND (2) SONS' SUIT FOR CONFIRMATION OF POSSESSION OF PROPERTY SOLD.

———*Extent of—Ascertainment of—Mode of.*

The interest which is purchased at a sale in execution of a decree obtained against the father of a Mithakshara joint family of his right, title and interest in an item of family property is not the share of the father at that time in the property ; but it is the right which the father, the debtor, would have to a partition, and what would come to him upon the partition being made. What the father was entitled to and what the purchaser became entitled to, was what the father would get if a partition had been made (29). The purchaser at such a sale acquires the share and interest of the father, and is entitled to take proceedings to have it ascertained by partition (30). The purchaser becomes entitled to the share in the property which the father would have got, treating it as if the sale was to operate as a partition at that time (29). (*Sir Barnes Peacock.*) BABOO HURDEY NARAIN SAHU *v.* BABOO ROODER PERKASH MISSER. **(1883) 11 I. A. 26 = 10 C. 626 (636-7) = 4 Sar. 510.**

SALE IN—INTEREST PASSING UNDER—ENTIRE ESTATE.

———*Mesne profits for which joint family liable—Decree for.*

The father and managing member of a joint Hindu family governed by the Mithakshara law wrongfully ousted a lessee from land held under lease from him, whereupon the lessee sued the father and obtained a decree for mesne profits against him. In execution of that decree the share of the whole of the joint family was sold and was purchased by a third party. The debt for which the sale was held was a joint family debt. The execution and sale proceedings were such that the purchaser must have thought that he was buying the entirety. All the parties thought the same.

In a suit brought by the undivided sons of the judgment-debtor praying that either the execution sale might be wholly set aside, or that they might recover possession of the land and that the execution purchaser might be put to take proceedings on partition, *held*, that the authority of Deendyal's case did not bind the Court to hold that nothing but the father's co parcenery interest passed by the sale, and that the sale in execution was of the entirety of the estate (18-9). (*Lord Hobhouse.*) MUSSAMAT NANOMI BABUASIN *v.* MODUN MOHUN. **(1885) 13 I. A. 1 = 13 C. 21 (36-7) = 4 Sar. 682.**

HINDU LAW—(*Contd.*)

Joint family—Father—Decree against—Execution of—(*Contd.*)

SALE IN—INTEREST PASSING UNDER — ENTIRE ESTATE—(*Contd.*)

———*Mortgage decree.*

C obtained a decree against *M*, a Hindu, for the realisation of a sum of money out of the property mortgaged to him by *M*, *viz.*, "My rights and interest in 6 pie out of 5a. 4p. of the entire 16 annas" of the joint family estate of *M* and his son.

The sale was fixed for 5—1—1875. On 4—1—1875, the plaintiff, *M's* undivided son, instituted a suit against *C* and *M* claiming that "the ancestral property of the plaintiff which he has inherited from his grandfather ought not to be sold in satisfaction of such illegal and personal debts" of *M*; and he prayed for a declaration protecting his estate.

On the next day the plaintiff's pleader presented a petition in the execution proceeding, stating that the 5a. 4p. share of the estate aforesaid, "which is the ancestral property of my client, is to be sold to-day in this Court." The petition then stated the suit commenced the day before, and prayed postponement of the sale till the suit should be disposed of.

That petition was rejected, not on the ground that the thing to be sold was only the share of *M*, but on the ground that "the plaintiff is at liberty, in case of the sale taking place, to make the purchaser a defendant in his suit, so that he (the purchaser) may defend the right purchased by him."

The sale certificate which was issued to the vakil of *C*, after stating that all the "right, interest, and connection which the judgment-debtor had in the property" had been purchased "from the decree-holder," and "that in future the certificate shall be considered as a good evidence of transfer of the right and interest of the judgment-debtor," described the property thus :—

"Five annas four pie of mouzah *U*, which belonged to the judgment-debtor, *M*, is sold for Rs. 10,000."

Held, reversing the High Court and restoring the Sub-Judge, that the thing put up to sale and bought was the entirety of the estate, and not merely the father's share in it. (*Lord Hobhouse.*) RAI BABU MAHABIR PERSHAD *v.* RAI MARKUNDA NATH SAHAI. **(1889) 17 I. A. 11 = 17 C. 584 = 5 Sar. 489.**

———*Right, title and interest—Description of property sold as.*

In a case in which, in execution of a money-decree against a Hindu father, the Court intended to sell, and the Court did sell, the whole estate, and not merely the share of the father therein, the High Court held that the sale affected the interests of the father only, because of the ruling of the Privy Council in Hurdey Narain's case "that a sale in execution of a money-decree of the right, title and interest of an Hindu father, will affect only the interests of the father."

Held, that the High Court was wrong in its view of the effect of the decision in Hurdey Narain's case (5).

The High Court seems to have acted on the rule so laid down as a rigid rule of law, apparently applicable to this particular case. But the distinction is obvious. In Hurdey Narain's case, all the documents shewed that the Court intended to sell, and that it did sell nothing but the father's share—the share and interest that he would take on partition,

HINDU LAW—(*Contd.*)

Joint family—Father—Decree against—Execution of—(*Contd.*)

SALE IN—INTEREST PASSING UNDER—ENTIRE ESTATE—(*Contd.*)

and nothing beyond it—and this tribunal in that case puts it entirely upon the ground that everything shewed that the thing sold was " whatever rights and interests the said judgment-debtor had in the property" and nothing else (5). (*Lord FitzGerald.*) MEENAKSHI NAIDU *v.* IMMUDI KANAKA RAMAYA KOUNDEN. (1888) 16 I. A. 1 = 12 M. 142 = 5 Sar. 271.

———The words " right, title and interest " are ambiguous. To find out what passes under an execution sale of the "right, title and interest" of a judgment-debtor, it is necessary to examine the facts and circumstances which led to the introduction of those words, and it is of the utmost importance that the substance and not the mere technicalities, of the transaction should be regarded.

In this case it appeared that after an order for sale in execution of a decree against a Hindu father and before the actual sale, his sons instituted separate suits for a declaration that the property directed to be sold was the property of the joint family of themselves and their father and that the decree against him being for debts contracted for immoral purposes could not affect their shares. They also applied for an interim injunction restraining the sale. The court declined to grant the injunction but directed the insertion in the sale notices of the words " right, title and interest " of the judgment-debtor in suit property, expressly adding that it did so because their insertion would not affect the case of either party. Their Lordships therefore held that the whole property passed by the sale notwithstanding the description of the property as " the right, title and interest" of the father. (*Lord Buckmaster, L. C.*) SRIPAT SINGH *v.* TAGORE. (1916) 44 I. A. 1 = 44 C. 524 = 15 A. L. J. 147 = 21 C. W. N. 442 = (1917) M. W. N. 193 = 25 C. L. J. 220 = 21 M. L. T. 222 = 19 Bom. L. R. 290 = 39 I. C. 252 = 32 M. L. J. 133.

SALE IN—INTEREST PASSING UNDER—FATHER'S SHARE ONLY.

———*Circumstances indicating.*

Various decrees were passed against the respondent's father, the late zamindar of Sivagiri. When execution was issued under the decree, and an attachment was made, during the lifetime of the deceased, the proclamation expressly stated that all that was to be sold was the life interest of the deceased. A petition put in by the creditor praying that that notification might be altered and that a fresh advertisement might be made expunging the words "during his lifetime" was rejected during the lifetime of the deceased, on the ground that what was intended by the decree to be sold, and what could be sold under the decree, was only the interest of the deceased during his lifetime. The sale was postponed at the instance of the creditors, in consequence of the illness of the deceased, because they represented that, as the estate was to be sold only for the father's interest during his lifetime, the sale would not fetch so much during his illness as it would if he were in a better state of health.

The late zemindar then died. No fresh attachment was made. The sale took place after his death upon the attachment which had been made during his lifetime. The proclamation stated that the property was to be sold only for the interest of the father.

After the father's death, the court allowed the respondent, notwithstanding the attachment to take possession of the estate, stating that all that was to be sold was the life interest of the father. The purchase at the sale was made by the creditors themselves benami in the name of their clerk and for a small sum.

HINDU LAW—(*Contd.*)

Joint family—Father—Decree against—Execution of—(*Contd.*)

SALE IN—INTEREST PASSING UNDER—FATHER'S SHARE ONLY—(*Contd.*)

Held, on the facts affirming the courts below, that all that was intended to be sold, and all that was sold was the life interest of the father, and not the whole interest in the zemindary. (*Sir Barnes Peacock.*) PETTACHI CHETTIAR *v.* SANGILI VEERA PANDIA CHINNATAMBIAR. (1887) 14 I. A. 84 = 10 M. 241 = 5 Sar. 38.

———Intention of creditor to proceed only against father's share—Evidence of—Effect of. *See* HINDU LAW—JOINT FAMILY—FATHER—DECREE AGAINST—EXECUTION OF—SALE IN—INTEREST PASSING UNDER—FATHER'S SHARE ONLY—RIGHT, TITLE, ETC.

———*Money decree.*

For a debt due, partly on account of a mortgage, and partly for further advances, by the father and managing member of a joint Hindu family, a simple money decree was obtained against him. In execution of that decree the entire eight annas share belonging to the family was attached; but what was sold to and purchased by the execution purchaser, who was the decree-holder himself, was merely the right, title and interest of the father in the said eight annas.

Held that what was sold and purchased at the execution sale was not the whole of the eight annas share, but only the father's right and interest therein (28-9).

This case is distinguishable from the cases where the father, being a member of a joint family governed by the Mithakshara law had mortgaged the family property to secure a debt, and the decree had been obtained upon the mortgage and for a realization of the debt by means of the sale of the mortgaged property (28). This case is precisely like the case of Deendyal Lal *v.* Jugdeep Narain Singh (29). (*Sir Barnes Peacock.*) BABOO HURDEY NARAIN SAHU *v.* BABOO ROODER PERKASH MISSER. (1883) 11 I. A. 26 = 10 C. 626 (635-6) = 4 Sar. 510.

———*Mortgage decree.*

The question was as to the amount of interest acquired by the purchaser at an execution sale of joint family estate subject to the Mithakshara law in proceedings to which the father alone was a party, whether the purchaser acquired the entirety of the property or the father's co-parcenery interest therein alone.

Held that the purchaser acquired the father's co-parcenary interest alone, in view of the following circumstances :—

(1) that the mortgage sued upon was only of the father's right and interest in the property ;

(2) that the decree and the sale certificate purported to affect only such inteeest ;

(3) that the sons were not parties to the proceedings; and

(4) that the price paid by the purchaser was nearer the value of the father's share than of the entirety. (*Lord Hobhouse.*) SIMBHUNATH PANDAY *v.* GOLAB SINGH. (1887) 14 I. A. 77 = 14 C. 572 = 5 Sar. 5.

———*Right, title and interest of father—Seizure and sale only of.*

The respondent was the only son of one *T*, and the family being governed by the law of the Mithakshara, was joint in estate, in the strict sense of the term, with his father. The appellant, who held a Bengali mortgage bond executed to him by *T*, put the bond in suit, and obtained a decree against *T* for a certain sum. He took no proceedings to enforce that decree, which was in the form of an ordinary decree for money, against the property especially hypothecated, but caused " the rights and proprietary and mokurruri title and share of *T*, the judgment-debtor" in other joint family property to be put up for sale for the amount due

HINDU LAW—(*Contd.*)

Joint family –Father—Decree against—Execution of—(*Contd.*)

SALE IN—INTEREST PASSING UNDER—FATHER'S SHARE ONLY—(*Contd.*)

under the decree, and himself became the purchaser of that property. He also succeeded in taking possession of the whole of that property.

Thereupon the respondent instituted the suit out of which the appeal arose for the recovery of the whole of the property which was purchased and taken possession of by the appellant. *T* was joined as a defendant.

Held that, whatever might be the nature of the debt for which the appellant obtained his decree, he could not be taken to have acquired by the execution sale more than the right, title and interest of the judgment-debtor (251).

If the appellant had sought to go further, and to enforce his debt against the whole property, and the co-sharers therein who were not parties to the bond, he ought to have framed his suit accordingly, and have made those co-sharers parties to it. By the proceedings which he took he could not get more than what was seized and sold in execution, *viz.*, the right, title and interest of the father (251). (*Sir James W. Colvile.*) DEENDYAL LAL *v.* JUGDEEP NARAIN SINGH. (1877) 4 I. A. 247 = 3 C. 198 (204-5) = 1 C. L. R. 49 = 3 Sar. 730 = 3 Suth. 468.

———Under the Hindu law, ancestral property in a joint Hindu family may be made liable for the father's debts, unless they can be shown to have been for an immoral or illegal consideration. This rule, however, does not always apply. The creditor's conduct, for example, may evidence an intention not to resort to such a right, whereby, after all, one man's property is taken to pay another man's debt. This is peculiarly so where the form of his proceedings points to an election to seek execution against his own debtor's interest, and no further.

Where the certificate of sale recited that the decree-holder had bought "the right and interest of the judgment-debtor" (the father) "to be allotted by division, namely, by a separate allotment of 152 bighas of land . . . . for the purpose of cultivation", and it did not appear that he claimed execution at any time against the family property generally, *held*, that there was strong evidence of an intention to proceed against the debtor's interest only. (*Lord Sumner.*) THAKUR SRI RADHA KRISHNA *v.* RAM BAHADUR.
(1917) 16 A. L. J. 33 = 7 L. W. 149 = 27 C. L. J. 191 = 22 C. W. N 330 = (1918) M. W. N. 163 = 43 I. C. 268 = 20 Bom L. R. 502 = 4 P. L. W. 9 = 23 M. L. T. 26 = 34 M. L. J. 97 (101-2).

SALE IN—INTEREST PASSING UNDER—QUESTION AS TO.

———*Evidence—Record of proceedings in execution and sale—Value of—Production of—Necessity.*

Where the question is whether the purchaser at an execution sale acquired the entirety of the 5a. 4p. which were put up to sale in execution, or only such share as the judgment-debtor, the father, would take on a partition with his son, it would be more convenient if the record contained the whole of the proceedings in the execution and sale, because they must always be important evidence, often the best, as to the nature of the thing sold (14).

Their Lordships commented upon the absence from the record of the application for attachment and sale, and the orders made thereon, and the notification of sale (14). (*Lord Hobhouse.*) RAI BABU MAHABIR PERSHAD *v.* RAI MARKUNDA NATH SAHAI. (1889) 17 I A. 11 = 17 C. 584 (588) = 5 Sar. 489.

———-Intention of creditor to proceed against father's share only—Evidence of—Effect of. *See* HINDU LAW—JOINT

HINDU LAW—(*Contd.*)

Joint family—Father—Decree against—Execution of—(*Contd.*)

SALE IN—INTEREST PASSING UNDER—QUESTION AS TO—(*Contd.*)

FAMILY—FATHER—DECREE AGAINST—EXECUTION OF—SALE IN—INTEREST PASSING UNDER—FATHER'S SHARE ONLY—RIGHT, TITLE, ETC.

———*Hindu law and fact.*

The question what was the nature of the right acquired under a sale of family property held in execution of a decree obtained against a Hindu father may not be a mere question of fact. but may be said to be a question of mixed law and fact (86). (*Sir Barnes Peacock.*) PETTACHI CHETTIAR *v.* SANGILI VEERA PANDIA CHINNATAMBIAR.
(1887) 14 I. A. 84 = 10 M. 241 (249) = 5 Sar. 38.

———*Point for consideration in case of—What the Court did put up for sale and not what it could or ought to have put up for sale.*

In deciding what was the nature of the right acquired under a sale of family property held in execution of a decree obtained against a Hindu father, the question to be considered is not what the Court could have done, or what they ought to have done, but what they did, what was put up for sale, and what was purchased. If what was put up for sale was merely the estate which the father had in his lifetime, then what the purchaser purchased was only that interest (88-9). (*Sir Barnes Peacock.*) PETTACHI CHETTIAR *v.* SANGILI VEERA PANDIA CHINNATAMBIAR.
(1887) 14 I. A. 84 = 10 M. 241 (250-1) = 5 Sar. 38.

———*Point for consideration in case of—What purchaser had reason to think he was buying.*

Each case in which the question is as to the amount of interest acquired by the purchaser at an execution sale where the sale relates to a joint family estate subject to the Mithakshara law, and the father of the family alone has been party to the proceedings must depend on its own circumstances. It appears to their Lordships that in all the cases, at least the recent cases, the inquiry has been what the parties contracted about if there was a conveyance, or what the purchaser had reason to think he was buying if there was no conveyance, but only a sale in execution of a money decree (83). (*Lord Hobhouse.*) SIMBHUNATH PANDAY *v.* GOLAB SINGH. (1887) 14 I. A. 77 = 14 C. 572 (579) = 5 Sar. 5.

———*Privy Council appeal—Permissibility for first time in.*

Where, in an appeal to the Privy Council, the plea was raised for the first time that a sale held in execution of a decree against a Hindu must be deemed to have passed also the interest of his sons in the property, their Lordships declined to allow the plea to be raised, because it appeared that, if the plea had been raised in the Courts below, and the whole of the facts had been investigated at the trial, the sons might have made out that the creditor elected to seek execution against the father's interest only. (*Lord Sumner.*) THAKUR SRI RADHA KRISHNA *v.* RAM BAHADUR. (1917) 23 M. L. T. 26 = 16 A. L. J. 33 = 7 L. W. 149 = 27 C. L. J. 191 = 22 C. W. N. 330 = (1918) M. W. N. 163 = 20 Bom. L. R. 502 = 4 P. L. W. 9 = 43 I. C. 268 = 34 M. L. J. 97 (101-2).

———*Right, title and interest—Description of property sold as—Effect of.*

The Civil Procedure Code of 1859 required that property sold in execution should be described as the right, title and interest of the judgment-debtor, and it has been held in many cases that the presence of these words in the sale certificate is consistent with the sale of every interest which the judgment-debtor might have sold, and does not necessarily import that when the father of a joint Hindu family is the

HINDU LAW—(*Contd.*)

Joint family—Father—Decree against—Execution of—(*Contd.*)

SALE IN—INTEREST PASSING UNDER—QUESTION AS TO—(*Contd.*)

judgment-debtor, nothing is sold but his interest as a co-sharer. It is a question of fact in each case (16). (*Lord Hobhouse.*) RAI BABU MAHABIR PERSAD *v.* RAI MARKUNDA NATH SAHAI. **(1889) 17 I. A. 11 = 17 C. 584 (589-90) = 5 Sar. 489.**

———*See also* HINDU LAW—JOINT FAMILY—FATHER—DECREE AGAINST—EXECUTION OF—SALE IN—INTEREST PASSING UNDER (1) ENTIRE ESTATE—RIGHT, TITLE AND INTEREST (2) FATHER'S SHARE ONLY—RIGHT, TITLE AND INTEREST, ETC.

———*Sons—Omission to implead—Materiality of—Ambiguity in expressions by which estate conveyed to purchaser—No such ambiguity therein—Distinction.*

If the expressions by which joint family estate (sold in execution of a decree against the father) is conveyed to the purchaser are susceptible of application either to the entirety or to the father's co-parcenary interest alone, the absence of the sons from the proceedings may be one material consideration. But if the fact be that the purchaser has bargained and paid for the entirety, he may clearly defend his title to it upon any ground which would have justified a sale if the sons had been brought in to oppose the execution proceedings (18). (*Lord Hobhouse.*) MUSSAMUT NANOMI BABUASIN *v.* MODUN MOHUN.

(1885) 13 I. A. 1 = 13 C. 21 (36) = 4 Sar. 682.

———When the question is as to the amount of interest acquired by the purchaser at an execution sale of joint family estate subject to the Mithakshara law in proceedings to which the father alone is a party, and the expressions by which the estate is conveyed to the purchaser are susceptible of application either to the entirety or to the father's co-parcenary interest alone, the creditor's omission of the sons from the proceedings is recognised as a material circumstance against the creditor (82). (*Lord Hobhouse.*) SIMBHUNATH PANDAY *v.* GOLAB SINGH.

(1887) 14 I. A. 77 = 14 C. 572 (578 9) = 5 Sar. 5.

SALE IN—PURCHASE AT, WITH KNOWLEDGE OF SON'S CLAIM, AND SUBJECT TO RESULT OF SUIT BY HIM.

———*What amounts to—Order declining to adjudicate upon son's objections in execution proceedings and referring him to suit—Purchase with knowledge of—Effect of.*

The suit was by the undivided sons of a Hindu governed by the Bengal Mithakshara law to set aside a mortgage executed by their father, the decree obtained on foot thereof, and the sale of joint ancestral property held in execution thereof, and to be confirmed in their possession of the property sold in execution. The High Court found that the mortgage debt was not binding on the sons or on the ancestral immoveable estate in their hands, but nevertheless dismissed the son's suit upon the principal ground, *viz.*, that, upon the authority of the decision of the Privy Council in Mudhan Thakoor *v.* Kantoo Lall, the execution purchasers were to be treated on the footing of purchasers for value, without notice.

It appeared, however, that, before the execution sale, the sons presented a petition to the executing Court objecting to the sale, that that Court refused to adjudicate upon the claim in an execution proceeding, and accordingly allowed the sale to take place, but made an order referring the sons to a regular suit for the establishment of their rights, and that the execution purchasers must be taken to have had notice, actual or constructive, of the son's objections, and the order made upon them.

HINDU LAW—(*Contd.*)

Joint family—Father—Decree against—Execution of—(*Contd.*)

SALE IN—PURCHASE AT WITH KNOWLEDGE OF SON'S CLAIM, AND SUBJECT TO RESULT OF SUIT BY HIM—(*Contd.*)

Held, that the case was clearly distinguishable from that of Mudhan Thakoor, and that on the facts of the case the purchasers must be held to have purchased with knowledge of the son's claim, and subject to the result of their suit (108). (*Sir James W. Colvile.*) SURAJ BUNSI KOER *v.* SHEO PROSHAD SINGH. **(1879) 6 I. A. 88 = 5 C. 148 (172-3) = 4 C. L. R. 226 = 4 Sar. 1 = 3 Suth. 589.**

SALE IN—PURCHASER AT—DUTY OF.

———*Purchaser* bona fide *and for value of—Rights of.*

A purchaser under an execution is not bound to go back beyond the decree to ascertain whether the Court was right in giving the decree, or, having given it, in putting up the property for sale under an execution upon it. A purchaser at a sale in execution of a decree obtained against a Hindu father is not bound to go further back than to see that there was a decree against the father; and that the property was property liable to satisfy the decree, if the decree had been given properly against him. If, having inquired into that, the purchaser *bona fide* purchases the estate under the execution, and *bona fide* pays a valuable consideration for the property, the sons are not entitled to come in and to set aside all that has been done under the decree and execution, and recover back the estate from the purchaser (334). (*Sir Barnes Peacock.*) GIRDHAREE LALL *v.* KANTOO LALL. **(1874) 1 I. A. 321 = 14 B. L. R. 187 = 22 W. R. 56 = 3 Sar. 380.**

SALE IN—SON'S SUIT AGAINST EXECUTION CREDITOR AND PURCHASER—NON-BINDING NATURE OF DEBT—EVIDENCE OF, SUFFICIENT AGAINST EXECUTION CREDITOR.

———*Sufficiency of, against purchaser.*

In a suit brought by Hindu sons against an execution creditor of their father and against purchasers of ancestral property at the sale held in execution of his decree, to set aside the mortgage executed by their father, the decree thereon obtained by the execution creditor, and the sale in execution of that decree at which the said purchasers purchased, *held*, that evidence adduced by the sons which was sufficient to prove as against the execution creditor the non-binding nature of the debt, the decree, and the execution sale was also sufficient to prove the same as against the execution purchasers, inasmuch as the latter were parties to the suit, they went to trial upon those issues, and they had equally with the execution creditor the means of cross-examining the plaintiffs' witnesses, and of adducing counter evidence (107). (*Sir James W. Colvile.*) SURAJ BUNSI KOER *v.* SHEO PROSHAD SINGH. **(1879) 6 I. A. 88 = 5 C. 148 (172) = 4 C. L. R. 226 = 4 Sar. 1 = 3 Suth. 589.**

SALE IN—SON'S SUIT FOR CONFIRMATION OF POSSESSION OF PROPERTY SOLD—DECREE TO BE PASSED IN, ON ITS BEING FOUND THAT PURCHASER ACQUIRED ONLY FATHER'S SHARE IN PROPERTY SOLD.

———*Form of—Confirmation of son's possession with declaration of purchaser's rights.*

In execution of a decree obtained against a Hindu governed by the Bengal Mithakshara on a bond and Bengali mortgage executed by him pledging two ancestral mouzahs *S* & *B*, mouzah *B* was attached and sold, the lot sold being described as "the eight anna share of the judgment-debtor in mouzah *B*, part of the mortgaged property." Before, however, the execution purchasers were put into possession,

HINDU LAW—(*Contd.*)

Joint family—Father--Decree against—Execution of—(*Contd.*)

SALE IN—SON'S SUIT FOR CONFIRMATION OF POSSESSION OF PROPERTY SOLD—DECREE TO BE PASSED IN, ON ITS BEING FOUND THAT PURCHASER ACQUIRED ONLY FATHER'S SHARE IN, PROPERTY SOLD—(*Contd.*)

the two undivided sons of the mortgagor instituted a suit for the confirmation of their possession in the eight annas of mouzah *B*, and to have the mortgage bond executed by their father, the decree thereon, and the sale in execution thereof, set aside.

It was found that neither the mortgage bond nor the execution sale affected the interests of the sons in the joint ancestral estate, and that by their execution purchase the purchasers acquired only the undivided share in eight annas of mouzah *B*, which had belonged to the mortgagor (father) in his lifetime.

Held, that the proper decree to be passed in such a case was one declaring that by their purchase the execution purchasers acquired only the one undivided third share in the eight-anna share of mouzah *B*, which formerly belonged to *A*, with such power of ascertaining the extent of such third part or share by means of a partition as *A* possessed in his lifetime ; and ordering that the plaintiffs (the sons of *A*) be confirmed in the possession of the said eight-anna share of mouzah *B*, subject to such proceedings as the respondents might take in order to enforce their rights above declared (109-110). (*Sir James W. Colvile.*) SURAJ BUNSI KOER *v.* SHEO PROSHAD SINGH.

(1879) 6 I. A. 88 = 5 C. 148 (174-5) = 4 C. L. R. 226 = 4 Sar. 1 = 3 Suth. 589.

SALE IN—SON'S SUIT TO RECOVER ENTIRE PROPERTY SOLD FROM PURCHASER AT—DECREE TO BE PASSED IN, ON ITS BEING FOUND THAT PURCHASER ACQUIRED ONLY FATHER'S SHARE IN PROPERTY SOLD.

———*Form of—Restoration of entire property to son with declaration of rights of purchaser—Decree for.*

In execution of a decree obtained against a Hindu father, joint family property was sold and purchased by the decree-holder himself. In a suit brought by the respondent, the undivided son of the judgment-debtor for the recovery of the whole property from the decree-holder purchaser, the father being also a party-defendant, it was found that by his purchase the latter acquired only the right, title, and interest of the father in the property sold. The High Court by its decree ordered that the respondent should obtain possession from the purchaser of the whole property sold for the benefit of the joint family.

Held, that the decree below ought not to be interfered with so far as it directed the possession of the property to be restored to the respondent ; but that it should be varied by adding a declaration that the decree-holder-purchaser, as purchaser at the execution sale, had acquired the share and interest of the father in the property purchased, and was entitled to take such proceedings as he should be advised to have that share and interest ascertained by partition (255-6). (*Sir James W. Colvile.*) DEENDYAL LAL *v.* JUGDEEP NARAIN SINGH. **(1877) 4 I. A. 247 = 3 C. 198 (209) = 1 C. L. R. 49 = 3 Sar. 730 = 3 Suth. 468.**

———Where, in execution of a decree obtained against a father of a Mithakshara joint family, his right, title, and interest in an item of family property is sold, and a suit is subsequently brought by the son to recover possession of the whole of that property, the decree which ought properly to be made in such a suit would be that the plaintiff, the son, should recover possession of the whole of the property, with a declaration that the purchaser at the execution sale had acquired the share and interest of the father, and is entitled

HINDU LAW—(*Contd.*)

Joint family—Father—Decree against—Execution of—(*Contd.*)

SALE IN—SON'S SUIT TO RECOVER ENTIRE PROPERTY SOLD FROM PURCHASER AT—DECREE TO BE PASSED IN, ITS BEING FOUND THAT PURCHASER ACQUIRED ONLY FATHER'S SHARE IN PROPERTY SOLD—(*Contd.*)

to take proceedings to have it ascertained by partition. A decree allowing the purchaser to retain possession of even a part of the property, instead of being turned out of the possession of the whole and left to demand a partition is not strictly right (30). (*Sir Barnes Peacock.*) BABOO HURDEY NARAIN SAHU *v.* BABOO ROODER PERKASH MISSER. **(1883) 11 I. A. 26 = 10 C. 626 (636-7) = 4 Sar. 510.**

———In a case in which the father's interest in an item of family property was sold in execution of a decree against him, the son instituted a suit to recover from the execution purchaser the whole of the property purchased by him. The High Court made a decree which was in effect a decree for partition whereby the father's share of the property in suit was left to remain with the execution purchaser, and the remainder of the property was given to the other members of the family according to their shares.

Held, that, though the decree of the High Court might have gone beyond what was necessary or proper, there was no ground for altering it (30).

The decree ought in strictness to have turned the execution purchaser out of the whole of the property and left him to demand a partition. The actual decree of the High Court is more favourable to him, because it allows him to retain possession of the share which he would have been entitled to if a partition had been made (30). (*Sir Barnes Peacock.*) BABOO HURDEY NARAIN SAHU *v.* BABOO ROODER PERKASH MISSER, **(1883) 11 I. A. 26 = 10 C. 626 (637) = 4 Sar. 510.**

SALE OF ENTIRETY OF FAMILY ESTATE IN—SON NOT MADE PARTY TO PROCEEDINGS—REMEDY OF.

———*Suit by son impeaching sale as regards his interest—Onus of Proof on him in.*

If the father's debt was of a nature to support a sale of the entirety of the family estate, he might legally have sold it without suit, or the creditor might legally procure a sale of it by suit. All the sons can claim is that, not being parties to the sale or execution proceedings, they ought not to be barred from trying the fact or the nature of the debt in a suit of their own. Assuming they have such a right, it will avail them nothing unless they can prove that the debt was not such as to justify the sale (18). (*Lord Hobhouse.*) MUSSAMUT NANOMI BABUASIN *v.* MODUN MOHUN. **(1885) 13 I. A. 1 = 13 C. 21 (36) = 4 Sar. 682.**

———Where sons claim against a purchaser of an ancestral estate under an execution against their father upon a debt contracted by him, it is necessary for the sons to prove that the debt was contracted for an immoral purpose, and it is not necessary for the creditors to show that there was a proper inquiry, or to prove that the money was borrowed in a case of necessity (105).

In a suit brought on behalf of minor sons to recover possession of ancestral joint family property sold in execution of a decree against their father, the Courts below found that the plaintiffs had not proved that the mortgage bond on foot of which the decree under execution was passed was given for moneys advanced for immoral purposes. Nevertheless, they decreed to the sons the possession of their shares in the suit property on the ground that the lenders had not made proper inquiries to ascertain whether there was any actual necessity for the loans.

HINDU LAW –(*Contd.*)

Joint family—Father—Decree against—Execution of—(*Contd.*)

SALE OF ENTIRETY OF FAMILY ESTATE IN—SON NOT MADE PARTY TO PROCEEDINGS—REMEDY OF—(*Contd.*)

Held, reversing the courts below, that the onus was on the plaintiffs to show that the debt was contracted for an illegal or immoral purpose ; and that, as they had failed to do so, their suit must have been dismissed. (*Sir Barnes Peacock.*) BHAGBUT PERSHAD *v.* GIRJA KOER.
(1888) 15 I. A. 99 = 15 C. 717 = 5 Sar. 186.

———A Hindu son cannot set up his right as a co-sharer to impeach a sale of joint family property decreed against his father for the purpose of defraying the debts of his father and grandfather except on condition of his showing the debts to have been contracted for immoral purposes (13-4). (*Lord Hobhouse.*) RAI BABU MAHABIR PERSHAD *v.* RAI MARKUNDA NATH SAHAI. **(1889) 17 I. A. 11 = 17 C. 584 (587) = 5 Sar. 489.**

SALE OF ENTIRETY OF FAMILY ESTATE IN—SON'S SUIT IMPEACHING DECREE AND SALE ON GROUND OF IMMORALITY OF DEBT—FAILURE TO PROVE SAME.

———*Decree proper in case of.*

The appellant, the *bona fide* holder of a promissory note executed by a zemindar, obtained a money-decree therein against the zemindar. In execution of that decree the appellant took proceedings to have the zemindary attached and sold. The respondent, the son of the Zemindar, intervened, and he sought by petition an order that his interest in the zemindary should be excluded from the sale, and that the sale should be made subject to his right. His objection was, however, over-ruled, the proceedings towards a sale went on, and the thing proposed and intended to be sold, and actually sold, was not the father's share but the whole interest in the zemindary itself.

Thereupon the respondent instituted the suit out of which the appeal arose against his father and the appellant (the decree-holder-purchaser) for a declaration that the promissory note in question was given for immoral and illegal purposes, and that the sale of the zemindary in execution of the decree thereon was invalid and illegal as against the respondent. He never contended that no more than his father's interest was sold. His case was that the whole zemindary was sold out and out ; he impeached the debt which led to the sale, and asserted that the decree founded on it could not bind his interests.

The courts below found on the evidence that the amount of the promissory note was a debt binding on the respondent, that he would be liable for the same to the extent of the assets coming to him by descent from his father, and that his interest in the zemindary was liable, and might be sold for the satisfaction of that debt. The court held, nevertheless, reversing the sub-judge, that only the father's interest must be held to have passed by the sale, and they did so because in their opinion the decision of the Privy Council in Hurdey Narain's case constrained them to do so,

Held, agreeing with the sub-judge, that the respondent's whole suit failed (4-5).

The respondent based his case upon the impeachment of the pro-note debt, and upon that alone, and failing in that allegation and that impeachment, the whole suit fails. That being the case there might have been a sale of this estate under this decree, including the whole interest or of so much as was necessary. The evidence shows that the court intended to sell, and that the court did sell. the whole estate and not any partial interest in it (5). (*Lord Fitz Gerald.*) MEENAKSHI NAIDU *v.* IMMUDI KANIKA RAMAYA KOUNDAN. **(1888) 16 I. A. 1 = 12 M. 142 = 5 Sar. 271.**

HINDU LAW—(*Contd.*)

Joint family—Father—Decree against—Execution of—(*Contd.*)

STAY OF—SECURITY BOND GIVEN BY FATHER AS A CONDITION OF, UNDERTAKING TO ACCOUNT IN EXECUTION FOR MESNE PROFITS NOT AWARDED BY DECREE.

———*Enforceability of, against son added as L. R. on death of father.*

Where a respondent, by reviving an appeal, substitutes himself for his father as a defendant in the suit, he assumes, not merely liability as heir in the ordinary way, but the position of defendant with all the rights and liabilities which had previously attached to it (232).

Where, as a condition of a stay of execution of a decree for possession and for past mesne profits, the defendant executed a security bond to the court undertaking to account in the suit itself for future profits also, and died, and his son was brought on record as his representative, *held*, that the son was liable under the bond to the same extent to which his father would have been if he had been alive, and that the son could not take any objection to the bond which would not have been available to the father himself if he had been alive.

The bond was not a mere bond of the father, in respect of which the respondent (son), as heir, would have been liable in the ordinary way. It was a proceeding in a court importing a certain liability to be enforced in the suit against the defendant to that suit, *viz.*, the father. By reviving the appeal, the respondent (son) substituted himself for his father as defendant in the suit ; and assumed the position of defendant with all the rights and liabilities which had previously attached to it (232). (*Sir James W. Colvile.*) SADASIVA PILLAI *v.* KAMALINGA PILLAI
(1875) 2 I. A. 219 = 15 B. L. R. 383 = 24 W. R. 193 = 3 Sar. 519 = 3 Suth. 190.

Joint family—Father—Family arrangement effecting partition of family property by.

———*See* HINDU LAW—JOINT FAMILY—FATHER—ANCESTRAL PROPERTY—PARTITION OF.

Joint famlly—Father—Firm of joint family carried on and managed by.

———Adjudication of, or of father manager of firm—Effect of, on minor sons partners of firm. *See* PRESIDENCY TOWNS INSOLVENCY ACT OF 1909, Ss. 17, 2, 52 HINDU JOINT FAMILY FIRM. **(1924) 52 I. A. 22 (27) = 6 Lah. 1.**

Joint family—Father—Gift by.

———Ancestral property—Gift of — Validity — Law in Bengal and in Madras. *See* HINDU LAW—GIFT — ANCESTRAL PROPERTY. **(1872) Sup. I. A. 47 (66-7).**

———*Daughter—Gift of money or moveable property to—Power of.*

The father has undoubtedly the power under the Hindu law of making, within reasonable limits, gifts of moveable property to a daughter. In one case the Board upheld the gift of a small share of immovable property on the ground that it was not shown to be unreasonable. In the present case, the gifts relate to sums of money. The only question is whether they were reasonable. Both the Courts in India have answered the question in the affirmative and their Lordships have no materials or ground to hold otherwise (173). (*Mr. Ameer Ali.*) RAMALINGA ANNAVI *v.* NARAYANA ANNAVI. **(1922) 49 I. A. 168 = 45 M. 489 (494-5) = 37 C. L. J. 15 = 30 M. L. T. 255 = (1922) M.W.N. 399 = 26 C. W, N. 929 = 16 L. W. 639 = 20 A. L. J. 839 = 24 Bom. L. R. 1209 = A. I. R. 1922 P.C. 201 = 68 I.C. 451 = 43 M.L.J. 428**

HINDU LAW—(*Contd.*)

Joint family—Father—Gift by—(*Contd.*)

———Self-acquisition — Gift of—Validity — Bengal and Madras—Law in. *See* HINDU LAW—GIFT — ANCESTRAL PROPERTY. **(1872) Sup. I. A. 47 (66-7).**

———Son in existence and sons to be born—Gift of entire family property to, to save it from being wasted by father and manager—Validity—Class gift—English law rule as to—Inapplicability of. *See* HINDU LAW—JOINT FAMILY—MANAGER—GIFT BY. **(1893) 11 I A. 26=10 C. 626.**

———Son's sons—Gift of self-acquisition to—Fraudulent nature of—Evidence of—Son's possession of property gifted if—Son appointed guardian of minor grandsons. *See* HINDU LAW—JOINT FAMILY—FATHER—SELF ACQUISITIONS OF—GIFT TO SON'S SONS OF. **(1873) 20 W. B. 137.**

———Validity against adopted son of—Execution of deed and delivery of it to donee before adoption—Registration of deed subsequent—Effect. *See* T. P. A., S. 123 — GIFT DEED OF JOINT FAMILY PROPERTY. **(1926) 54 I.A. 89=50 M. 193.**

Joint family—Father—Gift to.

———Ancestral immovable property subject to Mithakshara—Gift of property as—What amounts to. *See* HINDU LAW—ADOPTION—ADOPTED SON—ADOPTIVE FATHER—GIFT OF PROPERTY TO. ETC. **(1881) 8 I. A. 215 (228).**

Joint family—Father—Illegitimate son — Maintenance of.

———Assignment of ancestral property for—Validity of, against subsequently born legitimate son. *See* HINDU LAW—JOINT FAMILY—FATHER—ANCESTRAL PROPERTY—ILLEGITIMATE SON. **(1877) 4 I. A. 159 (165)= 3 C. 214 (219-20).**

Joint family—Father—Insolv ncy of.

———Property vesting in Official Assignee by reason of, under Presidency Towns Insolvency Act of 1909. *See* PRESIDENCY TOWNS INSOLVENCY ACT OF 1909, SS. 17, 2, 52. **(1924) 52 I.A. 22=6 Lah. 1.**

Joint family—Father—Joint family property—Stranger—Allotment to.

———*Agreement for—Son's assent to — Proof of both—Onus as to.*

Where plaintiff, suing as the reversionary heir of *P*, pleaded an agreement by *P's* maternal grandfather to give him (*P*) a share in his (maternal grandfather's) properties along with his sons, and the assent of the sons to the said agreement, *held* that the burden of establishing that agreement and the sons' assent to it was on the plaintiff.

Held further, reversing the High Court and affirming the trial judge, that the plaintiff had failed to prove the agreement set up. (*Sir Lawrence Jenkins.*) NALAM PATTABHIRAMA RAO *v.* NARAYANAMOORTHY. **(1921) 15 L. W. 404 (406)=26 C. W. N. 273= L. R. 3 P. C. 29=(1922) P. C. 102.**

———Binding nature of—Ratification by adopted son of—Effect. *See* HINDU LAW—ADOPTION — ADOPTED SON—ADOPTIVE FATHER—PARTITION OF. ETC. **(1846) 4 M. I. A. 1 (103).**

———*Partition—Allotment by way of family—Son's suit to recover property from stranger, father being impleaded as a defendant—Decree to son in, only conditional upon his consenting to a partition as regards father's interest in estate.*

A father and managing member of a joint Hindu family governed by the Mithakshara law made a family partition

HINDU LAW—(*Contd.*)

Joint family—Father—Joint family property—Stranger—Allotment to—(*Contd.*)

and allotted a share of the ancestral property to the 1st respondent, an utter stranger to the family. The appellants, his sons, brought a suit, treating the said allotment as an alienation and contesting its validity, for recovery of possession of the properties allotted to the share of the 1st respondent. The father was also made a defendant in the suit.

Held, that it was open to the 1st respondent to insist that as between the father and himself he stood in the shoes of the father as to the share which would come to the father on a partition, and that it was competent for the court to make the whole or any part of the relief granted to the appellants conditional on their assenting to a partition so far as regards the father's interest in the estate, so as to give effect to any right to which the respondent might be entitled claiming through the father (222). (*Sir Samuel Griffith.*) RAMKISHORE KEDERNATH *v.* JAINARAYAN RAMRACHIPAL. **(1913) 40 I. A. 213=40 C. 966 (981)=18 C. L. J. 237= 17 C. W. N. 1189=(1913) M. W. N. 661= 15 Bom. L. R. 867=14 M. L. T. 163=20 I. C. 958= 11 A. L. J. 865=10 N. L. R. 1=25 M. L. J. 512.**

———*Partition—Allotment by way of family—Suit by son in case of—Form of—Suit for partition—Necessity—Suit for recovery of property allotted to stranger—Maintainability.*

Appellants, members of a joint Hindu family governed by the Mithakshara law, sued to set aside their father's alienation of ancestral property made in favour of the 1st respondent, the alienation taking the form of an allotment of the property to the 1st respondent, an absolute stranger, at a family partition. The relief formally claimed was recovery of possession of the properties which had been allotted to the share of the 1st respondent. The father was made a defendant in the suit.

On objection raised to the form of the suit, on the ground that it should have been one for partition, *held* that, the basis of the appellant's claim being that they were still entitled to the property as a joint undivided estate, and desired to enjoy it as such, the suit as framed was sustainable (222). (*Sir Samuel Griffith.*) RAM KISHORE KEDARNATH *v.* JAINARAYAN RAMRACHIPAL. **(1923) 40 I. A. 213=40 C. 966 (981)=18 C. L. J. 237= 17 C. W. N. 1189=(1913) M. W. N.661= 15 Bom. L. R. 867=14 M. L. T. 163=20 I. C. 958= 11 A. L. J. 865=10 N. L. R. 1=25 M. L. J. 512.**

———Partition of joint family property and self-acquisitions between adopted son and stranger—Allotment under—Adopted son's suit to recover portion of joint family property allotted to stranger—Restoration of self-acquisition received by him—Necessity *See* HINDU LAW—ADOPTION—ADOPTED SON—ADOPTIVE FATHER—PARTITION OF. ETC. **(1846) 4 M. I. A. 1 (103).**

———*Validity against minor sons of—Condition.*

Although a partition made by a Hindu father may under some circumstances bind his minor sons, yet if on the partition a share is given to a stranger, the partition may be impeached as a disposition of property made without consideration, unless it can be supported as a *bona fide* compromise of a disputed claim (221-2). (*Sir Samuel Griffith.*) RAM KISHORE KEDARNATH *v.* JAINARAYAN RAMRACHIPAL. **(1913) 40 I. A. 213=40 C. 966 (980)= 18 C.L.J. 237=17 C.W.N. 1189=(1913) M. W. N.661= 15 Bom. L R. 867=14 M. L T. 163=11 A. L. J, 865= 10 N. L. R. 1=20 I. C. 958=25 M. L. J. 512.**

Joint family—Father—Lease by.

———Loan—Lease in consideration of—Ouster wrongful of lessee under—Decree for mesne profits against father on

HINDU LAW—(*Contd.*)

Joint family—Father—Lease by—(*Contd.*)

ground of—Sale in execution of—Debt foundation of—Original loan or receipt of mesne profits for which decree passed. *See* HINDU LAW—JOINT FAMILY—FATHER—DECREE AGAINST—EXECUTION OF—SALE IN—DEBT FOUNDATION OF. **(1885) 13 I.A. 1 (18-9) = 13 C. 21 (36).**

———*Mortgage debt invalid—Lease in effect collateral security for—Validity against son of—Striking out of offensive portions to make lease binding—Propriety of.*

A lease was granted to the appellant by the father of the 1st respondent and the manager of the joint family. Contemporaneously with the lease two other documents were executed; one was a sale of a part of the family property and the other a mortgage for Rs. 50,000, both in favour of the appellant. The lease deed was so drafted that it should at the same time serve the purpose of a lease and a collateral security for the mortgage debt, for the terms provided that out of the rent payable by the lessee under its terms the interest that was due to him upon his mortgage debt should be deducted, the result being that after all the different payments had been made as the lease provided the gross amount of Rs. 16,775 rent was reduced to Rs. 3,804 per annum.

Proceedings were separately instituted for setting aside the contemporaneous mortgage and the sale, and these ended by a compromise, the effect of which was that all that the 1st respondent could reasonably claim as his share of the family estate was released from the mortgage debt, and the sale deeds were set aside. That compromise did not deal with the lease, which was made the subject of the subsequent proceedings out of which the appeal arose.

Held, affirming the High Court, that the lease was not binding on the 1st respondent or on his share of the family property (730-1).

The lease was really in effect a collateral security for the mortgage debt, and the result was that the 1st respondent's property was put into pledge to secure the repayment of the moneys in respect of debts improvidently contracted by his father. The appellants offer to make all necessary alterations in the lease, in order to reduce it to a proper and reasonable form, is one that cannot be considered for the purpose of influencing the decision. It is impossible to regard the provision for the payment of the interest and any other provision that might be regarded as objectionable in the lease as in the nature of an independent bargain between the lessee and the lessor which can be cut out and separated from the general structure of the lease, and then can be so dealt with that the 1st respondent's property is relieved from these offensive provisions. The lease must be regarded as a whole. It must be regarded as it was drawn on the date it bore. (*Lord Buckmaster.*) NARAIN DAS *v.* ABINASH CHANDAR. **(1922) 27 C. W. N. 299 = 21 A. L. J. 201 = 37 C. L. J. 457 = L. R. 3 P. C. 129 = 31 M. L. T. 217 (P. C.) = 16 L. W. 780 = A. I. R. 1922 P. C. 347 = (1922) M.W.N. 791 = 4 U. P. L. R. (P. C.) 111 = 69 I. C. 273 = 44 M. L. J. 728 (730-1).**

Joint family—Father—Mortgage by.

INVALID MORTGAGE—ENFORCEABILITY OF, AGAINST SONS ON GROUND OF THEIR PIOUS OBLIGATION.

———In a suit upon a mortgage granted by a Hindu father in consideration of a sum advanced at the time of the mortgage and on the faith of it, *held* that the mortgage could not be held to be binding on the sons' shares in the family property by reason of their pious obligation under the Hindu Law to discharge their father's debts which were neither illegal nor immoral because the father was alive and the debt was not incurred for any legal necessity or for the benefit of the estate.

HINDU LAW—(*Contd.*)

Joint family—Father—Mortgage by—(*Contd.*)

INVALID MORTGAGE — ENFORCEABILITY OF, AGAINST SONS ON GROUND OF THEIR PIOUS OBLIGATION—(*Contd.*)

Responsibility to meet the father's debt is one thing, and the validity of a mortgage over the joint family estate is quite another thing. (*Lord Shaw.*) SAHU RAM CHANDRA BHUP SINGH. **(1917) 44 I. A. 126 = 39 A. 437 = 21 C.W. N. 698 = 26 C. L. J. 1 = 1 Pat. L. W. 557 = (1917) M. W. N. 439 = 22 M. L. T. 22 = 6 L. W. 213 = 19 Bom. L. R. 498 = 39 I. C. 280 = 33 M. L. J. 14.**

———A suit to enforce a mortgage executed by the joint managers of a joint Hindu family was instituted against, amongst others, the sons of certain of the mortgagors. The mortgage was not made for any such necessity as would justify such a mortgage, and it was not made for an antecedent debt. It was contended that the sons were under a pious obligation to pay their father's debts and that that fact would validate the mortgage.

Held, following Sahu Ram's case, that the mortgage was not binding on the family property.

In Sahu Ram's case it was laid down in effect that joint property could not be alienated as against co-sharers by way of mortgage or otherwise, except for necessity, or for payment of an actual antecedent debt, quite distinct from the debt incurred in the mortgage itself, and that in consequence the transaction in that case could not stand, and it was added that the mere circumstance of a pious obligation does not validate the mortgage. (*Viscount Haldane*). JOGI DAS *v.* GANGA RAM. **(1917) 21 C. W. N. 957 = 42 I. C. 791 = (1917) M. W. N. 739.**

INVALID MORTGAGE—LEASE IN EFFECT COLLATERAL SECURITY FOR—VALIDITY AGAINST SONS OF.

———Striking out of offensive provisions to make it binding—Propriety of. *See* HINDU LAW—JOINT FAMILY—FATHER—LEASE BY—MORTGAGE DEBT INVALID. **(1922) 42 M. L. J. 728 (730 1).**

INVALID MORTGAGE—VALIDITY OF, TO EXTENT OF FATHER'S SHARE.

———*Bengal Mithakshara—Law under.*

If the law of the Presidency of Fort William were identical with that of Madras, a mortgage executed by a Hindu father In his lifetime, as a security for a debt not binding upon his sons or upon their shares in the ancestral immoveable estate, might operate after his death as a valid charge upon the property comprised in the mortgage to the extent of his own then share. The difficulty is that, so far as the decisions have yet gone, the law, as understood in Bengal, does not recognize the validity of such an alienation. It is not necessary in this case to determine that vexed question, which their former decisions have hitherto left open (109). (*Sir James W. Colvile.*) SURAJ BUNSI KOER *v.* SHEO PROSHAD SINGH. **(1879) 6 I. A. 88 = 5 C. 148 (173-4) = 4 C.L.R. 226 = 4 Sar. 1 = 3 Suth. 589.**

———A mortgage of the joint family property of a Mithakshara family by its Karta (or Manager), unless necessity or an antecedent debt is proved, is void; the transaction itself gives to the mortgagee no rights against the Karta's interest in the joint family property.

In a suit to enforce a mortgage of joint family property of a Mithakshara family by its karta (or Manager), the High Court, being of opinion that the plaintiff had not proved that the moneys were borrowed for necessary purposes, dismissed the suit as against the sons of the mortgagor, but made a decree against the father (mortgagor) to the effect that, if the amount decreed was not paid within the period fixed, "the father's share in the mortgaged properties will be liable to be sold on partition."

HINDU LAW—(*Contd.*)

Joint family—Father—Mortgage by—(*Contd.*)

INVALID MORTGAGE—VALIDITY OF, TO EXTENT OF FATHER'S SHARE—(*Contd.*)

Held, that, upon the findings of the High Court its decree was too favourable to the plaintiff and incorrect. (*Lord Phillimore*). MANNA LAL *v.* KARU SINGH.

(1919) 13 L. W. 652 (654) = 1 Pat. L. T. 6 = 56 I. C. 766 = 39 C. L. J. 256.

———*North-West Provinces Mithakshara—Law under.*

Under the law of the Mithakshara, joint family property owned by all the members of the family as co-parceners cannot be the subject of a gift, sale, or mortgage by one co-parcener except with the consent, express or implied, of all the co-parceners. Any deed of gift, sale or mortgage, granted by one coparcener on his own account of or over the joint family property is invalid; the estate is wholly unaffected by it, and its entirety stands free of it; this rule applies even to the father. (*Lord Shaw.*) SAHU RAM CHANDRA *v.* BHUP SINGH. **(1917) 44 I. A. 126 = 39 A. 437 = 21 C. W. N. 698 = 26 C. L. J. 1 = 1 Pat. L. W. 557 = (1917) M. W. N. 439 = 22 M. L. T. 22 = 6 L. W. 213 = 19 Bom. L. R. 498 = 39 I. C. 280 = 33 M. L. J. 14.**

———According to the Mithakshara law of the North-Western Provinces, when a manager of a joint Hindu family mortgages property of the joint family for purposes not binding on the family, even the interest of the manager, that is, of the mortgagor, cannot be sold in enforcement of the mortgage. (*Lord Buckmaster.*) ANANT RAM *v.* COLLECTOR OF ETAH. **(1917) 40 A. 171 (176) = 7 L. W. 323 = 4 P. L. W. 226 = 16 A. L. J. 245 = 23 M. L. T. 228 = 22 C. W. N. 484 = 27 C. L. J. 363 = 20 Bom. L. R 524 = (1918) M. W. N. 446 = 44 I. C. 290 = 34 M. L J. 291.**

———*North West Provinces Mithakshara—Law under—Representation by Manager of power to alienate—Effect of.*

A mortgage of joint family property of a Mithakshara family by its karta, unless for an antecedent debt or any proven necessity of the joint family, is void even to the extent of the mortgagor's interests.

Quaere whether there is any exception to this general rule in a case in which the mortgagor, makes represtations to the mortgagee that he had power to mortgage the joint property. (*Viscount Haldane*). NARAIN PRASAD *v.* SARNAM SINGH. **(1917) 44 I. A. 163 = 39 A. 500 = (1917) M. W. N. 516 = 6 L. W. 334 = 26 C. L. J. 97 = 19 Bom. L. R. 546 = 21 C. W. N. 990 = 15 A. L. J. 585 = 2 Pat. L. W. 29 = 40 I. C. 284 = 33 M. L. J. 39.**

NECESSITY FOR.

———*Interest on loan — Rate of — Necessity for—Compromise by son amounting to proof of — Principal of loan —Necessity for—Compromise if proof also of.*

If the terms of the compromise are proof as to the necessity of the rate of interest, they would be proof to the same extent of the necessity of the principal of the loan. (*Lord Parmoor.*) RAM BUJAWAN PROSAD SINGH *v.* NATHU RAM. **(1922) 50 I. A. 14 (24) = 2 P. 285 = 4 Pat. L. T. 29 = 32 M. L. T. 129 = 38 C. L. J. 25 = (1923) M. W. N. 382 = 1 Pat. L. R. 445 = 18 L. W. 767 = 25 Bom, L. R. 568 = A. I. R. (1923) P. C. 37 = 28 C. W. N. 446 = 71 I. C. 933 = 44 M. L. J. 615.**

———*Onus of proof of—Son's admission of necessity discharging mortgagee from—Admission of liability by son in document subsequently executed by him to mortgagee for principal and interest and compound interest due under mortgage deed if amounts to.*

In a suit brought against a Hindu son to enforce a mortgage bond executed by his deceased father and providing for interest at the rate of 3 per cent. per month with three monthly rests, the High Court held that an admission of liability on the part of the son in a document subsequently executed by him in favour of the mortgagee in respect of both principal and interest and compound interest under the suit bond, though not in any sense a ratification of what was done by the father, was presumptive proof of a justifying family necessity for the principal and interest, under the suit bond, and that, in the absence of evidence on the part of the son to rebut that presumption, he was liable for the amount due under the bond.

Held, dissenting from the High Court, that the admission in the subsequent deed would not constitute such proof of a justifying family necessity as would be sufficient to discharge the mortgagee from the onus of proving that there were special circumstances which entitled the father to pledge the joint family property on excessive terms of interest or of compound interest (24). (*Lord Parmoor*). RAM BUJHAWAN PROSAD SINGH *v.* NATHU RAM.

(1922) 50 I.A. 14 = 2 P. 285 = 4 Pat. L.T. 29 = 32 M.L.T. 129 = 38 C.L.J. 25 = (1923) M.W.N. 382 = 1 Pat. L.R. 445 = 18 L.W. 767 = 25 Bom. L. R. 568 = A.I.R. (1923) P.C. 37 = 28 C.W.N. 446 = 71 I.C. 933 = 44 M.L.J. 615.

———*Onus of proof of—Son's admission of necessity discharging mortgagee from—Mortgage bond subsequent by father in favour of same mortgagee—Suit against son on —Deed compromising—Recital in, that prior bond "is allowed to stand good as before—That is, the principal, interest and compound interest will remain due from me" —Effect of.*

The suit was to enforce a deed of mortgage executed on 16th July, 1903 executed by the father and managing member of a joint Hindu family in respect of joint family property. The deed provided for interest at 3 per cent. per month with three monthly rests. The question was whether the father had authority to borrow on such terms. The High Court held that the mortgagee was entitled to recover the amount of interest provided for by the bond owing to an admission made by the defendant, the son, in the terms of a compromise entered into by him on the death of his father and referred to in a consent decree.

The said compromise was of a suit upon a subsequent mortgage executed by the father, the suit being instituted against the father and the son, and continued, after the death of his father, against the son alone. The arrangement was embodied in a consent decree, and was in part carried out by the execution of a sale-deed. The sale-deed contained this passage: "Be it known that the bond dated July 16, 1903, stands good as before, after payment of Rs. 1.000 as principal, besides interest and compound interest." The consent decree provided as follows: "Besides the amount claimed, Rs. 1,000, as principal and interest and compound interest due under the mortgage bond, dated July 16, 1903 is due from me under the bond. Only Rs. 1,487 out of interest and compound interest entered on the back of the bond has been realised. The bond is allowed to stand good as before—*i.e.*, the principal interest and compound interest will remain due from me."

Held, dissenting from the High Court, that the words in the consent decree and in the sale-deed constituted no more than a reservation of the rights, whatever they might be, under the mortgage bond of July 16, 1903, and that they did not constitute an admission of a legal necessity either to the principal amount or of the rate of interest or compound interest (23).

HINDU LAW—(*Contd.*)

Joint family—Father—Mortgage by—(*Contd.*)

NECESSITY FOR—(*Contd.*)

The mortgage bond which it was sought to enforce in the suit was executed subsequently to the mortgage bond of July 16, 1903, and it would be a reasonable precaution to insert words of reservation in order to insure that there was no interference with the security of the prior bond (23-4). (*Lord Parmoor*). RAM BUHAWAN PROSAD SINGH *v.* NATHU RAM. (1922) 50 I.A. 14=2 P. 285= 4 Pat. L.T. 29=32 M.L.T. 129=38 C.L.J. 25= (1923) M.W.N. 382=1 Pat. L.R. 445= 18 L.W. 767=25 Bom. L.R. 568= A.I.R. (1923) P.C. 37=28 C.W.N. 446= 71 I.C. 933=44 M.L.J. 615.

———*Onus of proof of, in suit to enforce mortgage against sons—Suraj Bunsi's case—Rule in—Inapplicability of.*

The rule of law as to the onus of proof laid down in Suraj Bunsi Koer's case that where joint ancestral property has passed out of a joint family either under a conveyance executed by a father in consideration of an antecedent debt or in order to raise money to pay off an antecedent debt or under a sale in execution of a decree for the father's debt, cannot recover that property, unless they shew that the debts were contracted for immoral purposes, and that the purchasers had notice that they were so contracted applies only to cases in which ancestral property has passed out of the family and is inapplicable to a case in which a mortgagee of a Hindu father seeks to enforce his mortgage as against the sons. (*Lord Shaw*) SAHU RAM CHANDRA *v.* BHUP SINGH. (1917) 44 I.A. 126=39 A. 437= 21 C.W.N. 698=26 C. L. J. 1=1 Pat. L.W. 557= (1917) M.W.N. 439=22 M.L.T. 22= 6 L. W. 213=19 Bom. L. R. 498=39 I. C. 280= 33 M.L.J. 14.

SON MINOR AT THE TIME OF.

———*Liability of.*

The liability of the minor son is limited to his interest in the joint family property. He is not personally liable nor is his separately acquired property liable. (*Lord Phillimore*). RAMKISHAN SINGH *v.* MD. ABDUL SATTAR. (1928) 30 Bom. L. R 852=109 I. C. 574=28 L.W. 248= 32 C.W.N. 1149=24 N. L. R. 186=48 C.L.J. 570= A.I.R. 1928 P. C. 165 (2)=55 M.L.J. 292 (294).

SUIT TO ENFORCE—IMMORAL AND ILLEGAL NATURE OF DEBT—SON'S PLEA OF.

———*Common naturt of.*

In a suit to enforce as against joint family property of a Mithakshara family a mortgage of that property made by its kurta (or manager), the sons of the mortgagor pleaded that their father was of immoral life, and borrowed the money for the expenses incident thereto.

Their Lordships observed that the son's allegations were of the class of allegation which was only too frequently made when a mortgage suit was contested (656). (*Lord Phillimore*). MANNA LAL *v.* KARU SINGH (1919) 13 L.W. 652=1 Pat. L.T. 6— 56 I.C. 766=39 C.L.J. 256.

———*Onus of proof of.*

In a suit to enforce as against joint family property of a Mithakshara family a mortgage of that property made by its kurta (or manager), the sons of the mortgagor alleged that their father was of immoral life, and borrowed the money for the expenses incident thereto. *Held* that the burden of proving those allegations lay upon the sons (656). (*Lord Phillimore.*) MANNA LAL *v.* KARU SINGH. (1919) 13 L.W. 652=1 Pat. L.T. 6= 56 I.C. 766=39 C.L.J. 256.

HINDU LAW—(*Contd.*)

Joint family—Father—Partition by.

———Ancestral property—Partition of. *See* HINDU LAW—JOINT FAMILY—FATHER—ANCESTRAL PROPERTY—PARTITION OF.

———Brothers—Partition with. *See* HINDU LAW—JOINT FAMILY—FATHER—ANCESTRAL PROPERTY—PARTITION WITH BROTHER.

———Family arrangement—Partition by way of. *See* HINDU LAW—JOINT FAMILY—FATHER—ANCESTRAL PROPERTY—PARTITION OF.

———Self-acquisition - Partition unequal of, among male descendants—Will effecting—Validity—Benares law. *See* HINDU LAW—JOINT FAMILY—FATHER—SELF-ACQUISITIONS OF—WILL MAKING UNEQUAL PARTITION OF, AMONG, ETC. (1867) 12 M. I. A. 1 (39).

———Sons - Partition with. *See* HINDU LAW—JOINT FAMILY—FATHER—ANCESTRAL PROPERTY—PARTITION OF—SONS.

———Stranger—Allotment of portion of family property to. *See* HINDU LAW—JOINT FAMILY—FATHER—JOINT FAMILY PROPERTY—STRANGER.

———Unequal partition. *See* HINDU LAW—JOINT FAMILY—FATHER—ANCESTRAL PROPERTY—PARTITION OF (1) UNEQUAL PARTITION, ETC., AND (2) WILL—UNEQUAL PARTITION, ETC.

———Will—Partition by. *See* HINDU LAW—JOINT FAMILY—FATHER—ANCESTRAL PROPERTY—PARTITION OF—WILL.

Joint family—Father—Party defendant in suit—Son joined as L. R. on his death—Liability of.

———Nature and extent of. *See* HINDU LAW—JOINT FAMILY—FATHER—DECREE AGAINST—EXECUTION OF—STAY OF. (1875) 2 I. A. 219 (232).

Joint family—Father—Property held under grant by—Re-grant of, in his lifetime, to his eldest son—Nature of property in that son's hands.

———Question between him and his brothers. *See* HINDU LAW—ANCESTRAL PROPERTY—SELF-ACQUISITION—FATHER—PROPERTY HELD UNDER GRANT BY. (1847) 4 M. I. A. 246.

Joint family—Father—Property in name of—Benami for son—Plea by him of.

———*Possession with son—Sale-deed in favour of father—Consideration money paid by him.*

The question was whether certain property belonged to *W*, the judgment-debtor, and was liable to be attached and sold as his in execution of the decree against him, or whether the property really belonged to *A*, the father of *W*.

The sale-deed in respect of that property stood in the name of *A*. The execution creditor alleged that it was fraudulently taken in his name instead of in the name of his son, and, in support of his case, the execution creditor relied upon the circumstance that possession of the property remained with the son. The consideration money for the conveyance was, however, proved to have been paid by the father.

Held, that the *prima facie* case which was made out by showing that the son was in possession was rebutted by the evidence that the father paid the consideration money for the conveyance to himself, and that the property was conveyed to him (157-8). (*Sir Barnes Peacock*,) MITCHELL *v.* MATHURA DASS. (1885) 12 I. A. 150= 8 A. 6 (13)=4 Sar. 663.

HINDU LAW—(*Contd.*)

Joint family—Father—Sale by.

AFTER-BORN SON'S RIGHT TO DISPUTE.
AGREEMENT FOR RE-CONVEYANCE IN CASE OF—SON'S RIGHT TO BENEFIT OF.
ANTECEDENT DEBT JUSTIFYING.
CONTRACT FOR.
DEBT CONTRACTED BEFORE BIRTH OF SON—DECREE FOR, AND ATTACHMENT IN EXECUTION ALSO BEFORE BIRTH—SALE AFTER BIRTH TO PAY OFF DEBT AND TO GET RID OF EXECUTION.
INVALID SALE.
NECESSITY JUSTIFYING.
REAL TRANSFER NOT INTENDED OR EFFECTED BY.
RIGHT AND INTEREST OF HIS AND NOTHING MORE—SALE OF.
SON'S RIGHT BY BIRTH IF PREVAILS AGAINST.
SON'S SUIT TO RECOVER PROPERTY SOLD—PORTION OF PURCHASE-MONEY ALONE FOUND TO HAVE BEEN APPLIED FOR NECESSARY PURPOSES — DECREE PROPER IN CASE OF.
SON'S SUIT TO SET ASIDE—EXAMINATION OF FATHER IN—PARTY RESPONSIBLE FOR.
SON'S SUIT TO SET ASIDE—ILLEGALITY OR IMMORALITY OF DEBT FOR WHICH SALE WAS MADE--PROOF OF.
SON'S SUIT TO SET ASIDE, AND TO RECOVER PROPERTY SOLD—SALE FOUND TO BE FOR NECESSITY—PORTION OF PURCHASE-MONEY UNACCOUNTED FOR—DECREE PROPER IN CASE OF.
UNDIVIDED SHARE OF PROPERTY SOLD—SON'S RIGHT TO RECOVER, ON SETTING ASIDE SALE.

AFTER-BORN SON'S RIGHT TO DISPUTE.

———The suit was by a Hindu son to set aside a sale of ancestral property made by his father, and to recover the whole of the property alienated. The law applicable to the case was the Mithila law, which was very similar to the law administered under the Mithakshara.

The High Court held that the plaintiff was not entitled to recover, inasmuch as he was not born at the time when the deed of sale in question was executed. There was no appeal from that decision of the High Court (328-9). (*Sir Barnes Peacock.*) GIRDHAREE LALL *v.* KANTOO LALL.

(1874) 1 I. A. 321 = 14 B. L. R. 187 = 22 W. R. 56 = 3 Sar. 380.

———The respondents, plaintiffs in the suit, are sons of *A*, himself a son of one of the mortgagors. In 1895, when the suit mortgage deeds were executed by *A's* father, the respondents were still unborn. It follows from this fact that the suit mortgage deeds have always been binding on the respondents. The only joint family estate to an interest in which they succeeded was an estate which to the extent of these two mortgages had already been alienated. (*Lord Blanesburgh.*) LAL BAHADUR *v.* AMBIKA PRASAD. **(1925) 52 I. A. 443 (445) = 47 A. 795.**

AGREEMENT FOR RECONVEYANCE IN CASE OF—SON'S RIGHT TO BENEFIT OF.

———*Sale in father's own behalf and as guardian of minor son—Agreement for reconveyance in father's name.*

S, on behalf of himself and as guardian of his minor son *K*, sold a village to *V*, for Rs. 10,000. On the same day the parties executed what was called a "counter part document," by which it was provided that *V* should reconvey the said village to *S*, after a period of thirty years from that date, *i.e.*, in the Ani cultivation season of the thirtieth year, in case *S* wished to have the vaillge again, and upon his paying to *V*, the sum of Rs. 10,000.

Held, that the "counterpart document" was executed by *V*, in favour of *S*, and his son *K*, though the latter's name was not mentioned in the "counterpart document."

HINDU LAW—(*Contd.*)

Joint family—Father—Sale by—(*Contd.*)

AGREEMENT FOR RECONVEYANCE IN, GASE OF—SON'S RIGHT TO BENEFIT OF—(*Contd.*)

S and *K* were members of a joint Hindu family, and the deed of sale was executed by *S*, on behalf of his minor son as well as on his own behalf, and the "counterpart document" was obviously intended to give the right to call for a reconveyance of the property to the persons who were parties to the deed of sale. (*Sir Lancelot Sanderson.*) SAKALAGUNA NAIDU *v.* MUNUSWAMI NAYAKAR.

(1928) 55 I. A. 243 = 51 M. 533 = 32 C. W. N. 850 = 28 L. W. 51 = 109 I. C. 765 = 48 C. L. J. 125 = 30 Bom. L. R. 1379 = 26 A. L. J. 1211 = A. I. R. 1928 P. C. 174 = 55 M. L. J. 198.

ANTECEDENT DEBT JUSTIFYING.

———*See* HINDU LAW—JOINT FAMILY—FATHER—DEBT OF—ANTECEDENT DEBT.

CONTRACT FOR.

———*See* HINDU LAW—JOINT FAMILY—FATHER—CONTRACT FOR SALE, ETC.

———Debt contracted before birth of son—Decree for, and attachment in execution also before birth—Sale after birth to pay off debt and to get rid of execution—Validity against son. *See* HINDU LAW—JOINT FAMILY—FATHER—ANCESTRAL PROPERTY—SON'S RIGHT BY BIRTH IN—DEBT CONTRACTED, ETC. **(1874) 1 I. A. 321 (330).**

INVALID SALE.

———*Setting aside of—Son's right on—Recovery of entire property sold—Recovery of undivided share therein—Mithila law—Mithakshara law.*

Quaere whether in a suit by a Hindu son, governed by the Mithila law, to set aside a deed of sale executed by his father, and to recover possession of the whole property alienated, the son had, on the setting aside of the deed, any particular share in the property alienated of which he was entitled to recover possession (333).

The Mithila law is very similar to the Mithakshara on this point. Under the Mithakshara law, no individual member of an undivided family, whilst it remains undivided, can predicate of the joint and undivided property that he, that particular member, has a certain definite share. It is probable that, on account of this rule of law, the suit was brought by the son not for the purpose of recovering his share, because he had no distinct or definite share to recover, but to recover the whole property upon the ground that the sale by the father was void, and that the whole property which the father had conveyed ought to be brought back again to be joint property for the benefit of the whole family. It is questionable whether a son can, under the Mithakshara law, recover an undivided share of ancestral property sold by his father (329-30). *N. B.* In this case the father was alive, and was made a defendant in the suit (328). (*Sir Barnes Peacock.*) GIRDHAREE LALL *v.* KANTOO LALL. **(1874) 1 I. A. 321 = 14 B. L. R. 187 = 22 W. R. 56 = 3 Sar. 380.**

———Validity of, to extent of father's share—Bengal and North-West Provinces—Mithakshara law in. *See* HINDU LAW—JOINT FAMILY—FATHER — MORTGAGE BY—INVALID MORTGAGE—VALIDITY OF, TO EXTENT OF, ETC.

NECESSITY JUSTIFYING.

———*Mortgage by father binding on son—Sale to discharge.*

A sale of family property by a father or other manager otherwise unobjectionable, which resulted in the removal from what remained of it of the burden *protanto* of encumbrances binding on a son or other member of the family

HINDU LAW—(*Contd.*)

Joint family—Father—Sale by—(*Contd.*)

NECESSITY JUSTIFYING—(*Contd.*)

cannot be successfully attacked by that son or other member. (*Lord Blanesburgh.*) LAL BAHADUR *v.* AMBIKA PRASAD. **(1925) 52 I. A. 443 (450) = 47 A. 795 = (1925) M. W. N. 852 = 2 O. W. N. 913 = 28 O. C. 371 = 23 L. W. 320 = 12 O. L. J. 649 = 30 C. W. N. 701 = A. I. R. (1925) P. C. 264 = 91 I. C. 471.**

———Purchase-money—Necessity for portion of—Absence of proof of—Effect of on validity of sale—Sale itself found to be for necessity—Son's suit to set aside sale, and to recover property sold—Decree proper in. *See* HINDU LAW—JOINT FAMILY—FATHER—SALE BY—SON'S SUIT TO SET ASIDE, AND TO RECOVER PROPERTY SOLD.

———*Purchase-money—Necessity for raising whole of—Absence of—Effect of, on validity of sale.*

In the case of a sale of ancestral property by a Hindu father, even if there was no necessity to raise the whole purchase-money the sale would not be wholly void (332). (*Sir Barnes Peacock.*) GIRDHAREE LALL *v.* KANTOO LALL. **(1874) 1 I. A. 321 = 14 B. L. R. 187 = 22 W. R. 56 = 3 Sar. 380.**

———*Purchase-money—Portion of, unaccounted for—Necessity for—Presumption as to, when sale itself found to be justified.*

In any case where the sale by a father has been held to be justified but there is no evidence as to the application of a portion of the consideration, a presumption arises that it has been expended for proper purposes and for the benefit of the family. This is in line with the series of decisions in which it was held that where the purchaser acts in good faith and after due inquiry, and is able to show that the sale itself was justified by legal necessity, he is under no obligation to inquire into the application of any surplus and is, therefore, not bound to make repayment of such surplus to the members of the family challenging the sale. (*Lord Salvesen.*) KRISHN DAS *v.* NATHU RAM.

(1926) 54 I. A. 79 = 49 A. 149 = 8 Pat. L. T. 210 = 31 C. W. N. 462 = 29 Bom. L. R. 825 = 45 C. L. J. 386 = 25 A. L. J. 80 = (1927) M. W. N. 89 = 4 O. W. N. 184 = 38 M. L. T. (P. C.) 48 = 100 I. C. 130 = 26 L. W. 856 = A. I. R. 1927 P. C. 37 = 52 M. L. J. 720.

REAL TRANSFER NOT INTENDED OR EFFECTED BY.

———*Purchaser's right to father's share at least in case of.*

In a suit by a Hindu son to recover joint family property purporting to be conveyed under a sale-deed executed by his father, the courts below found (1) that no consideration passed for the sale and (2) that no real transfer was intended or effected between the vendor and the vendee, and passed a decree declaring that the plaintiff was entitled to recover the entire property on behalf of the family. On appeal to the Privy Council the alienee contended that he was entitled at least to the father's share in the property comprised in the sale deed. That contention was not, however, raised in the court below. Their Lordships refused to entertain it, especially in view of the finding of the Courts below that no real transfer was intended or effected between the vendor and the vendee. (*Sir Lancelot Sanderson.*) KRISHNA REDDI *v.* RAGHAVA REDDI

(1927) A. I. R. 1927 P. C. 257 (260) = I.L.T. 40 M. 1 = 107 I. C. 449 = 32 C. W. N. 3 = 53 M. L. J. 700.

RIGHT AND INTEREST OF HIS AND NOTHING MORE—SALE OF.

———*Son's interest if passes under.*

When a man conveys his right and interest, and nothing more, he does not *prima facie* intend to convey away also

HINDU LAW—(*Contd.*)

Joint family—Father—Sale by—(*Contd.*)

RIGHT AND INTEREST OF HIS AND NOTHING MORE—SALE OF—(*Contd.*)

rights and interests presently vested in others, even though the law may give him the power to do so. Nor would a purchaser who is bargaining for the entire family estate be satisfied with a document purporting to convey only the right and interest of the father (83). (*Lord Hobhouse.*) SIMBHUNATH PANDAY *v.* GOLAB SINGH.

(1887) 14 I. A. 77 = 14 C. 572 (579) = 5 Sar. 5.

SON'S RIGHT BY BIRTH IF PREVAILS AGAINST.

———Debt contracted before birth of son—Decree thereon, and attachment of property in execution also before birth—Sale of ancestral property by father, after birth of son, to pay off that debt and to get rid of that execution—Validity against son of. *See* HINDU LAW—JOINT FAMILY—FATHER—ANCESTRAL PROPERTY—SON'S RIGHT BY BIRTH IN—DEBT CONTRACTED, ETC.

(1874) 1 I. A. 321 (330).

SON'S SUIT TO RECOVER PROPERTY SOLD—PORTION OF PURCHASE-MONEY ALONE FOUND TO HAVE BEEN APPLIED FOR NECESSARY PURPOSES—DECREE PROPER IN CASE OF.

———*Setting aside of sale—Terms of.*

Where, in a suit by a Hindu son to recover joint family property alienated by his father, it was found that part of the purchase-money was applied to pay antecedent debts, *held*,

(1) that the plaintiff could get the alienation set aside only upon the terms of repaying the sums applied to pay antecedent debts;

(2) that, as the defendants (alienees) had been in possession of the property sold, plaintiff had to pay the principal only of those sums;

and (3) that the defendants (alienees) were not accountable for mesne profits.

Inasmuch as their Lordships, agreeing with the Court below, hold that the alienation is to be set aside only on payment of certain sums, the defendants must be deemed to be lawfully in possession until it is set aside, and are therefore not accountable for mesne profits. (*Lord Phillimore*). BANWARI LAL *v.* MAHESH.

(1918) 45 I. A. 284 (288) = 41 A. 63 (67-8) = 21 O. C. 228 = 23 C. W. N. 577 = (1919) M. W. N. 490 = 49 I. C. 540.

SON'S SUIT TO SET ASIDE—EXAMINATION OF FATHER IN—PARTY RESPONSIBLE FOR.

———Where in a suit by a Hindu son to set aside a sale of family property by his father, the latter is made a defendant, and his acts and character are impugned, he (the father) is a witness rather to be called for the defendants than for the plaintiff (287). (*Lord Phillimore*). BANWARI LAL *v.* MAHESH. **(1918) 45 I. A. 284 = 41 A. 63 (67) = 21 O. C. 228 = 23 C. W. N. 577 = (1919) M. W. N. 490 = 49 I. C. 540.**

———Purchase-money — Portion of — Application of—Question as to—Sale itself justified. *See* HINDU LAW—JOINT FAMILY—FATHER—SALE BY—SON'S SUIT TO SET ASIDE, AND TO RECOVER PROPERTY SOLD.

(1926) 54 I. A. 79 = 49 A. 149.

———Suit, collusive suit—Sale found to be justified—Portion of purchase-money—Application of—Father in a position to explain—Examination of. *See* HINDU LAW—JOINT FAMILY—FATHER—SALE BY—SON'S SUIT TO SET ASIDE, AND TO RECOVER PROPERTY SOLD.

(1926) 53 I. A. 204 (213) = 48 A. 518.

HINDU LAW—(*Contd.*)

Joint family—Father—Sale by—(*Contd.*)

SON'S SUIT TO SET ASIDE—ILLEGALITY OR IMMORALITY OF DEBT FOR WHICH SALE WAS MADE—PROOF OF.

———*Onus on son as to.*

It is necessary for the son, in order to set aside the sale of ancestral property for the purpose of paying the father's debts, to show that the debt was illegal or contracted for an immoral purpose (332). (*Sir Barnes Peacock*). GIRDHAREE LALL *v.* KANTOO LALL. (1874) **1 I. A. 321 = 14 B. L. R. 187 = 22 W. R. 56 = 3 Sar. 380.**

SON'S SUIT TO SET ASIDE, AND TO RECOVER PROPERTY SOLD—SALE FOUND TO BE FOR NECESSITY—PORTION OF PURCHASE-MONEY UNACCOUNTED FOR—DECREE PROPER IN CASE OF.

———It is not because that, in the case of a sale of ancestral property by a Hindu father, a small portion of the purchase-money is not accounted for, that the son has a right to turn out the *bona fide* purchaser who gave value for the estate, and to recover possession of it with mesne profits (332). (*Sir Barnes Peacock.*) GIRDHAREE LALL *v.* KANTOO LALL. (1874) **1 I. A. 321 = 14 B. L. R. 187 = 22 W. R. 56 = 3 Sar. 380.**

———*Son's right to relief at least as regards unaccounted portion of purchase-money—Suit collusive one—Father alive and capable of accounting for same but his evidence deliberately withheld.*

To a suit by a Hindu son to set aside a sale of family property by his father for the sum of Rs. 18,000, the father was a party-defendant. Rs. 16,000 out of the Rs. 18,000, was satisfactorily shown to have been applied by the father for the discharge of antecedent debts binding on the son. The balance of Rs. 2,000 which was admittedly received by the father, was left unaccounted for. Though the father could have given evidence how that balance was applied his evidence was deliberately withheld. There was no evidence that it was used for immoral or unauthorised purposes.

Held, on the facts, that the suit was a collusive suit, and that the plaintiff was not entitled to any relief even in respect of the unaccounted for balance of Rs. 2,000 (213). (*Mr. Ameer Ali.*) MASIT-ULLAH *v.* DAMODAR PRASAD. **(1926) 53 I. A. 204 = 48 A. 518 = (1926) M. W. N. 816 = 3 O. W. N. 721 = 25 A. L. J. 1 = 28 Bom. L. R. 1402 = 44 C. L. J. 321 = 24 L. W. 551 = 7 P. L. T. 815 = 31 C. W. N. 293 = A. I. R. 1926 P. C. 105 = 98 I. C. 1031 = 51 M. L. J. 792.**

———The plaintiffs sued for a declaration that a sale of ancestral joint family property made by their father, the manager of tha family, 16 years before suit was invalid, and for recovery of possession of the property thus alienated. The sale was made after due inquiry as to the legal necessity by the vendee. Such necessity was proved by him to the extent of Rs, 3,000 out of a total price of Rs. 3,500. The sale was for an adequate consideration. The vendee was not in a position to explain how the surplus of Rs. 500 was applied. The plaintiff's father was made a party to the action but did not defend. He was alive at the date of the trial, but died afterwards. The High Court gave the plaintiffs a conditional decree by which they were declared entitled on payment of Rs. 3.000 to have the sale set aside, and the property returned by the vendee.

Held, reversing the High Court, that the proper course, in the circumstances of the case, was to dismiss the suit in its entirety.

The fact that in such a case the vendee is not able to establish how the surplus of Rs. 500 was applied is not a sufficient ground in law either for setting aside the sale or, on sustaining the sale, for directing the repayment by the vendee of such surplus. The true question which falls to be

HINDU LAW—(*Contd.*)

Joint family—Father—Sale by—(*Contd.*)

SON'S SUIT TO SET ASIDE, AND TO RECOVER PROPERTY SOLD—SALE FOUND TO BE FOR NECESSITY— PORTION OF PURCHASE-MONEY UNACCOUNTED FOR—DECREE PROPER IN CASE OF —(*Contd.*)

answered in such cases is whether the sale itself was one which was justified by legal necessity. In any case where the sale has been held to be justified but there is no evidence as to the application of a portion of the consideration, a presumption arises that it has been expended for proper purposes, and for the benefit of the family. This is in line with the series of decisions in which it was held that where the purchaser acts in good faith and after due inquiry, and is able to show that the sale itself was justified by legal necessity, he is under no obligation to enquire into the application of any surplus and is, therefore, not bound to make re-payment of such surplus to the members of the family challenging the sale. (*Lord Salvesan*). KRISHN DAS *v.* NATHU RAM. **(1926) 54 I. A. 79 = 49 A. 149 = 8 Pat. L. T. 210 = 31 C. W. N. 462 = 29 Bom. L. R. 825 = 45 C. L. J. 386 = 25 A. L. J. 80 = (1927) M. W. N. 89 = 4 O. W. N. 184 = 38 M. L. T. (P. C.) 48 = 100. I. C. 130 = 26 L. W. 856 = A I. R. (1927) P. C. 37 = 52 M. L. J. 720.**

———A sale of joint family property will not be set aside merely because a part of the proceeds is not proved to have been applied to purposes of necessity. The real question that has to be considered is this : Whether the sale itself was justified by necessity. If the purchaser has acted honestly, if the existence of a family necessity for sale is made out, and the price is not unreasonably low, he (the purchaser) is not bound to account for the application of the price.

Where, in a case in which the sale was for Rs. 4,000, family necessity was made out to the extent of Rs. 3,500, and the balance of Rs. 500 was not fully accounted for, *held* that the sum of Rs. 3,500 out of Rs. 4,000 was surely a justification of sale for a family necessity proved up to that amount.

A practice appears to have crept up in the Allahabad High Court of investigating and settling these cases upon the principle of accounting. If, upon a strict accounting, it is found that, although it is completely established that by far the most substantial part of the consideration was for family necessity, yet if a certain balance of the price remains unaccounted for, or is insufficiently proved, then by that result the parties' interests are to be judged, and the sale is set aside, conditionally upon the re-payment by the vendor or his representatives of the substantial part referred to. It is manifest that this practice imperils transactions of sale which, in their real essence and substance, are sales made for family necessity. (*Lord Shaw.*) GAURI SHANKER *v.* JIWAN SINGH. **(1927) 25 A. L. J. 967 = 4 O. W. N. 1192 = A. I. R. 1927 P. C. 246 = 47 C.L J. 7 = 30 Bom. L. R. 64 = 32 C. W. N. 257 = (1928) M. W, N 1 = I.L.T. 40 A. 1 = 27 L.W.203 = 107 I. C. 4 = 9 Pat L. T. 277 = 53 M. L. J. 786.**

———Plaintiffs, the minor sons of one *N*, deceased, instituted a suit on 2nd March, 1922, to recover possession of certain property, and for a declaration that a certain sale-deed dated 21st July, 1908, purporting to have been executed by *N*, in favour of an ancestor of the defendants was invalid.

The facts found were : that the sale of 21st July, 1908 was effected after due enquiry made by or on behalf of the vendee as to the legal necessity, that the sale was for adequate consideration, that legal necessity was proved by the defendants to the extent of Rs. 7,744 at least out of a total price of Rs.10,767, and that they were not able to prove how the surplus was applied.

HINDU LAW—(*Contd.*)

Joint family—Father—Sale by—(*Contd.*)

SON'S SUIT TO SET ASIDE, AND TO RECOVER PROPERTY SOLD—SALE FOUND TO BE FOR NECESSITY—PORTION OF PURCHASE-MONEY UNACCOUNTED FOR—DECREE PROPER IN CASE OF—(*Contd.*)

The Subordinate Judge made a decree dismissing the plaintiffs' claim but directing the defendants to pay to the plaintiffs the sum representing the unaccounted surplus.

On appeal, the High Court set aside the decree of the Sub-Judge and decreed possession of the suit property to the plaintiffs subject to the payment by them within a period fixed of the sum of Rs. 7,744. The decree further provided that in case of non-payment by them within the time mentioned the suit should stand dismissed.

Held, that neither of the decrees below could stand, and that the proper decree to be passed in the case was one dismissing the suit.

The material question in the case is whether the sale itself was one which was justified by legal necessity. Even assuming that the defendants after a long interval of time were not able to prove conclusively how the surplus was applied, that fact alone is not a sufficient ground for setting aside the sale. (*Sir Lancelot Sanderson.*) RAM SUNDER LAL *v.* LACHHMI NARAIN. (1929) 27 **A. L. J. 561** = 33 **C. W. N. 699** = **A. I. R. 1929 P. C. 143** = 57 **M. L. J. 7.**

UNDIVIDED SHARE OF PROPERTY SOLD—SON'S RIGHT TO RECOVER, ON SETTING ASIDE SALE.

———Mithila Law—Mithakshara Law. *See* HINDU LAW—JOINT FAMILY—FATHER—SALE BY—INVALID SALE—SETTING ASIDE OF. (1874) **1 I. A. 321 (329-30).**

Joint family—Father—Self-acquisitions of.

———Acquisitions with profits of ancestral property if. *See* HINDU LAW - ANCESTRAL PROPERTY — ACQUISITIONS WITH PROFITS OF. (1870) **13 M. I. A. 542 (546).**

———Alienation of—Power of. *See* HINDU LAW—JOINT FAMILY — FATHER — ALIENATION BY — SELF-ACQUISITION.

———Ancestral property mortgaged by ancestors—Foreclosure of mortgage against them—Acquisition of property subsequently by father for money or for services—Nature of property in his hands. *See* HINDU LAW—ANCESTRAL PROPERTY — SELF-ACQUISITION — TEST—ANCESTRAL PROPERTY MORTGAGED, ETC.

(1898) **25 I. A. 54 (75-6)** = **20 A. 267 (292-3).**

———Collateral—Property inherited from. *See* HINDU LAW—JOINT FAMILY—JOINT FAMILY PROPERTY—SELF-ACQUISITION—INHERITED PROPERTY—COLLATERAL.

(1917) **45 C. 733 (739).**

———*Evidence.*

Held, accepting the finding of the High Court, that the property bequeathed by a Hindu was his self-acquisition and not joint family property which devolved on his undivided son by survivorship (139-40.) (*Lord Macnaghten.*) SRINIVASA MOORTHY *v.* VENKATAVARADA IYENGAR.

(1911) **38 I. A. 129** = **34 M. 257 (268)** = **15 C. W. N. 741** = **13 Bom. L. R. 520** = (1911) **2 M. W. N. 375** = **14 C. L. J. 64** = **10 M. L. T. 263** = **8 A. L. J. 774** = **11 I. C. 447** = **21 M. L. J. 669.**

———The suit was to set aside two deeds of gift made by one *D*, the father of one of the appellants, and grandfather of the others, on the ground that the properties to which the gifts related were part of the joint family estate of the deceased and the appellants. The question therefore was whether the properties dealt with by the deeds were joint family properties.

HINDU LAW—(*Contd.*)

Joint family—Father—Self-acquisitions of—(*Contd.*)

There was abundant evidence in the case afforded by transactions of exchange entered into by the deceased and by the accounts maintained by him showing that the properties in question were joint family properties. There were, however, recitals in the two deeds of gift in question to the effect that the properties comprised therein were acquired by *D*, by his own labour and exertions and from his own fund, and were his self-acquisitions.

Held, that sufficient countervailing weight could not be attached to those recitals to displace the strong evidence from the exchanges and the accounts (745).

The recitals in the deeds were probably intended to make evidence (745). (*Sir Walter Phillimore.*) RADHAKANT LAL *v.* NAZMA BEGUM. (1917) **45 C. 733** = **22 C. W. N. 649** = **27 C. L. J. 632** = **16 A. L. J. 537** = **5 P. L. W. 72** = **23 M. L. T. 392** = (1918) **M. W. N. 386** = **20 Bom. L. R. 724** = **45 I. C. 806** = **35 M. L. J. 99.**

———Gift of—Validity of—Law in Bengal and in Madras. *See* HINDU LAW—GIFT—ANCESTRAL PROPERTY.

(1872) **Sup. I. A. 47 (66-7).**

———*Gift to son's sons of—Fraudulent nature of—Evidence of—Son's possession of property gifted if—Son appointed guardian of minor grandsons.*

Where, in a case in which a Hindu gave his self-acquired property to his grandsons (son's sons) and to his then second wife, and at the same time he made his son the guardian of those grandsons during their minority, it was contended that the deed was fraudulent. The Trial Judge held that the tranaction was a colorable one, on the strength of the only evidence at all pointing in that direction, *viz.*, that after the death of the father, the son remained in possession of the property.

Held, dissenting from that finding, that, inasmuch as the grandsons were minors and the son was appointed their guardian, that possession was not inconsistent with the deed. RAJAH BISHEN PERKASH NARAIN SINGH *v.* BAWA MISSER. (1873) **2 Suth. 878** = **20 W. R. 137** = **12 B. L. R. 430** = **3 Sar. 272.**

———Immovables forming—Alienation of—Power of—Conflicting principles as to—Modern tendency. *See* HINDU LAW—JOINT FAMILY—FATHER—ALIENATION BY—SELF-ACQUIRED IMMOVABLES.

(1898) **25 I. A. 54 (71)** = **20 A. 267 (288).**

———Immovable property forming—Will bequeathing, by person having sons or other male descendants—Validity—Mithakshara law—Benares law. *See* HINDU LAW—JOINT FAMILY—FATHER—WILL BY—IMMOVABLE PROPERTY, ETC. (1867) **12 M. I. A. 1 (38-40).**

———Maternal grandfather—Property inherited from *See* HINDU LAW—ANCESTRAL PROPERTY—MATERNAL GRANDFATHER.

———*Moveables forming—Will bequeathing—Validity—Mithakshara law.*

It has been settled that even in those parts of India which are governed by the stricter law of the Mithakshara, a Hindu having male descendants may so dispose of self-acquired property, if moveable, subject perhaps to the restriction that he cannot wholly disinherit any one of such descendants (38). (*Sir James W. Colvile.*) BABOO BEER PERTAB SAHEE *v.* MAHARAJAH RAJENDAR PERTAB SAHEE. (1867) **12 M. I. A. 1** = **9 W. R. (P. C.) 15** = **2 Suth. 114** = **2 Sar. 348.**

———Partition with brothers—Property got at—Property subsequently acquired by. *See* HINDU LAW—JOINT-FAMILY—FATHER—ANCESTRAL PROPERTY—PARTITION WITH BROTHERS. (1907) **34 I. A. 65** = **29 A. 244.**

HINDU LAW—(*Contd.*)

Joint family—Father — Self-acquisitions of—(*Contd.*)

———*Throwing into common Stock of—Evidence of.*

The question was whether the properties acquired by a Hindu father after his partition with his brothers were, as against his sons, self-acquisitions or joint family property.

It appeared that the father had considerable nucleus of ancestral property in his hands after the partition and that he kept one account of his income from the ancestral property and of his own earnings. Properties of considerable value were from time to time purchased by him, and he did not in any way discriminate between the sources of his income, but blended them all in one general account. His sons, when they became of age to earn their own living, gave the pay which they received to their father, with whom they lived and by whom they were supported.

Held, that that was strong evidence that there was but one common stock of the whole family, into which each voluntarily threw what he might otherwise have claimed as self-acquired ; and that the property purchased by, or with the assistance of, the joint funds was joint property of the family, and not of any particular member of it (70-1). (*Sir Andrew Scoble.*) LAL BAHADUR *v.* KANHAIA LAL. **(1907) 34 I. A. 65 = 29 A. 244 (255-6) = 2 M. L. T. 147 = 5 C. L. J. 340 = 11 C. W. N. 417 = 9 Bom. L. R. 597 = 4 A. L. J. 227 = 9 Sar. 200 = 17 M. L. J. 228.**

———*Throwing into common stock of—Evidence of—Inheritance from collateral—Property got by—Throwing into common stock of.*

The suits out of which the appeals arose concerned the validity and effect of two deeds of gift made by one *D*, deceased, the father of the first plaintiff and appellant, and grandfather of the other plaintiffs and appellants, in favour of two concubines and the daughter of one of them.

The son asserted that he and his father were joint members of a Hindu family, and that the properties to which the gifts related were part of the joint family estate. That was the question to be determined in the suit.

It was assumed that the properties covered by the deeds in question were got by *D*, by inheritance from a collateral and were therefore his self-acquired properties. The question for decision was whether *D* converted those self-acquired properties of his into ancestral family estate by throwing them into the common stock.

At the time of the death of the collateral above referred to in 1878 and the accession of *D* and his brothers to that collateral's property, *D* was acting as guardian of his divided younger brother *K*. Accordingly one book was kept for their joint-share of the collateral's estate ; and that system of book-keeping, which started on 2nd October, 1878, was continued till 11th February, 1880, when *K* came of age. Thereafter, no separate book was kept by or for *D* in respect of the property which had come to him from the collateral ; but there was one account for all *D's* receipts from all sources, whether it was income from joint family property, or from that which he had acquired from the collateral, or any other source of revenue, and similarly for all his expenditure of whatever kind.

The first plaintiff and appellant had been born on 31st May, 1877, and from that time forward there had been a joint family estate for him and his father. Nevertheless, the accounts from 1880 onwards were such as to show a blending of the properties.

It further appeared that when in the year 1881, *D* and his younger brother, *K* took the further step of effecting what was called " a deorh partition," that is, not merely a separation of interest, but an actual partition of the several properties constituting their estates, mutual exchanges were made whereby *D* gave up his share in some ancestral family property for *K's* share in property which came to him from the same collateral, and *vice versa*.

HINDU LAW—(*Contd.*)

Joint family—Father — Self-acquisitions of—(*Contd.*)

Held, reversing the High Court, that, assuming that *D* acquired his share of the property of the collateral as self-acquired property, he so dealt with it afterwards as to make it joint property with his ancestral family estate, of which family, the first plaintiff, and, as they were born, the other plaintiffs were members (745). (*Sir Walter Phillimore.*) RADHAKANT LAL *v.* NAZMA BEGUM. **(1917) 45 C. 733 = 22 C. W. N. 649 = 27 C. L. J. 632 = 16 A. L. J. 537 = 5 P. L. W. 72 = 23 M. L. T. 392 = 45 I. C. 806 = (1918) M. W. N. 386 = 20 Bom. L. R. 724 = 35 M. L. J. 99.**

———*Will bequeathing, by person without male descendants—Validity of—Mithakshara law.*

It has been settled that even in those parts of India which are governed by the stricter law of the Mithakshara, a Hindoo without male descendants may dispose, by will, of his separate and self-acquired property, whether moveable or immoveable (38). (*Sir James W. Colvile.*) BABOO BEER PERTAB SAHEE *v.* MAHARAJAH RAJENDER PERTAB SAHEE. **(1867) 12 M. I. A. 1 = 9 W. R. (P. C.) 15 = 2 Suth 114 = 2 Sar. 348.**

———*Will bequeathing, to one of sons—Validity—N.-W. Provinces.*

In this District (Cawnpur) a strong feeling prevails amongst the Brahmins upon the subject of testamentary disposition, which, though at length established by law as to self-acquired property, is opposed to the ancient usages and feelings of the country (121).

N.B.—In this case the bequest was by a Hindu father of his self-acquired immoveable property in favour of his eldest son only. (*Lord Kingsdown.*) NANA NURAIN RAO *v.* HUREE PUNTH BHAO. **(1862) 9 M. I. A. 96 = 1 Sar. 843 = Marsh. 436.**

———*Will bequeathing, to sons—Nature of estate in their hands, ancestral or self-acquired.*

Quaere, whether, when a Hindu devises to his sons property which, in the absence of such devise, they would take as his heirs, the sons should be considered to take as devisees or as heirs (116). (*Sir Robert P. Collier.*) PAULIEM VALLOO *v.* PAULIEM SOORYAH. **(1877) 4 I. A. 109 = 1 M. 252 (259) = 3 Sar. 698 = 3 Suth. 387.**

———*Quaere* as to the effect in a Mithakshara family of a bequest made by a father of property which, in the father's hands, was self-acquired, to his son, whether the property so bequeathed would, in the son's hands, be ancestral or self-acquired property.

Conflict of decisions on the point noted. (*Lord Phillimore.*) LAL RAM SINGH *v.* DY. COMMISSIONER OF PARTABGARH. **(1923) 50 I. A. 265 (274-5) = 45 A. 596 (604) = 21 A. L. J. 777 = 26 O. C. 257 = 9 O. & A. L. R. 746 = 33 M. L. T. 355 = (1923) M. W. N. 591 = A. I. R. 1923 P.C. 160 = 10 O. L. J. 513 = 29 C. W.N. 86 = 76 I. C. 922.**

———Will bequeathing immovable property forming, by person having sons or other male descendants—Validity—Mithakshara law—Benares law. *See* HINDU LAW—JOINT FAMILY—FATHER—WILL BY—IMMOVABLE PROPERTY ETC. **(1867) 12 M. I. A. 1 (38-40).**

———Will bequeathing movables forming—Validity—Mithakshara law. *See* HINDU LAW—JOINT FAMILY—FATHER—SELF-ACQUISITIONS OF—MOVABLES FORMING. **(1867) 12 M. I. A. 1 (38).**

———*Will making unequal partition of, among male descendants—Validity—Benares Law.*

HINDU LAW—(*Contd.*)

Joint family — Father — Self-acquisitions of—(*Contd.*)

Quaere, whether according to the law of the Benares school, a Hindoo can by will make an unequal distribution of his self-acquired immoveable property amongst his male descendants without their consent (39). (*Sir James W. Colvile.*) BABOO BEER PERTAB SAHEE *v.* MAHARAJAH RAJENDER PERTAB SAHEE. (1867) **12 M. I. A. 1 = 9 W. R. (P. C.) 15 = 2 Suth. 114 = 2 Sar. 348.**

Joint family—Father—Son.

ADOPTION IN HIS LINE—AGREEMENT BY FATHER STIPULATING AGAINST.

———Binding nature of, on son then in existence. *See* HINDU LAW—JOINT FAMILY—FATHER—ADOPTION IN HIS LINE. (1886) **13 I. A. 97 (99) = 9 M. 499 (505).**

ANCESTRAL PROPERTY.

———*See* UNDER HINDU LAW—JOINT FAMILY—FATHER—ANCESTRAL PROPERTY.

JOINT FAMILY PROPERTY—RELEASE BY FATHER OF INTEREST IN, UNDER ERRONEOUS IMPRESSION THAT PROPERTY WAS SELF-ACQUISITION OF HIS OWN FATHER.

———Binding nature of, on himself and his sons. *See* HINDU LAW—JOINT FAMILY—FATHER— ANCESTRAL PROPERTY—PARTITION WITH BROTHER—RELEASE OF, ETC. (1927) **54 I. A. 413.**

PROPERTY IN NAME OF FATHER—CLAIM TO, ON GROUND OF ITS BEING BENAMI FOR SON.

———Possession with son—Sale-deed in favour of father—Consideration money paid by him. *See* HINDU LAW—JOINT FAMILY—FATHER—PROPERTY IN NAME OF—BENAMI FOR SON. (1885) **12 I. A. 150 (157-8) = 8 A. 6 (13).**

PROPERTY PURCHASED IN NAME OF—JOINT FAMILY PROPERTY—SELF-ACQUISITION OF SON.

———*No evidence of possession of separate funds by son or of purchase being with money belonging to him.*

The plaintiff was the daughter of one Rup Charan, deceased, and she claimed that certain properties were the self-acquired properties of her father which devolved upon her after the death of her mother. The parties were governed by the Dayabhaga law, and the deceased and the defendants constituted a joint Hindu family. The properties in question were purchased in the name of Rup Charan during the lifetime of his father. Both the courts below found that there was no evidence that Rup Charan had any separate funds or that the properties in dispute were purchased with money belonging to him.

Held, that in the absence of such evidence the presumption was clear and decisive that they were acquired by the father in the name of the son, and that they were not the self-acquired properties of Rup Charan. (*Mr. Ameer Ali.*) PARBATI DASI *v.* BAIKUNTHA NATH DE.

(1913) **15 M. L. T. 66 = (1914) M. W. N. 42 = 12 A. L. J. 79 = 19 C. L. J. 129 = 18 C. W. N. 428 = 22 I. C. 51 = 16 Bom. L. R. 101 = 26 M. L. J. 248 (250).**

———*Presumption.*

The presumption of Hindu Law is that an acquisition made in the name of an individual son of a joint family was made by the head of the family, and as part of the family estate (422). (*Sir James W. Colvile.*) MUSSUMAT ANUNDEE KOONWAR *v.* KHEDOO LAL.

(1872) **14 M. I. A. 412 = 18 W. R. 69 = 2 Suth. 591 = 3 Sar. 50.**

———*Son living separately from father but not completely separated from him.*

A Hindoo had only self-acquired estate. Previous to his death his three sons separated in food and left their father's house, living separately. The question was whether property purchased after the separation in the name of one of the sons, and business carried on in his name, and the profits derived from that business, formed part of the joint family estate or constituted the separate property of that son.

Held, on the evidence, that, although there was a cesser of commensality, the normal condition of a joint Hindoo family, did not, from the evidence, operate as a complete separation, and that the properties in question formed part of the joint property. (*Sir James W. Colvile.*) MUSSUMAT ANUNDEE KOONWAR *v.* KHEDOO LAL.

(1872) **14 M. I. A. 412 = 18 W. R. 69 = 2 Suth. 591 = 3 Sar. 50.**

PURCHASE IN NAME OF.

———*Benami or not.*

The appellant and respondent were brothers, and joint heirs by the Hindu law of their deceased father, *R*. Many years before his death, and previously to the birth of the appellant, *R* purchased a talook in the name of the respondent. The question was whether the purchase in the name of the respondent was a mere *benami* purchase, or a purchase for the respondent's separate use and benefit. There was no question but that all the purchase money was provided by *R*. It was certainly not the money of the respondent.

The grounds on which the respondent relied in support of his case that the purchase was for his separate use and benefit were the age of the respondent at the time of the purchase (he being a mere infant at the time), the English form of conveyance, the accounts kept by the father in his books, the different mode in which the purchase in question was treated in the books of the father from purchases in the names of other persons; a document submitted to him as a case in another cause, containing a statement of his title, though that was claimed on each side; certain letters relating to the property; certain memorials addressed, one to the Deputy Collector of Hooghly, and another to the Deputy Governor of Bengal, relating to the tenure of the property, and parol evidence as to conversations; to which might be added the evidence of the conduct of the respondent and appellant after their father's death, the benefit of which was claimed on each side.

Held, on the evidence reversing the Supreme Court, that the purchase was a *benami* purchase, and that the respondent in whose name it was made was a trustee for the father, and that the property in question was part of the father's estate at the time of his death (85-6). (*Lord Justice Knight Bruce.*) GOPEEKRIST GOSAIN *v.* GUNGAPERSAUD GOSAIN. (1854) **6 M. I. A. 53 = 2 Suth. 13 = 4 W. R. 46 = 1 Sar. 493.**

RIGHTS OF, AS AGAINST FATHER.

———*Dayabhaga Law—Mithakshara law—Distinction.*

Sons have not as against their father in his lifetime, under the law of the Dayabhaga, the rights which they have under the law of the Mithakshara (251). (*Sir James W. Colvile*) DEENDYAL LAL *v.* JUGDEEP NARAIN SINGH. (1877) **4 I. A. 248 = 3 C. 198 (205) = 1 C. L. R. 49 = 3 Sar. 730 = 3 Suth. 468.**

———*Dayabhaga Law.*

In Bengal there is joint family property, but where property is held by the father as its head his issue have no legal claim upon him or the property except for their maintenance. He can dispose of it as he pleases, and they cannot require a partition. The sons have no ownership while the father is alive and free from defect. Upon his death the

HINDU LAW—(*Contd.*)

Joint family—Father—Son—(*Contd.*)

RIGHTS OF, AS AGAINST FATHER—(*Contd.*)

property in the sons arises, and with it the right to a partition (64-5). (*Sir Richard Couch.*) RANI SARTAJ KUARI *v.* RANI DEORAJ KUARI. **(1887) 15 I. A. 51 = 10 A. 272 (287-8) = 5 Sar. 139.**

SELF-ACQUISITION OF FATHER BEQUEATHED TO

———Nature of, in his hands, ancestral or self-acquired. *See* HINDU LAW—JOINT FAMILY—FATHER—SELF-ACQUISITION OF — WILL BEQUEATHING, TO SON.

SELF-ACQUISITION OF, OR ANCESTRAL ESTATE.

———Father's self-acquisition bequathed to son. *See* HINDU LAW—JOINT FAMILY—FATHER—SELF-ACQUISITION OF—WILL BEQUEATHING, TO SONS.

SELF-ACQUISITION OF, OR JOINT FAMILY PROPERTY.

———Father—Property purchased by, in son's name. *See* HINDU LAW—JOINT FAMILY—FATHER—SON—PROPERTY PURCHASED, ETC.

Joint family—Father—Stranger—Allotment of family property to.

———*See* HINDU LAW—JOINT FAMILY—FATHER—JOINT FAMILY PROPERTY—STRANGER.

Joint family—Father—Will by.

———Ancestral property—Partition of—Will effecting. *See* HINDU LAW—JOINT FAMILY—FATHER—ANCESTRAL PROPERTY—PARTITION OF—WILL, ETC.

———Ancestral property—Wil bequeathing. *See* HINDU LAW—JOINT FAMILY — FATHER — ANCESTRAL PROPERTY—WILL, ETC.

———*Immoveable property, ancestral or self-acquired—Bequest of, by person having sons or other male descendants—Validity—Mithakshara law—Benares law—Distinction.*

It is objected that a Hindoo in those Provinces (which are governed by the Mithakshara law) who has sons or other male descendants must be held to be incapable of making by will an unequal distribution amongst them of immove able property, whether self-acquired or ancestral; because by the law of the Mithakshara his sons in both cases take, on their birth, an interest in the property, which their father without their consent cannot displace. For the respondent it is contended that this question is concluded by the decision in the Bithoor case (9 M.I.A. 96). The appellant, however, insists, that this decision is opposed to the law of the school of Benares, and relies on the texts of the Mithakshara, which show that a father cannot alienate his self-acquired estate, or make an unequal distribution of them by partition, without the consent of his sons ; and also upon passages in Strange's "HINDU LAW," and other authorities. It has been argued, on the other hand, that all these authorities are to be reconciled with the decision in the Bithoor case, by holding, that they relate to property acquired by the father, with the use or by the aid of ancestral estate ; and that they have no application to separate or any self-acquired property in the strict sense of the term. Their Lordships are relieved from the necessity of determining whether this distinction is well founded, or whether, if it be not so, the present case must be governed by the Bithoor case (38-40). (*Sir James W. Colvile.*) BABOO BEER PERTAB SAHEE *v.* MAHARAJAH RAJENDER PERTAB SAHEE. **(1867) 12 M.I.A. 1 = 9 W.R. (P.C.) 15 = 2 Suth. 114 = 2 Sar. 348.**

———Self-acquisition—Partition unequal of—Will effecting—Validity. *See* HINDU LAW — JOINT FAMILY — FATHER—SELF-ACQUISITION OF—WILL MAKING UNEQUAL PARTITION, ETC.

HINDU LAW—(*Contd.*)

Joint family—Father—Will by—(*Contd.*)

——— Self-acquisition—Will disposing of. *See* HINDU LAW—JOINT FAMILY—FATHER—SELF-ACQUITIONS OF—WILL, ETC.

Joint family—Female member of.

———Property recorded in revenue records in name of—Claim to, as joint family property—Male members entitled to property in existence—Female member entitled only to maintenance—EFFECT. *See* HINDU LAW—JOINT FAMILY—MEMBER OF—REVENUE RECORDS — RECORD OF MEMBER AS SOLE PROPRIETOR OF JOINT FAMILY ESTATE IN—EFFECT OF—FEMALE MEMBER, ETC.

(1866) 10 M.I.A. 511 (529-30).

———*Purchase in name of, as guardian of minor son (a co-parcener)*—Benami *for her daughter—Plea by her of—Proof of—Onus*

The plaintiffs were members of a joint Hindu family governed by the Mithakshara and they sued to recover proprietary possession of a share in a certain mouza, alleging it to be part of their undivided property. The defendant, who was in possession, resisted the suit on the ground that the property in question really belonged to his wife, to whose rights he succeeded when she died. The plaintiffs produced a conveyance of the year 1863, under which the property in question was conveyed on sale to *B*, guardian of her son, *S*, then a minor, both being members of the plaintiffs' joint family. There was also evidence that the purchase consideration was provided out of joint funds. The rights of *S* descended to the plaintiffs, and it was not contended that *B* took any interest for herself. The defendant produced no conveyance in his own favour, but claimed that the purchase of 1863 was in truth a *benami* transaction for the separate benefit of his wife.

Held, that, though in the first instance the burden of proof was on the plaintiffs, the burden of proof passed to the defendant very early in the case (*Lord Sumner.*) MOTI LAL *v.* KUNDAN LAL. **(1917) 22 M. L. T. 10 = 6 L. W. 92 = 15 A. L. J. 329 = 1 P. L. W. 490 = 19 Bom. L. R. 471 = 21 C. W. N. 929 = 25 C. L. J. 581 = 39 I. C. 964 = (1917) M. W. N. 464 = 32 M. L. J. 468 (469),**

Joint family—Firm of.

———*See* HINDU LAW—JOINT FAMILY—BUSINESS OF.

Joint family—Grandfather.

DEBT OF—GRANDSON'S LIABILITY FOR.

———Basis and extent of—Original Hindu Law—Law as administered by British Indian Courts. *See* HINDU LAW—DEBT—LIABILITY FOR, OF SONS, ETC.

(1926) 53 I. A. 204 (211-2) = 48 A. 518.

———*Son alive.*

The suit was brought by grandsons of a Mithakshara joint family to recover family property improperly sold by their grandfather deceased. To the suit the plaintiffs made their fathers parties. It was argued that, though the sale might be invalid and the plaintiffs entitled to recover possession, they were not entitled to do so without paying to the vendees the money received by their grandfather by reason of their "pious obligation" to pay his debts.

Held, that no such doctrine could be invoked in the circumstances of the case (236).

In the present case the doctrine is invoked against grandsons and in the lifetime of the sons. Nothing more need be said. The invocation of the doctrine entirely fails (236). (*Lord Shaw*). CHET RAM *v.* RAM SINGH.

(1922) 49 I. A. 228 = 44 A. 368 (375-6) = 16 L. W. 89 = 31 M. L. T. 50 = (1922) M. W. N. 455 = 3 P. L. R. 1922 = 24 Bom. L. R. 1231 = 27 C. W. N. 150 = 21 A. L. J. 114 = 37 C. L. J. 79 =

HINDU LAW—(*Contd.*)

Joint family—Grandfather—(*Contd.*)

DEBT OF—GRANDSON'S LIABILITY FOR—(*Contd.*)

3 Pat. L. T. 363 = 4 U. P. L R. (P. C.) 64 = A. I. R. 1922 P. C. 247 = 67 I. C. 569 = 43 M. L. J. 98.

GIFT BY.

———Grandsons in existence and to be born—Gift of entire family property to, to prevent it from being wasted by son—Validity of—Effect of. *See* HINDU LAW — JOINT FAMILY—MANAGER—GIFT BY—GRANDSONS IN EXISTENCE AND TO BE BORN.

SALE BY—NECESSITY FOR.

———*Issue as to, in grandsons' suit to set aside sale—Inaction of father and uncles admitted to be due to inability to prove illegal or immoral nature of debt—Value of.*

The respondents sued to set aside a sale of joint family property effected by their grandfather and their grand uncle, the then managers of the family. The respondents contended that the sale was not for purposes binding upon them. The major portion of the consideration for the sale was proved to represent a debt for which family property could validly have been sold. The evidence as to a minor portion of the consideration was vague. The sale had been made long before the date of the suit, and the principal parties to the transaction had died. The respondents' father and uncle, who were throughout aware of the circumstances connected with the sale, and who supported the respondents, never themselves took any steps to impeach the sale. On the other hand, the respondents' father admitted in his evidence given in the suit that his inaction was at all events partly attributable to the fact that he could at no time prove that his father, a vendor, had spent the sale consideration after receiving it "in bad company or for immoral purposes."

Held, that, in considering the question of the necessity for the sale, it was proper to bear in mind that inaction of the father and the uncle of the respondents and the ground attributed by the father for such inaction. (*Lord Blanesburgh.*) LAL BAHADUR *v.* AMBIKA PRASAD.

(1925) 52 I. A. 443 (448-9) = 47 A. 795 = (1925) M. W. N. 852 = 2 O. W. N. 913 = 28 O. C. 371 = 23 L. W. 220 = 12 O. L. J. 649 = 30 C. W. N. 701 = A. I. R. 1925 P. C. 264 = 91 I. C. 471.

SELF-ACQUIRED IMMOVABLE PROPERTY OF.

———*Right by birth of grandson in—Maxim* cessante ratione cessat et ipsa lex—*Application of.*

The grandsons did not by birth acquire that community of interest with their grandfather in his self-acquired lands which is the foundation of the supposed restriction on his power to make by will an unequal distibution of his self-acquired immoveable property amongst his male descendants without their consent. And, *cessante ratione cessat et ipsa lex* (39). (*Sir James W. Colvile.*) BABOO BEER PERTAB SAHEE *v.* MAHARAJAH RAJENDER PERTAB SAHEE.

(1867) 12 M. I. A. 1 = 9 W. R. P. C. 15 = 2 Sar. 348 = 2 Suth. 114.

WILL MAKING UNEQUAL DISTRIBUTION OF SELF-ACQUIRED IMMOVABLE PROPERTY.

———Validity. *See* Previous heading.

Joint family—Great-grandfather.

DEBT OF—GREAT-GRANDSON'S LIABILITY FOR.

The law of the Mithakshara proceeds on a logical basis; rights are created by birth up to the third generation, *viz.*, son, grandson, and great-grandson; the son of a grandson is entitled equally with his father to question the validity of debts contracted by the ancestor after his birth. His obligation to discharge the valid debts of the ancestor is, therefore, co-extensive with the rights (210.) The rights of the descendants are co-extensive with their obligations (208.) (*Mr. Ameer Ali.*) MASIT-ULLAH *v.* DAMODAR PRASAD. **(1926) 53 I.A. 204 = 48 A. 518 = (1926) M.W.N. 816 = 3 O. W. N. 721 = 25 A. L. J. 1 = 28 Bom. L. R. 1402 = 44 C. L. J. 321 = 24 L.W. 551 = 7 P. L. T. 815 = 31 C. W. N. 293 = 98 I. C. 1031 = A. I. R. 1926 P.C. 105 = 51 M. L. J. 792.**

———Basis and extent of—Original Hindu Law—Law as administered by British Indian Courts. *See* HINDU LAW—DEBTS—LIABILITY FOR, OF SONS, ETC. **(1926) 53 I.A. 204 (211-2) = 48 A. 518.**

RIGHT BY BIRTH OF GREAT-GRANDSON IN ESTATE OF.

———*See* HINDU LAW — JOINT FAMILY—GREAT-GRANDFATHER—DEBT OF. **(1926) 53 I.A. 204 (210) = 48 A. 518.**

Joint family—Joint family property.

———Co-parcenaryship betwen members in, and survivorship following upon it—Severance of. *See* UNDER HINDU LAW—JOINT FAMILY—CO-PARCENARY IN.

———Court of Wards—Assumption of management of property by. *See* CENTRAL PROVINCES GOVERNMENT WARDS ACT OF 1885.

———Court of Wards—Member's undivided interest in such property—Assumption of management of—Power of. *See* CENTRAL PROVINCES GOVERNMENT WARDS ACT OF 1885.

———*Declaration of property being plaintiff's and defendant's—Suit for— Partition and possession of plaintiff's share in—Decree for—Propriety — Plaint not praying for such relief.*

In a suit brought in 1865 it was fonnd that there was a declaration of trust by the defendant (with whom a summary settlement had been made and to whom a sunnud had been granted in favour of the joint family consisting of himself and of the plaintiffs), and that up to the time of the quarrel in 1865 all the villages in suit were held by the defendant in trust for the family, as a joint family estate, governed by the rules of the Mithakshara. The plaint in the suit did not allege that the plaintiffs had been dispossessed of their rights in the said villages, but merely that the defendant intended to dispossess them, and to put a stop to the profits enjoyed by them, and they simply prayed that, after inquiry, proper orders might be passed that they be not deprived of their right.

Held, that their Lordships must deal with the case as it stood at the time of the commencement of the suit (168).

At that time there does not appear to have been any complete separation or division of the family, and the plaintiffs do not pray for a partition of the estate. The appellant (plaintiff) was not entitled to a definite portion of the estate, but merely to the rights of a member of a joint Hindu family. Their Lordships cannot therefore do more than declare that the defendant holds the villages in suit in trust for the joint family, and as a joint family estate, governed by the rules of the Mithakshara, and order and declare that the defendant do cause and allow the said villages, and the proceeds thereof, to be managed, used, dealt with, and applied accordingly (168). (*Sir Barnes Peacock.*) THAKOOR HURDEO BUX *v.* THAROOR JOWAHIR SINGH.

(1879) 6 I.A. 161 = 4 Sar. 10 = Bald. 218 = 3 Suth. 608 = R. & J.'s No. 57.

———Decree declaring property to be ordinary partible—Decree declaring it to be indivisible property subject to rights on part of junior members to profits of estate according to their shares—Test. *See* OUDH ESTATE — JOINT FAMILY ESTATE—DECREE DECLARING ETC. **(1887) 14 I.A. 37 (60-2) = 14 C. 493 (511-2).**

HINDU LAW—(*Contd.*)

Joint family— Joint family property—(*Contd.*)

———Exclusion from. *See* LIMITATION ACT OF 1908—ART. 127.

———Family priest—Purchase by manager in name of—Property subject of, if joint family property—Presumption. *See* HINDU LAW—JOINT FAMILY—MANAGER—FAMILY PRIEST. (1873) **19 W. R. 230.**

———Father and sons—Rights of, in property — Dayabhaga law. *See* HINDU LAW—JOINT FAMILY—FATHER—SON—RIGHTS OF, AS AGAINST FATHER—DAYABHAGA LAW. **(1888) 15 I. A. 51 (64-5)=10 A. 272.**

———Female member entitled only to maintenance—Property recorded in sole name of, in revenue records—Claim to, as joint family property—Male members entitled to property at the time in existence—Effect, *See* HINDU LAW—JOINT FAMILY—MEMBER OF—REVENUE RECORDS—RECORD OF MEMBER AS SOLE PROPRIETOR OF JOINT FAMILY PROPERTY IN—EFFECT OF—FEMALE MEMBER ETC. **(1866) 10 M. I. A. 511 (529-30).**

———Income of—Purchases with—Accretion to original property—Rule as to. *See* HINDU LAW — IMPARTIBLE ESTATE—INCOME OF—HOLDER'S POWERS OVER. **(1922) 50 I. A. 1 (7)=2 P. 319.**

———Income of—Use by manager of, in improving his mistress's house—Junior members' rights in case of. *See* HINDU LAW — JOINT FAMILY —MANAGER — INCOME OF JOINT FAMILY PROPERTY. (1924) **21 L. W. 183 (190.)**

———Manager— Concubine of — Property in name of—Claim of other members to, as being joint family property—Proof of—Onus—Quantum. *See* HINDU LAW — JOINT FAMILY —MANAGER—CONCUBINE OF, **(1921) 21 L. W. 183.**

———Property indivisible and descendible to nearest male heir, subject to rights of junior branches to share in profits and to demand partition of such shares—Validity in law of. *See* OUDH ESTATE—JOINT FAMILY ESTATE INDIVISIBLE AND DESCENDIBLE ETC. **(1888) 16 I. A. 71 (75)=16 C. 397 (405).**

———Religious charity—Dedication by manager to—Validity—*Inter vivos* dedication — Dedication by will. *See* HINDU LAW—JOINT FAMILY—MANAGER—RELIGIOUS CHARITY. **(1927) 54 I. A. 136 (140)=50 M. 421.**

———Revenue records—Record in, of name of a member of joint family as proprietor of joint family property — Practice of—Effect of. *See* HINDU LAW—JOINT FAMILY —MEMBER OF—REVENUE RECORDS.

———Self-acquisition—Blending of, by members of joint family—Effect of—Evidence of. *See* HINDU LAW—JOINT FAMILY—MEMBERS OF — JOINT FAMILY PROPERTY AND SELF-ACQUISITIONS OF.

———*Self-acquisition—Inherited property—Collateral—Inheritance from.*

Property got by inheritance from a collateral would be self-acquired (739). (*Sir Walter Phillimore.*) RADHAKANT LAL *v.* NAZMA BEGUM. **(1917) 45 C. 733=22 C. W. N. 649=27 C. L. J. 632=16 A. L. J, 537=5 P. L. W. 72=23 M. L. T. 392=(1918) M. W. N. 386=20 Bom. L, R, 724=45 I. C. 806=35 M. L. J. 99.**

———Self-acquisition — Inherited property — Maternal grandfather—Inheritance from. *See* HINDU LAW—ANCESTRAL PROPERTY—MATERNAL GRANDFATHER.

———Self-acquisition—Son—Property purchased by father in name of—Nature of. *See* HINDN LAW—JOINT FAMILY —FATHER — SON — PROPERTY PURCHASED IN NAME OF.

HINDU LAW—(*Contd.*)

Joint family—Joint family property—(*Contd.*)

———Self-acquisition or. *See* HINDU LAW — JOINT FAMILY, (1) FATHER — SELF-ACQUISITION OF, (2) MANAGER OF—SELF-ACQUISITION OF & (3) MEMBER OF—SELF-ACQUISITION OF.

———Son— Property purchased by father in name of—Nature of. *See* HINDU LAW—JOINT FAMILY—FATHER—SON—PROPERTY PURCHASED IN NAME OF.

———Stranger—Allotment of share to — Validity. *See* HINDU LAW— JOINT FAMILY, (1) FATHER — JOINT FAMILY PROPERTY, & (2) MANAGER—JOINT FAMILY PROPERTY.

Joint Family—Manager.

ACCOUNT—LIABILITY FOR.
ALIENATION BY.
BOND IN NAME OF.
BUSINESS BY.
CONCUBINE OF—PROPERTY IN NAME OF.
CONTRACT FOR SALE OF FAMILY PROFERTY BY—SPECIFIC PERFORMANCE OF—SUIT FOR.
CONTRACT IN SOLE NAME OF —SUIT IN REGARD TO.
COURT OF WARDS—ASSUMPTION OF MANAGEMENT OF ENTIRE FAMILY PROPERTY BY.
DEBT DUE TO JOINT FAMILY—PURCHASE BY MANAGER IN SETTLEMENT OF.
DEBT OF.
DECREE AGAINST.
FAMILY ARRANGEMENT OF NATURE OF PARTITION BY.
FAMILY PRIEST—PURCHASE IN NAME OF.
GIFT BY.
INCOME OF JOINT FAMILY PROPERTY—USE OF, IN IMPROVING MISTRESS'S HOUSE.
INHERITANGE — CUSTOM OF FAMILY AS TO—DESTRUCTION OF, OR RELEASE OF ESTATE FROM.
JOINT FAMILY PROPERTY.
JUNIOR MEMBERS.
MISAPPROPRIATION BY.
MORTGAGE BY.
PARTITION BY.
RELIGIOUS CHARITY—DEDICATION OF FAMILY PROPERTY TO.
SALE BY.
SELF-ACQUISITIONS OF.
SUIT AGAINST.
SUIT BY—JUNIOR MEMBERS IF NECESSARY PARTIES TO.
TRADE BY.
WILL BY.
ZEMINDARY LAND OF FAMILY — CREATION OF NEW ZIRAT LAND OUT OF.

Joint Family—Manager—Account—Liability for.

———Agreement between members for joint living and for joint enjoyment—Management by eldest brother—Provision for—Effect of—Relationship of eldest brother to other members—His liability to account to them *See* HINDU LAW—JOINT FAMILY — MEMBERS OF—JOINT LIVING AND JOINT ENJOYMENT, ETC. **(1899) 26 I.A. 167 (171)=22 M. 470 (475-6.)**

———*Basis of—Actual or possible receipts.*

In the absence of proof of direct misappropriation or fraudulent and improper conversion of the joint family monies to the personal use of the manager, he is liable on partition to account only for what he received and not for what he ought to or might have received if the moneys had been profitably dealt with (288). (*Sir John Edge.*) PER-

HINDU LAW—(*Contd.*)

Joint family—Manager—Account—Liability for—(*Contd.*)

RAZU *v.* SUBBARAYUDU. (1921) 48 I.A, 280 = 44 M. 656 (663) = (1921) M.W.N. 541 = 34 C.L.J. 56 = 23 Bom. L.R 920 = 14 L.W. 270 = 26 C.W.N. 1 = 3 U.P.L.R. (P.C.) 46 = 19 A.L.J. 621 = 61 I.C. 690 = 41 M.L.J. 33.

———*Nature and extent of—Trustee — Accountability to* cestui que trust *— English rules as to—Inapplicability of.*

The rules applicable to strict accounts between trustees and *cestui que trusts* that exist in England ought not to be applied without qualification in India, because in truth there are a number of fiduciary relationships in India to which these rules cannot in their entirety apply. This does not mean that breach of established duty should be less severely dealt with in India than in this country, but that there are fiduciary relationships which do not involve all the duties which are imposed upon trustees here. The office of manager of a joint family estate affords an illustration of this difference (287). (*Sir Johd Edge.*) PERRAZU *v.* SUBBARAYUDU. (1921) 48 I.A. 280 = 44 M. 656 (663) = (1921) M.W.N. 541 = 34 C.L.J. 56 = 23 Bom, L.R. 920 = 14 L. W. 270 = 3 U.P L.R. (P.C.) 46 = 26 C. W. N, 1 = 19 A. L. J, 621 = 61 I.C. 690 = 41 M. L, J. 33.

———*Partition—Suit for.*

Where, in a suit for partition, the defendant (manager of the family) admitted the existence of certain jewels as joint family property and could not charge the plaintiff with its possession, *held* that the defendant was, as manager of the family, primarily responsible, and was bound to account for it. (*Sir Andrew Scoble.*) RAJA BOMMADEVARA VENKATA NARASIMHA NAIDU *v.* RAJA BOMMADEVARA BHASHYAKARLU NAIDU. (1902) 29 I. A. 76 (81) = 25 M. 367 (379) = 6 C. W. N. 641 = 4 Bom. L. R. 543 = 8 Sar. 258.

Joint Family—Manager—Alienation by.

———Benefit to estate—Meaning of, in Hunooman Pershad's case and other cases that follow it. *See* HINDU LAW—EXPRESSIONS IN—BENEFIT TO ESTATE.
(1917) 44 I. A. 147 = 40 M. 709.

———Binding character of, against other members—Law as to. *See* HINDU LAW—JOINT FAMILY—FATHER—ALIENATION BY—BINDING CHARACTER OF, AGAINST SONS—LAW AS TO. (1923) 51 I.A. 129 (139) = 46 A. 95.

———Binding nature of—*Stare decisis*—Principle of—Applicability. *See* HINDU LAW—JOINT FAMILY—FATHER—ALIENATION BY—BINDING NATURE OF, ETC.
(1923) 51 I. A. 129 (137) = 46 A. 95.

———*Consent of other members to—Necessity—Implication of such consent—Condition—Major and minor members—Distinction.*

The rights of coparceners in an undivided Hindu family governed by the law of the Mithakshara to impeach an alienation made by one member of the family without their authority, express or implied, has of late years been frequently before the courts of India, and it cannot be said that there has been complete uniformity of decision respecting it (101).

All are agreed that the alienation of any portion of the joint estate, without such express or implied authority, may be impeached by the co-parceners, and that such an authority will be implied, at least in the case of minors, if it can be shown that the alienation was made by the managing member of the family for legitimate family purposes. It is not so clearly settled whether, in order to bind adult co-

HINDU LAW—(*Contd.*)

Joint Family—Mannager—Alienation by—(*Contd.*)

parceners, their express consent is not required (101). (*Sir James W. Colvile.*) SURAJ BUNSI KOER *v.* SHEO PROSHAD SINGH. (1879) 6 I. A. 88 = 5 C. 148 (165) = 4 C. L. R. 226 = 4 Sar. 1 = 3 Suth. 589.

———Consent of other members to—Necessity—N. W. P. Mithakshara—Rule under—Exception in case of alienation for antecedent debt. *See* HINDU LAW—JOINT FAMILY—MEMBER OF—ALIENATION BY—CONSENT OF OTHER MEMBERS TO. (1922) 49 I. A. 228 (232-3) = 44 A. 368 (374).

———Invalid alienation—Validity of, as against manager's share. *See* HINU LAW—JOINT FAMILY—FATHER—MORTGAGE BY—INVALID MORTGAGE—VALIDITY OF, ETC.

———Power of—Hunooman Pershad's case—Principles laid down in—Applicability of. *See* HINDU LAW—MINOR—GUARDIAN OF—ALIENATION BY—HUNOOMAN PERSHAD'S CASE. (1880) 8 I. A. 8 (11) = 6 C. 843 (847).

———Trade—Alienation for purposes of *See* HINDU LAW—JOINT FAMILY—BUSINESS OF—MANAGER OF FAMILY.

Joint Family—Manager—Bond in name of.

———*Joint family property or self-acquisition—Presumption—Private transactions by some of members—Evidence of—Effect.*

The presumption is that a bond held in the name of the managing member of a joint Hindu family is joint property; and it is for those who assert the contrary to make good their case.

Proof that some of the members of the family had private transactions by no means proves that the particular bond in question was the private property of the manager in whose name it was held.

Where the appellants alleged that a bond held in the name of *R*, the manager of a joint Hindu family, was the separate property of *R*, *held*, on the facts, that they failed to displace the presumption in favour of joint ownership. (*Viscount Cave.*) BANDHU RAM *v.* CHINTAMAN SINGH.
(1921) 26 C. W. N. 406 = 3 Pat. L. T. 295 = 20 A. L. J. 495 = A. I. R. 1922 P. C. 215 = 66 I. C. 402.

Joint Family—Manager—Business by.

———*See* HINDU LAW—JOINT FAMILY—BUSINESS OF—MANAGER OF FAMILY.

Joint Family—Manager—Concubine of—Property in name of.

———*Claim of other members to, as being joint family property—Proof of—Onus—Quantum.*

The suit was brought by the grand-nephews of one *D* deceased against a dancing-girl to recover possession of a house, asserting that the plaintiffs and *D* had formed a joint family, that the house in question was bought out of family money and had become joint family property; but that it had been improperly transferred by *D*, in the exercise of his power as karta or manager of the family property to the dancing-girl. The defence set up by the dancing-girl was that the house was her own, bought out of the proceeds of her own money and jewels.

Held, on the evidence, reversing the appellate Court and restoring the trial Judge, that the plaintiffs had failed to prove that the house was the property of *D*, or of the joint family of which he was a member. (*Lord Phillimore.*) DEBI RAI *v.* PAHLAD DAS. (1924) 21 L. W. 183 = A. I. R. 1925 P. C. 38 = 86 I. C. 251 = 6 L. R. P. C. 92.

HINDU LAW—(*Contd.*)

Joint Family—Manager—Contract for sale of family property by—Specific Performance of—Suit for.

———*Earnest-money with interest—Claim against heirs of manager for—Amendment of plaint so as to set up—Appeal—Permissibility for first time in.*

The plaintiff sued the members of a joint Hindu family for specific performance of an agreement for the sale of family property alleged to have been made by one of them, the karta of the family, or, in the alternative, for damages for breach thereof, such damages being assessed at the earnest-money paid with interest from date of agreement to date of realisation. The trial Judge dismissed the suit, holding (1) that the agreement was not proved to be genuine and to be supported by consideration, and (2) that the contract was not binding on the other members of the family, because it was not shown to have been entered into for the benefit of the defendant's family or to have been necessary as an act of prudent management. Pending an appeal to the High Court by the plaintiff, the karta, defendant No (1) died, and the suit title was amended by adding as his heirs his son and grandsons, who were already parties. At the hearing of the appeal to the High Court the plaintiff gave up his claim for specific performance. The High Court found the agreement to be genuine and to be supported by consideration to the extent of the earnest money alleged to have been paid, and passed a decree against all the defendants for the repayment of the earnest-money with interest. The High Court failed to consider the question whether the contract was binding on the other members of the family, which the trial Judge had found against.

Held that, even if the conclusions of fact of the High Court were well-founded, its decree could not be supported, and the suit ought to be dismissed in its entirety (59-60).

The suit was framed as an ordinary suit for specific performance of an agreement, with an alternative claim for damages for breach thereof. The amendment of the cause title in the appeal before the High Court on the death of Defendant No. 1 did not alter the nature of the suit. Nor did the abandonment of the claim for specific performance at the hearing of that appeal alter the suit as framed into an action for money had and received, or for the recovery of a debt. The plaint cannot, at this stage, be allowed to be amended so as to make the suit one of that nature, because the defendants must have an opportunity to rebut such new cause of action, and that course would involve fresh written statements and a fresh trial (59-60). (*Lord Sinha.*) RAMSARAN MANDAR *v.* MAHABIR SAHU.
(1926) 54 I. A. 55 = 6 P. 323 = 31 C. W. N. 469 = 25 L. W. 635 = (1927) M.W.N. 69 = 29 Bom. L.R. 796 = 25 A. L. J. 74 = (1927) M. W. N. 69 = 8 Pat. L. T. 98 = 100 I. C. 56 = 38 M. L. T. (P. C.) 74 = A. I. R. 1927 P. C. 18 = 52 M. L. J. 402.

———*Improvident and non-binding nature of sale against other members—Plea of, by subsequent purchaser impleaded in suit—Maintainability.*

A suit for the specific performance of a contract to sell property owned by a joint Hindu family was brought against the father and managing member of the family and against two persons who claimed that they had purchased the property under a subsequent contract and who denied the existence and validity of the plaintiff's contract. The High Court held that the plea that the plaint contract was an improvident sale was not open to the subsequent purchasers. On appeal to the Privy Council it was contended on their behalf that under the purchase they acquired all the rights of the family and could use, therefore, any defence open to any members of the family.

Their Lordships were not satisfied that the High Court were right in holding that the plea of improvidence was not open to the subsequent purchasers, but they did not feel it necessary to pronounce upon the point. (*Lord Phillimore.*) SHEIKH NASIR-UD-DIN *v.* AHMAD HUSAIN.
(1926) A. I. R. 1926 P. C. 109(110) = (1926) M. W. N, 812 = 3 O. W. N. 731 = 25 A.L. J. 20 = 38 M. L. T. P. C. 3 = 97 I. C. 543.

HINDU LAW—(*Contd.*)

Joint Family—Manager—Contract for sale of family property by—Specific performance of—Suit for—(*Contd.*)

Joint Family Manager—Contract in sole name of—Suit in regard to.

——— -Junior members if necessary parties to. *See* HINDU LAW—JOINT FAMILY—BUSINESS OF—MANAGER OF FAMILY. **(1911) 38 I. A. 45 = 33 A. 272.**

Joint Family—Manager—Court of Wards—Assumption of management of entire family property by.

———*Application for—Power to make.*

The managing members of a Mithakshara joint family have the power and authority as such members to make an application under S. 7 (1) (*c*) (*iv*) of the Central Provinces Government Wards Act, 1885 with the intention that the Court of Wards should, in the interests of all the members of the joint family, assume the superintendence of the family property including the ancestral property of the joint family. (*Sir John Edge.*) GULABSINGH *v.* SETH GOKULDAS. **(1913) 40 I. A. 117 (128) = 40 C. 784 (798-9) = 17 C.L J. 619 = 15 Bom. L. R. 613 = 17 C. W. N. 918 = (1913) M.W.N. 542 = 14 M.L.T. 55 = 9 N. L. R. 117 = 25 M. L. J. 179.**

Joint family—Manager—Debt due to joint family—Purchase by manager in settlement of.

———*Purchase benami in son's name—Joint family if entitled to benefit of.*

In discharge of a debt due to a joint Hindu family, the manager, by means of a benami transaction, took a portion of the amount in cash and a conveyance of three villages in his son's name.

Held, that the other member was entitled to his share in the villages purchased and in the cash received (55).

The manager might as such, and honestly, agree in this way of settling the joint debt. He would have no authority, and it would be contrary to his duty as manager or as a co-sharer to make use of the debt for a purchase on his own account. It should be presumed, in the absence of evidence to the contrary, that he did what he might lawfully do (55). (*Sir Richard Couch.*) MAKUND RAM SUKAL *v.* SALIQ RAM SUKAL. **(1894) 21 I. A. 47 = 21 C. 590 (601-2) = 6 Sar. 423.**

Joint Family—Manager—Debt of.

———Binding character of, against other members—Law as to. *See* HINDU LAW—JOINT FAMILY—FATHER—ALIENATION BY—BINDING CHARACTER OF, AGAINST SONS—LAW AS TO. **(1923) 51 I. A. 129 (139) = 46 A. 95.**

———Binding nature of—*Stare decisis*—Principle of—Applicability. *See* HINDU LAW—JOINT FAMILY—FATHER—ALIENATION BY—BINDING NATURE OF, AGAINST OTHER MEMBERS. **(1923) 51 I. A. 129 (137) = 46 A. 95.**

———*Family purposes—Debt incurred for—Agreement by other members to contribute to—Portion of debt not applied for family purposes—Manager's right to recover, under agreement.*

P, the managing member of a joint Mithakshara Hindu family, having incurred debts for which he and the other members of the family would be liable, obtained from the latter, an ekrarnama, under which the latter accepted liability for half the principal amount of Rs. 18,000 covered by bonds and rokas of *P*, and for Rs. 500, being half of

HINDU LAW—(*Contd.*)

Joint Family—Manager—Debt of—(*Contd.*)

the amount of interest due thereon, and undertook to indemnify *P* and his heirs should the latter have to pay the whole or a portion of the loans with interest on account of the quota of the executants to the extent of one-half. Two bonds of Rs. 10,995 and Rs. 2,495, which formed part of the sum of Rs. 18,000 referred to in the ekrarnama, were sued upon and *P* was compelled to pay the amount thereof with interest. Parts of the advances taken under those bonds were not in fact (as provided by the agreement) applied for family purposes, but either for *P*'s own benefit or for a purpose outside the agreement. In a suit by the heirs of *P*, against the other parties to the ekrarnama for recovery of half the amounts paid by *P*, in discharge of the bonds, *held*: Although under the terms of the ekrarnama the plaintiffs were entitled to recover from the defendants one-half of the full amount paid by *P*, under the two bonds, it would be unjust and inequitable to give them a decree for that sum without regard to the fact that a part of the sums borrowed was applied by *P*, not as provided by the agreement for family purposes but either for his own benefit or for a purpose outside the agreement; and that he (*P*) should be treated as having forfeited his claim to the extent of the sums misapplied with the interest thereon, leaving the balance of his claim standing. (*Viscount Cave.*) POKHAR SINGH *v.* JAGU SINGH.

(1920) 25 C. W. N. 745 = (1921) M. W. N. 66 = 2 Pat. L. J. 587 = 3 U. P. L. R. (P. C.) 31 = 61 I. C. 681.

———Trade carried on by manager—Debts contracted for purposes of—Binding nature of, on junior members. *See* HINDU LAW—JOINT FAMILY—BUSINESS OF—MANAGER OF FAMILY.

Joint Family—Manager—Decree against.

———*Binding nature of, on minor members—Question as to—Privy Council, appeal—Maintainability for first time in.*

The question whether the minor members of a joint Hindu family are bound by a decree in a prior suit brought by the managing member of the family is not a pure question of law but is one depending very largely upon the facts. Where, therefore, such a question was abandoned in the High Court, *held* that the question could not be raised in the appeal to the Privy Council (125). (*Lord Phillimore.*) LINGANGOWDA *v.* BASANGOWDA.

(1927) 54 I. A. 122 = 51 B. 450 = 25 A. L. J. 319 = 4 O. W. N. 424 = 101 I. C. 44 = 31 C. W. N. 570 = 25 L. W. 789 = 29 Bom. L. R. 848 = 45 C. L. J. 504 = 8 Pat. L. T. 462 = A. I. R. 1927 P. C. 56 = 52 M. L. J. 472.

———*Binding nature of, on minor members not parties to prior suit—Fresh suit by them in respect of same cause of action—Maintainability.*

The father of the appellants sued the respondents claiming that certain land was in his ownership and under his management, and praying for an injunction restraining the respondents from interfering with his possession. His case was that the respondents were not legitimate members of the family, and that, in any event, they had lost their right in the joint family property by exclusion. His pleas were found against; it was held that the respondents were legitimate members of the family and that there had been no exclusion, and the suit of the appellant's father was dismissed.

The appellants subsequently instituted the suit out of which the appeal arose, raising the same pleas. They contended that they were not bound by the decision in their father's suit, on the ground that they were not parties to it and were then minors, and that their father had not sued on behalf of the family with due care.

HINDU LAW—(*Contd.*)

Joint Family—Manager—Decree against—(*Contd.*)

Held, that the appellant's father having in the prior suit acted on behalf of himself and his minor children to try to exclude a collateral branch from a share of the family property and having failed, the appellants were, under S. 11, Expl. VI of C. P. C. of 1908, bound by the decision in the prior suit, and were precluded from instituting a fresh suit raising the same question.

In the case of an Hindu family where all have rights, it is impossible to allow each member of the family to litigate the same point over and over again, and each infant to wait till he becomes of age, and then bring an action, or bring an action by his guardians before; and in each of these cases, therefore, the Court looks to the Explanation VI of S. 11 of C. P. C. of 1908, to see whether or not the leading member of the family has been acting either on behalf of minors in their interest, or if they are majors, with the assent of the majors. If the appellant's father had succeeded in the prior suit, the judgment therein would have enured for the benefit of the appellants, and, as he has failed, they must take the consequences. (*Lord Phillimore.*) LINGANGOWDA *v.* BASANGOWDA.

(1927) 54 I. A. 122 = 51 B. 450 = 25 A. L. J. 319 = 4 O. W. N. 424 = 101 I. C. 44 = 31 C. W. N. 570 = 25 L. W. 789 = 29 Bom. L. R. 848 = 45 C. L. J. 504 = 8 Pat. L. T. 462 = A. I. R. (1927) P. C. 56 = 52 M. L. J. 472.

———*Capacity of manager in, individual or representative—Presumption—Family debt—Suit to recover.*

Where the question was whether certain family property could be held liable under decrees obtained against members of the joint family, their Lordships considered that, where the family was joint, there might be a presumption that the party sued was sued as a representative of the family, and held that, when the decrees were substantially decrees in respect of a joint family and against the representatives of the family, they might be properly executed against the joint family property (236-7). (*Sir Robert P. Collier.*) BISSESSUR LALL SAHOO *v.* MAHARAJAH LUCHMESSUR SINGH.

(1879) 6 I. A. 233 = 5 C. L. R. 477 = 4 Sar. 76 = 3 Suth. 686 = Bald. 331.

———*Mortgage—Foreclosure—Decree for, against manager—Effect of, against other members—Fresh suit for redemption by them—Maintainability.*

There are occasions, including foreclosure suits, when the managers of a joint Hindu family so effectively represent all other members of the family that the family as a whole is bound.

Where in a suit for redemption instituted by some of the members of a joint Hindu family the mortgagee raised the plea that the suit was not maintainable by reason of foreclosure decree absolute obtained by him against persons who were at all material times in the foreclosure suit the managers of the joint family of which the plaintiffs were members and it appeared that in the foreclosure proceedings the said managers acted in every way in the interests of the family itself and that at the time of the said proceedings the mortgagee had no notice of the plaintiffs' interests and no question therefore arose under S. 85 of the Transfer of Property Act, 1882, *held* that the foreclosure decree was binding on plaintiffs, though they were not parties to the proceedings in which the decree was passed, and the suit was therefore not maintainable. (*Lord Moulton.*) SHEO SHANKAR RAM *v.* JADDO KUNWAR.

(1914) 41 I. A. 216 = 36 A. 383 = 12 A. L. J. 1173 = 18 C. W. N. 968 = 20 C. L. J. 282 = (1914) M. W. N. 593 = 16 M. L. T. 175 = 1 L. W. 645 = 24 I. C. 504 = 16 Bom. L. R. 810.

HINDU LAW—(*Contd.*)

Joint Family—Manager—Decree against—(*Contd.*)

———*Mortgage decree—Sale in execution of, and purchase by mortgagee himself—Suit by junior members for declaration that their right of redemption had not been extinguished by said decree and sale—Maintainability—Suit based on sole ground of their non-representation in prior suit.*

A mortgage decree was obtained against *J*, the manager of a Mithakshara joint Hindu family, his two brothers, and his two sons, on foot of a mortgage of joint family property executed by *J*. In execution of that decree the mortgaged property was sold and was purchased by the mortgagee himself. The sale proceeds being insufficient, a decree was obtained under S. 90 of the Transfer of Property Act, and, in execution thereof, other property of the family was sold and was purchased also by the mortgagee himself. The two sons of *J* were minors at the date of that suit but were sued in their own names as being majors.

In a suit brought by the said sons of *J*, for a declaration that their right of redemption had not been extinguished by the decree in the prior suit or by the sales in execution thereof, they admitted the binding character of the mortgage sued upon in the prior suit and of the decree therein. They did not impeach the decree therein, or the sales in execution thereof. The only ground on which they rested their claim was that they were not duly represented in the prior suit, not being represented therein by duly appointed guardians *ad litem*.

Held, that the suit was unsustainable.

While the decree for sale stands and sale has taken place under it, the right to redeem is extinguished unless the sale be set aside. After the sale has taken place the owner holds as purchaser, and is entitled to raise all the defences that belong to him as such, and unless the claim to set aside the sale is made in a properly constituted action and properly raised in suitable pleadings in that action, the Court cannot interfere with the possession which has been given him by the purchase (98). (*Lord Moulton.*) GANPAT LAL *v.* BINDBASINI PRASAD NARAYAN SINGH. **(1920) 47 I. A. 91 = 47 C. 924 = 24 C. W. N. 954 = (1920) M. W. N 382 = 28 M. L. T. 330 = 18 A. L. J. 555 = 12 L. W. 59 = 56 I. C. 274 = 39 M. L J. 108.**

———*Sale in execution of—Interest passing under—Mortgage of family property, and not of manager's share only, for family debt—Suit on, for recovery of amount by sale of mortgaged property itself—Sale in execution of decree in—Junior members not impleaded in suit.*

The managers of a joint Hindu trading family mortgaged a portion of the family property, and not merely their shares therein, for the purpose of paying a debt due from their firm, On that mortgage a suit was instituted against the mortgagors alone, but the plaint therein claimed the recovery of the mortgage debt and interest out of the mortgaged property. The mortgagee obtained a decree in that suit, and, in execution thereof, he applied for the seizure and sale of the mortgaged property itself, and not merely of the right, title, and interest of the mortgagors therein. That application was granted, and, at the sale held in execution, the whole property was sold, as appeared from the certificate of sale, and purchased by the mortgagee himself.

The court below, while of opinion that the mortgage and the proceedings on foot thereof were calculated to convey the entirety of the property, and not merely the mortgagor's share therein, nevertheless held that the shares of the other members did not pass by the sale, on the sole ground that they had not been made parties to the suit on the mortgage.

Held that the mere fact of the non-joinder of the other members in the suit was not an absolute bar to their interest passing by the sale, and that, in the circumstances of the

HINDU LAW—(*Contd.*)

Joint Family—Manager—Decree against—(*Contd.*)

case, the shares of the other members also passed by the sale (194, 196). (*Sir Barnes Peacock.*) DOULUT RAM *v.* MEHR CHAND. **(1887) 14 I. A. 187 = 15 C. 70 (80-1) = 5 Sar. 84 = 1 P. R. 1888.**

———*Sale in execution of—Purchaser at—Suit by, for declaration that sale conveyed interest of junior members also—Latter resisting suit in Court below on ground of their non-joinder—Binding nature of mortgage and scope of sale—Remand of case in appeal for trial of.*

In a suit by the purchaser of a joint family property sold in execution of a decree obtained against the manager alone for a declaration that, under his execution purchase, he acquired also the shares of the defendants, the other members of the family, in the property sold, and for recovery of possession of such shares, the plaintiff offered to prove the facts necessary to make the mortgage valid and binding upon the defendants, and that the sale was of the entirety of the property, and not merely of the shares of the mortgagor therein. The defendants declined to have those questions tried, and made their stand in the courts below upon the sole ground of their not having been made parties to the suit or to the execution proceedings.

Held that, under the circumstances, the defendants were not entitled to have a remand of the case to enable them to have an opportunity of proving that the mortgage was not valid and binding upon them (197) (*Sir Barnes Peacock.*) DOULUT RAM *v.* MEHR CHAND. **(1887) 14 I. A. 187 = 15 C. 70 (81-2) = 5 Sar. 84 = 1 P. R. 1888.**

———*Sale of family property itself in execution of—Junior members not impleaded in suit—Rights of.*

The mere non-joinder of the junior members of a joint Hindu family in a suit against the manager on a mortgage bond executed by him is not conclusive of the fact that the shares of the other members did not pass by the sale held in execution of the decree passed in such suit. If the mortgage was valid and binding upon the other members, the entire property could be sold, even if they were no parties to the suit. All that the other members can claim is that, not being parties to the sale or execution prceedings, they ought not to be barred from trying the fact or the nature of the debt in a suit of their own, or in a suit brought by the execution purchaser against them for the recovery of the property purchased by him. But such a right would avail them nothing unless they could prove that the debt was not such as to justify the sale (196-7). (*Sir Barnes Peacock.*) DOULUT RAM *v.* MEHR CHAND. **(1887) 14 I. A. 187 = 15 C. 70 (81) = 5 Sar. 84 = 1 P. R. 1888.**

Joint family—Manager—Family arrangement of nature of partition by.

———*See* HINDU LAW—JOINT FAMILY—MANAGER—GIFT BY—SONS IN EXISTENCE AND TO BE BORN. **(1883) 11 I. A. 26 = 10 C. 626.**

———*See* HINDU LAW—JOINT FAMILY—MANAGER—GIFT BY—GRANDSONS IN EXISTENCE AND TO BE BORN. **(1884) 11 I. A. 164 = 6 A. 560.**

Joint family—Manager—Family priest—Purchase in name of.

———*Joint family's right to benefit of—Presumption.*

The presumption of law and the presumption of fact with regard to property purchased by the manager of a joint Hindu family benami in the name of the family priest would be that it was joint family property, and the onus of proof would be on those who insisted that the property was not part of the joint family estate. CHAND HURREE MAITEE *v.* RAJAH NARENDRO NARAIN ROY. **(1873) 2 Suth. 805 = 19 W. R. 230 = 4 Sar. 800.**

HINDU LAW—(*Contd.*)

Joint family—Manager—Gift by.

———Daughter—Gift to. *See* HINDU LAW—JOINT FAMILY—FATHER—GIFT BY—DAUGHTER.

———*Daughter—Gift of Government promissory notes out of income to—Validity of—Decision of Indian Courts as to—Privy Council's interference with.*

B, the then head of a Hindu family, and indeed the only male member of it, gave Government promissory notes of the nominal value of Rs. 20,000 to his daughter and transferred them to her name in his lifetime. The family estate was large, and the gift was made out of income, not out of capital. The gift was an absolute gift to the daughter. The court of appeal held that the gift was within the competence of *B* to make, and that it could not be questioned by a son born to *B's* predeceased undivided brother after *B's* death.

Their Lordships affirmed the Court of appeal, observing: "The question belongs to a class in respect of which this Board is always very unwilling to interfere with the decisions of the Courts in India (114). (*Sir Arthur Wilson.*) BACHOO HURKISONDAS *v.* MANKOREBAI.

(1907) 34 I. A. 107 = 31 B. 373 (380) = 2 M. L. T. 295 = 6 C. L. J. 1 = 11 C. W. N. 769 = 9 Bom. L. R. 646 = 17 M. L. J. 343.

———*Grandsons in existence and to be born—Gift of entire family property to, to save it from being wasted by son—Class gift—English law rule as to—Inapplicability of.*

The manager of a joint Hindu family governed by the Mithakshara law, and consisting of himself, his son, and a minor grandson, that son's son, executed a deed of gift giving the entire family property to the minor grandson then in existence and to other grandsons that might be born thereafter. The deed was executed with the consent of the son obtained for valuable consideration, and in order to save the ancestral estate from being wasted by the son. Possession was given to the minor grandson then in existence, through his mother, who was by the deed appointed his guardian.

It was said that the gift was made to a class, *viz.*, grandsons of the executant, and that, inasmuch as some of the class, the after-born grandsons, could not take, even the grandson in existence at the date of the deed could not take.

Held that it was not necessary to view the transaction as though it were to be determined by rules of construction drawn from English law and applicable to English deeds of gift (178-9).

The transaction is a family arrangement, partaking so far of the nature of a partition that the son receives a portion and is thenceforth totally excluded, and *quoad ultra*, the grandfather surrenders his interest to his grandson, who on a complete partition among the whole family would be entitled to one-fourth. Now in such an arrangement it would be quite consistent with Hindu ideas of ancestral property to express a desire that the whole generation into which the property was transferred should benefit by it. The notions present to the mind of the head of a joint Hindu family who is making a family arrangement, are something very different from the notions present to the mind of an English testator when he makes a gift to a class (178-9). (*Sir Arthur Hobhouse.*) RAI BISHEN CHAND *v.* ASMAIDA KOER.

(1884) 11 I. A. 164 = 6 A. 560 (574-5) = 4 Sar. 512.

———*Grandsons in existence and to be born—Gift of entire family property to, to save it from being wasted by son—Effect—Grandson in existence at the time if takes the whole.*

The manager of a joint Hindu family governed by the Mithakshara law, and consisting of himself, his son, and a minor grandson (son of that son), executed a deed of gift giving the entire family property to that grandson and to other grandsons that might be thereafter born. The deed was executed with the consent of the son obtained for valuable consideration, and for the purpose of saving the ancestral estate from the continued extravagance of the son. Possession of the property was given to the grandson then in existence, through his mother, who was by the deed appointed his guardian.

HINDU LAW—(*Contd.*)

Joint Famiiy—Manager—Gift by—(*Contd.*)

Held that, assuming that the deed was intended to express a gift to the grandsons that might be born thereafter, which could not take effect as such, the grandson then in existence took the whole, and that in any event the property covered by the deed effectually passed away from the grandfather and his son (177-8).

The paramount intention was to get rid of the son by passing the property to his sons That intention is much more readily effectuated by giving the property to the grandson then in existence than by holding that the deed and all that followed upon it, the mutation of names, the possession and management of the mother of the grandson then in existence, did not operate any change at all. In the present case, there is every reason for holding that, if the after-born grandsons are not able to take by virtue of the gift, the grandson then in existence shall take the whole. Their Lordships hold that the circumstance that the parties wished to do something beyond their legal power, and that they have used unskilful language in the deed of gift, ought not to invalidate that important fact of their plan which is consistent with one construction of the deed, and is clearly proved from the transfer of the property in fact (177-8). (*Sir Arthur Hobhouse.*). RAI BISHEN CHAND *v.* ASMAIDA KOER. **(1884) 11 I. A. 164 = 6A. 560 (572-3) = 4 Sar. 512.**

———*Grandsons in existence and to be born—Gift of entire family property to, to save it from being wasted by son—Nature of—Family arrangement partaking of nature of partition—Money payment to son in lieu of his share and his assent to gift.*

The Manager of a joint Hindu family governed by the Mithahkshara law, and consisting of himself, his son, and his minor grandson, the son of that son, executed a deed of gift giving away the whole of the family property to the minor grandson then in existence and to other grandsons who might be born thereafter. The son accepted in lieu of his share in the ancestral estate a sum of money for the payment of debts incurred by him; and he consented to the deed of gift and to the transfer of property thereby made. Possession was given to the minor grandson then in existence, through his mother, who was by the deed of gift appointed his guardian. The deed of gift was executed in order to save the ancestral estate from being wasted by the son.

Held, that the transaction was a family arrangement partaking so far of the nature of a partition that the son received a portion and was thereforth totally excluded and *quoad ultra* the grandfather surrendered his interest to his grand son, who on a complete partition among the whole family would be entitled to one-fourth (178-9).

The transaction cannot strictly be a partition, for, according to the Mithakshara, there can be no partition directly between grandfather and grandson while the father is alive (179). (*Sir Arthur Hobhouse.*) RAI BISHEN CHAND *v.* ASMAIDA KOER. **(1884) 11 I. A. 164 = 6 A. 560 (574) = 4 Sar. 512.**

———*Member of family—Gift of entire family property to one, to save it from extravagance of another—Fraudulent nature of—Plea of, by creditors of extravagant member—Onus of proof in case of.*

The Manager of a joint Hindu family governed by the Mithakshara law executed a deed of gift giving the whole of the family properties to S, his minor grandson (son's son) then in existence, and to other grandsons who might be born

HINDU LAW—(*Contd.*)

Joint Family—Manager—Gift by—(*Contd.*)

thereafter, to save the ancestral estate from the consequences of the continued extravagance of *U*, his son. After the death of the grandfather, the appellant, who had obtained a decree for money against *U*, got the properties comprised in the deed of gift attached and advertised for sale in execution. The attachment was, however, raised at the instance of the mother of *S*, who set up his claim under the said deed of gift.

In a suit instituted thereupon by the appellant to avoid the said deed of gift, on the ground that it was executed merely to defeat the right of the creditors, and to make the lands comprised in the deed available to answer debts of *U*, *held*, that, as the creditors had no charge on *U's* share in the family property, it was not for the defendant, *S*, to show purchase for value without notice, in order to retain the property comprised in the deed of gift, and that, on the contrary, the appellant must allege and prove that the deed was intended to defeat, and had the effect of defeating, *U's* creditors (176).

All that the defendant, *S*, has to show is that the transfer was made in good faith and for consideration (176). (*Sir Arthur Hobhouse.*) RAI BISHEN CHAND *v.* ASMAIDA KOER. **(1884) 11 I.A.164 = 6 A. 560 (571-2) = 4 Sar. 512.**

———*Member of family—Gift of entire family property to one, to save it from the extravagance of another—Validity—Consent of latter for consideration—Effect — Avoidance of gift—Right of his creditors as to.*

A joint Hindu family governed by the Mithakshara law consisted of *M*, *U*, his only son, and *S*, the minor son of *U*, by his wife *A*. To save the ancestral estate from being wasted by the extravagance of *U*, *M*, the head of the family, executed a registered deed of gift giving the whole of the family properties to *S*, and his brothers who might be born thereafter. The deed was executed with the consent of *U*, obtained for valuable consideration. *U* was a party to the gift. Mutation of names was effected in the name of *S*, minor under the guardianship of *A*. *S* died a few months afterwards, and the estates were thereupon transferred into the name of *A*, as his heir, without opposition. The consideration paid to *U*, for obtaining his consent to the deed of gift approached, if it did not equal, the whole value of his then share.

Held, that the transfer, having been made in good faith and for good consideration, the property comprised in the deed of gift effectually passed away from *M* and *U*, and that it could not be avoided by the creditors of *U*, whether or not they were paid (176, 180).

Even if the amount paid to *U*, for obtaining his consent came from the joint chest, it is an application by the head and manager of the family of a large share of the family property to the separate purpose of one member, who was indulging his inclinations apart from the family. That is a substantial consideration (175-6).

The document in fact shows valuable consideration approaching, if not equalling, the whole value of *U's* then share. And, though *M* seems to have taken the precaution to see that portions of the Rs. 5,000 actually reached the hands of *U's*. creditors, he was not bound to do that, because they were general creditors, and had no lien upon the property. It would place these joint families in a very unforunate predicament if they could never buy out a vicious member who threatens their ruin, so long as any of his creditors remains unpaid (176). (*Sir Arthur Hobhouse.*) RAI BISHEN CHAND *v.* ASMAIDA KOER. **(1884) 11 I. A. 164 = 6 A. 560 (570-1) = 4 Sar. 512.**

———*Sons in existence and to be born—Gift of entire family property to, to save it from being wasted by father and manager—Validity—Class gift—English law rule as to—Applicability.*

HINDU LAW—(*Contd.*)

Joint Family—Manager—Gift by—(*Contd.*)

A father and his infant son constituted the whole of a joint family living under the Mithakshara law. The father was extravagant and embarrassed, and to save the ancestral estate he executed a deed of gift to the infant son, coupled with a declaration that if any other sons should be born to him they should from the date of their birth acquire equal right in the property. The High Court held that, even if the gift was void against the father's creditors, it was binding and operative as between the parties to the instrument, and that from the moment of its execution the father ceased to have any joint interest in the family estate.

N. B. This point does not appear in the report of the case either in the Indian Appeals or in the Indian Law Reports and is taken from L. R. 11 I. A. 164 at 179-80, where it is referred to as illustrating the notions present to the minds of Hindus when making arrangements of ancestral property.

The following observations occur on pp 179-180 of L. R. 11 I. A. 164 :—

The notions present to the mind of the head of a joint Hindu family who is making a family arrangement are something very different from the notions present to the mind of an English testator when he makes a gift to a class. Though there was a similar gift made from a similar motive in the case in L. R. 11 I. A. 26, it did not occur to anybody to contend that the deed of gift was void, except as a fraud upon creditors. BABOO HURDEY NARAIN SAHU *v.* BABOO ROODER PERKASH MISSER. **(1883) 11 I. A. 26 = 10 C. 626 = 4 Sar. 510.**

Joint Family—Manager—Income of joint family property—Use of, in improving mistress's house.

———*Junior member's rights in case of.*

If the manager of a joint Hindu family chooses to expend the income of the joint family property upon his mistress, in making improvements on her property, there is no rule of law which would enable the survivors of the joint family to follow these monies into the property, still less to sue for possession of the property (190). (*Lord Phillimore.*) DEBI RAI *v.* PAHLAD DAS. **(1924) 21 L. W. 183 = A. I. R. 1925 P. C. 38 = 86 I. C. 251 = 6 L. R. P. C. 92.**

Joint family—Manager—Inheritance—Custom of family as to—Destruction of, or release of estate from.

———Power of. *See* HINDU LAW — INHERITANCE—PRIMOGENITURE — CUSTOM OF — FAMILY CUSTOM—DESTRUCTION OF. **(1919) 12 L. W. 730 (737, 743).**

Joint Family—Manager—Joint Family Property.

———Religious Charity—Dedication to—Validity of—*Inter vivos* dedication—Dedication by will—Distinction. *See* HINDU LAW—JOINT FAMILY—MANAGER—RELIGIOUS CHARITY. **(1927) 54 I. A. 136 (140) = 50 M. 421.**

———*Stranger—Allotment of share to.*

In the plaint the foundation of the plaintiff's title is stated to be that *T* was made joint heir when he was brought and given In marriage. *Quaere*, whether it was competent for the ancestor to have so dealt with the property and given a share to the husband of his daughter, with or without the consent of the co-heirs. (*Mr. Baron Parke.*) YACHEREDDY CHINN BASSAVAPPA *v.* YACHEREDDY GOWDAPPA. **(1835) 5 W. R. 114 P. C. = 1 Suth. 41 (44) = 1 Sar. 84.**

Joint family—Manager—Junior members,

———Concubine of Manager—Property in name of—Claim to—Proof of—Onus—Quantum. *See* HINDU LAW—JOINT FAMILY—MANAGER—CONCUBINE OF. **(1924) 21 L. W. 183.**

HINDU LAW—(*Contd.*)

Joint Family—Manager—Junior members—(*Contd.*)

———Family priest—Purchase by manager in name of—Right to benefit of. *See* HINDU LAW—JOINT FAMILY—MANAGER—FAMILY PRIEST. **(1873) 19 W. R. 230.**

———Misappropriation by manager—Liability for. *See* HINDU LAW—JOINT FAMILY—MANAGER—MISAPPROPRIATION BY—JUNIOR MEMBER'S LIABILITY FOR. **(1925) 48 M. L. J. 236 (244).**

———Mistress of manager—Income of joint family property used by him in improving house of—Junior members' rights in case of. *See* HINDU LAW—JOINT FAMILY—MANAGER—INCOME OF JOINT FAMILY PROPERTY. **(1924) 21 L. W. 183 (190).**

———Mortgage by manager—Binding nature of, on junior members. *See* HINDU LAW—JOINT FAMILY—MANAGER—MORTGAGE BY—JUNIOR MEMBERS.

———*Relation between manager and.*

The question was whether the defendant was liable to be sued in the Arcot Court by reason of his carrying on business by an agent at a place within the jurisdiction of that Court.

All that appeared was that the defendant was a member of a joint Hindu family of which *K* was the manager, that the property of the joint family was within the limits of the jurisdiction of the Arcot Court, that the defendant, as a member of the family, had a share in such property, and that *K* acted and made payments to the defendants in his capacity of manager of joint family property, of which the defendant had a share.

Held, that *K* was not the agent of the defendant, and that the defendant could not be sued in the Arcot Court as if he carried on business there through an agent (228).

The relation of the manager and the other members of a joint Hindu family is not that of principal or agent or of partners; it is much more like that of trustee and *cestui que trust* (228). (*Lord Lindley.*) ANNAMALAI CHETTY *v.* MURUGASA CHETTY. **(1903) 30 I. A. 220 = 26 M. 544 (552-3) = 7 C. W. N. 754 = 8 Sar. 523 = 4 Bom. L. R. 494 = 13 M. L. J. 287.**

———The manager of a joint Hindu family is not the agent of the members of the family so as to make them liable to be sued as if they were the principals of the manager. The relation of such persons is not that of principal or agent, or of partners; it is much more like that of trustee and *cestui que trust* (228). (*Lord Lindley.*) ANNAMALAI CHETTY *v.* MURUGASA CHETTY. **(1903) 30 I. A. 220 = 26 M. 544 (553) = 7 C. W. N. 754 = 4 Bom. L. R. 494 = 8 Sar. 523 = 13 M. L. J. 287.**

———Revenue sale—Purchase by manager at—Suit by junior members to enforce their rights under—Maintainability. *See* SALE OF LAND FOR REVENUE ARREARS ACT I OF 1845—S. 21. **(1872) 1 I. A. 342 (345).**

Joint Family—Manager—Misappropriation by.

———*Interest on amount subject of—Rate of, to be allowed against manager—Discretion of Indian courts as to—Interference with, by Privy Council,*

In a suit for partition, the Subordinate Judge allowed interest at 9 per cent. on the moneys found to have been misapplied by the manager. On appeal the High Court reduced the rate to 6 per cent.

Held, that it would require very special and unusual circumstances to induce the Board to vary such a decision, which rested upon discretion, even though in this matter the view of the High Court differed from that of the Subordinate Judge as to the way in which that discretion should be exercised. (*Sir John Edge.*) PERRAZU *v.* SUBBARAYUDU. **(1921) 48 I. A. 280 (286) = 44 M. 656 (662) = (1921) M. W. N. 541 = 34 C. L. J. 56 = 14 L. W. 270 =**

HINDU LAW—(*Contd.*)

Joint Family—Manager—Misappropriation by—(*Contd.*)

23 Bom. L. R. 920 = 3 U. P. L. R. (P. C) 46 = 26 C. W. N. 1 = 19 A. L. J. 621 = 61 I. C. 690 = 41 M. L. J. 33.

———*Junior members' liability for—Trust funds—Misappropriation of, with their knowledge and assent.*

Where the manager of a joint Hindu family misappropriates trust money entrusted to the joint family with the knowledge and assent of the other members of the family, the latter are, equally with the manager, liable for the moneys so misappropriated. (*Sir John Edge.*) LALA JAI NARAIN *v.* LALA UJAGAR LAL. **(1924) 21 L. W. 162 = 29 C. W. N. 775 = (1925) M. W. N. 13 = A. I. R. 1925 P. C. 11 = 27 Bom. L. R. 713 = 85 I. C. 2 = 48 M. L. J. 236 (244).**

Joint Family—Manager—Mortgage by

AUTHORITY AS TO.
BINDING NATURE OF.
DECREE AGAINST MANAGER ON—SALE IN EXECUTION OF.
INTEREST PROVIDED BY.
INVALID MORTGAGE—VALIDITY OF, AS REGARDS MANAGER'S SHARE.
JUNIOR MEMBER.
NECESSITY FOR.
SUIT TO ENFORCE.
TERMS OF.

AUTHORITY AS TO.

———*Borrowing and terms—Authority as to—Proof of—Onus on lender as to.*

In the case of a loan to kartas, the burden of proof in the first instance rests upon the lender to show that both the borrowing and the terms were within the authority which kartas can exercise. (*Viscount Sumner.*) SUNDER MULL *v.* SATYA KINKAR SAHANA. **(1927) 55 I. A. 85 = 7 Pat. 294 = (1928) M. W. N. 242 = 27 L. W. 461 = 26 A. L. J. 364 = 9 Pat. L. T. 203 = 5 O. W. N. 400 = 47 C. L. J. 403 = 32 C. W. N. 657 = 108 I. C. 337 = 30 Bom. L. R. 793 = I. L. T. 40 Pat. 120 = A. I. R. 1928 P. C. 64 = 54 M. L. J. 427.**

———*Extent of.*

The authority of kartas to borrow on the security of family property is a limited one. (*Viscount Sumner.*) SUNDER MULL *v.* SATYA KINKAR SAHANA. **(1927) 55 I. A. 85.**

———*Reasonable commercial terms—Borrowing upon—Authority limited to.*

The manager has authority to borrow upon reasonable commercial terms, and the mortgage by him stands as good security to that extent, but all terms of the mortgage in excess of that necessity are outside the scope of the authority.

In a case in which the mortgage bond provided for interest at the rate of 18 per cent. per mensem, with provision for half-yearly rests, and a further penalty in the event of default, their Lordshsips, acting on the above principle, *held* that the High Court was right in allowing only simple interest at 18 per cent. per annum. (*Lord Phillimore.*) MANNA LAL *v.* KARU SINGH. **(1919) 13 L. W. 652 (656-7) = 1 Pat. L. T. 6 = 56 I. C. 766 = 39 C. L. J. 256.**

———*Reasonable commercial terms in L. R. 46 I. A. 145—Meaning of.*

The words "to borrow upon reasonable commercial terms" in the judgment of Lord Phillimore in L. R. 46 I. A. 145 are simply used in contradistinction to such terms as would

HINDU LAW—(*Contd.*)

Joint Family—Manager—Mortgage by—(*Contd.*)

AUTHORITY AS TO—(*Contd.*)

be in excess of the necessity and therefore in excess ot the authority. Excess of the necessity of course relates to terms that are available, because, if you must borrow and therefore must pay interest, it cannot be in excess of the authority on that occasion to pay the terms that are necessary, when more moderate terms are not available. "Commercial terms" is obviously a relative expression. They are relative to the time and the place, the country and the part of the country, where the money is borrowed, the kind of security that is offered for the loan, the possibilities of realising such security, the supply of capital and the opportunities of finding persons willing to lend for possibly a considerable time. They cannot be confined, as in this country they might be confined, to something connected with a publicly announced and official rate of interest for loans generally, or to a current rate generally allowed upon the highest security in financial transactions, such as an issue of debentures, or to something regulated by the day to day supply of money and by facilities for short loans. Their Lordships think that the word "commercial" must be understood, in a case like this, of a community, which is not a commercial community, and of transactions which no one would call mercantile, as a comprehensive but convenient term for such terms as can be arranged freely between borrower and lender under the circumstances of the particular case. (*Viscount Sumner.*) SUNDER MULL *v.* SATYA KINKAR SAHANA.
(1927) 55 I. A. 85 = 7 Pat. 294 = (1928) M. W. N. 242 = 27 L. W. 461 = 26 A. L. J. 364 = 9 Pat. L. T. 203 = 5 O. W. N. 400 = 47 C. L. J. 403 = 32 C. W. N. 657 = 108 I. C. 337 = 30 Bom. L.R. 793 = I.L.T. 40 Pat. 120 = A. I. R. 1928 P. C. 64 = 54 M. L. J. 427.

BINDING NATURE OF.

———*Concurrence of adult members—Mortgage with—Binding nature of, against all—Mithakshara family.*

The karta of an undivided Mithakshara family, with the concurrence of the adult members of the family, can mortgage family property for family purposes in case of necessity, so as to charge the property against all the members of the family (169). (*Sir Arthur Wilson.*) GHARIB-UL-LAH *v.* KHALAK SINGH. **(1903) 30 I. A. 165 = 7 C.W.N. 681 = 25 A. 407 (415) = 5 Bom. L. R. 478 = 8 Sar. 483.**

———*Conditions.*

A mortgage by the manager of a joint Hindu family will only be good so as to bind family property if it was effected to meet necessary expenses, or as it is otherwise expressed for joint family purposes. (*Lord Phillimore.*) MANNA LAL *v.* KARU SINGH. **(1919) 13 L. W. 652 (653) = 1 Pat. L. T. 6 = 56 I. C. 766 = 39 C L. J. 256.**

———*Question as to—Decision of—Basis proper of—Onus of proof—Evidence actually adduced in the case.*

There can be no doubt that when a case does not rest upon burden of proof alone, that is to say, where evidence has actually been given, attention must be paid in the first instance to what the witnesses have said and what evidence has been adduced. If that is credible and acceptable, further questions may never arise, for it may establish the necessary proposition that the transaction in the form which it took was not in excess of the Karta's authority. (*Viscount Sumner.*) SUNDUR MULL *v.* SATYA KINKAR SAHANA.
(1927) 55 I.A. 85 = 7 Pat. 294 = (1928) M. W. N. 242 = 27 L.W. 461 = 26 A.L.J. 364 = 9 Pat. L.T. 203 = 5 O.W.N. 400 = 47 C.L.J. 403 = 32 C.W.N. 657 = 103 I.C. 337 = 30 Bom. L.R. 793 = I.L.T. 40 Pat. 120 = A.I.R. 1928 P.C. 64 = 54 M.L.J. 427.

HINDU LAW—(*Contd.*)

Joint Family—Manager—Mortgage by—(*Contd.*)

DECREE AGAINST MANAGER ON—SALE IN EXECUTION OF.

———*See* UNDER HINDU LAW—JOINT FAMILY—MANAGER—DECREE AGAINST.

INTEREST PROVIDED BY.

———*Compound interest—Stipulation for—Validity of—No hard and fast rule as to—Validity dependent upon evidence in, and circumstances of, each case.*

In this case it was contended that the Board had in (1) L.R. 46 I.A. 145; (2) L.R. 50 I.A. 14; and (3) L.R. 51 I.A. 278, ruled that compound interest was in excess of the Karta's powers regardless of the evidence in and of the facts and circumstances of each particular case and ought not therefore to be enforced notwithstanding that the evidence in the case showed that the terms on which the loan in question was obtained were reasonable and proper terms in the circumstances of the case.

Held, over-ruling the contention, that the decisions relied upon did not lay down any such hard and fast rule. (*Viscount Sumner.*) SUNDER MULL *v.* SATYA KINKAR SAHANA. **(1927) 55 I.A. 85 = 7 Pat. 294 = (1928) M.W.N. 242 = 27 L.W. 461 = 26 A.L.J 364 = 9 Pat. L.T. 203 = 5 O.W.N. 400 = 47 C.L.J. 403 = 32 C.W.N. 657 = 108 I.C. 337 = 30 Bom. L.R. 793 = I.L.T. 40 Pat. 120 = A.I.R, 1928 P.C. 64 = 54 M.L.J. 427.**

———*Compound interest or compound interest with rests—Stipulation for — Not necessarily invalid—Circumstances of lending taken as a whole real test of validity.*

The question of compound interest cannot be regarded as entirely separable from the rate of interest. Compound interest at a moderate rate may not necessarily be oppressive and similarly compound interest with infrequent rests may not be oppressive, while compound interest coupled with a high rate of interest and with frequent rests might be in excess of any authority which the Kartas could have. The whole conditions and terms of the lending have to be regarded together. There is uo rule, which their Lordships can discover, which binds them, when the terms of a loan are challenged, to lean to their reduction, or to presume that simple interest must always be judicially preferable to compound interest, or that rates, because they might seem high here, must be unreasonable in India. Compound interest is common and may often be necessary and proper in India under the circumstances of that country. The matter is not one upon which, one way or the other, their Lordships' Board has ever decided that there is a presumption one way. (*Viscount Sumner.*) SUNDER MULL *v.* SATYA KINKAR SAHANA. **(1927) 55 I.A. 85 = 7 Pat. 294 = (1928) M.W. N. 242 = 27 L.W. 461 = 26 A.L.J. 364 = 9 Pat. L.T. 203 = 5 O.W.N. 400 = 47 C L.J 403 = 32 C.W.N. 657 = 108 I,C. 337 = 30 Bom. L.R. 793 = I.L.T. 40 Pat. 120 = A.I.R. 1928 P.C. 64 = 54 M.L.J. 427.**

———*Compound interest at 15 per cent. per annum with annual rests—Necessity for—Proof of—Evidence.*

The suit was to enforce a mortgage bond executed by the karta of a joint Hindu family for a principal sum of Rs. 12,000, with compound interest at 15 per cent. per annum with yearly rests. No question was raised by the other members as to the necessity for the borrowing itself. The only question was as to the necessity for the terms, namely, the rate of interest and the rests and the compound interest.

The evidence adduced by the mortgagee, which was uncontradicted, was to the effect that the loan in question was raised to clear off prior mortgages which had been entered

HINDU LAW—(*Contd.*)

Joint Family—Manager—Mortgage by—(*Contd.*)

Interest provided by—(*Contd.*)

into in the previous two or three years with a local bank on even more onerous terms, that is, on compound interest at a rate higher than 15 per cent. with six-monthly rests.

The Courts below concurrently found that the interest and the terms of the loan were brought within the karta's authority as being such terms as it was reasonable and proper for him to incur at the time and under the circumstances, for the purpose of obtaining the loan.

The argument before the Privy Council was that such evidence as the mortgagee gave, even if a *prima facie* discharge of the onus on him, ought to be disregarded in view of the decisions of the Privy Council in (1) L.R. 46 I.A. 145; (2) L.R. 50 I.A. 14; (3) L.R. 51 I.A. 278; the contention being that the Board had in those three cases ruled that compound interest was in excess of the karta's powers regardless of the evidence in and of the facts and circumstances of each particular case and ought therefore not to be enforced, notwithstanding that the evidence in the case showed that the terms on which the loan in question was obtained were reasonable and proper terms in the circumstances of the case.

Held, overruling the contention, that the decisions relied on did not lay down any such hard and fast rule, and that, in view of the evidence that was given in the case, enough was proved to discharge the onus of proof on the mortgagee, and to justify a decree in favour of the mortgagee when no evidence in answer was given. (*Viscount Sumner.*) SUNDER MULL *v.* SATYA KINKAR SAHANA.

(1927) 55 I.A. 85 = 7 Pat. 294 = 1928 M.W.N. 242 = 27 L.W. 461 = 26 A.L.J. 364 = 9 Pat. L.T. 203 = 5 O.W.N. 400 = 47 C.L.J. 403 = 32 C.W.N. 657 = 108 I.C. 337 = 30 Bom. L.R. 793 = I.L.T. 40 Pat. 120 = A.I.R. 1928 P.C. 64 = 54 M.L.J. 427.

———3 *per cent. per month with three monthly rests—No necessity for—Interest proper to be awarded in case of.*

In a suit to enforce against a Hindu son a mortgage bond executed by his father and providing for interest at 3 per cent. per month with three monthly rests, the mortgage on the terms stipulated for was found to be not justified by necessity. The Sub-Judge accordingly allowed simple interest at the rate of 1 per cent. per mensem as a fair commercial rate in the absence of special circumstances justifying a higher rate.

Their Lordships restored his decree. (*Lord Parmoor.*) RAM BUJHAWAN PROSAD SINGH *v.* NATHU RAM.

(1922) 50 I.A. 14 (21) = 2 P. 285 = 4 Pat L.T. 29 = 32 M.L.T. 129 = 38 C.L.J. 25 = 1923 M.W.N. 382 = 1 Pat. L.R. 445 = 18 L.W. 767 = 25 Bom. L.R. 568 = 28 C.W.N. 446 = A.I.R. 1923 P.C. 37 = 71 I.C. 933 = 44 M.L.J. 615.

———*Rate of—Necessity for—Absence of—Plea of—Plea of no legal necessity to execute mortgage document if covers.*

Where in a suit upon a mortgage bond executed by the manager of a joint Hindu family, the other members of the family pleaded by their written statement that the property was ancestral property and that there had been no legal necessity to execute the document sued upon, *held* that on such a plea it was open for the defendants, while admitting the necessity to borrow the principal, to contend that the rate of interest was unnecessarily high. (*Lord Phillimore.*) NAZIR BEGAM *v.* RAO RAGUNATH SINGH.

(1919) 46 I A. 145 (148) = 41 A. 571 (575) = 23 C.W.N. 700 = 26 M.L.T. 40 = 17 A.L.J. 591 = 21 Bom. L.R. 484 = 30 C.L.J. 86 = 11 L.W. 188 = 1919 M.W.N. 498 = 50 I.C. 434 = 36 M.L.J. 521.

HINDU LAW—(*Contd.*)

Joint Family—Manager—Mortgage by—(*Contd.*)

Interest provided by—(*Contd.*)

———*Rate of—Necessity for—Absence of—Plea of—Plea of no necessity for loan and that property is not liable for payment of amount claimed if covers—Plea in addition of stipulation for interest being of nature of penalty—Effect.*

A plea of no necessity for a loan raised by the manager of a joint Hindu family on the security of joint family property, and that the property is not at all liable for the payment of the amount claimed, opens the door for a defendant to say that the rate of interest is excessive, and places on the plaintiff (mortgagee) the onus of proving that the rate of interest is not excessive, having regard to all the circumstances which prevailed when the loan was made. The defendant in such a case does not lose his right to raise this defence by adding the additional plea that, apart from the conditions which attach when a karta mortgages the joint property, the stipulation in the bond for payment of interest, and compound interest, is in itself penal and unconscionable (22). (*Lord Parmoor.*) RAM BUJHAWAN PROSAD SINGH *v.* NATHU RAM. **(1922) 50 I.A. 14 = 2 P. 285 = 4 Pat. L.T. 29 = 32 M.L.T. 129 = 38 C.L.J. 25 = 1923 M.W.N. 382 = 1 Pat. L.R. 445 = 18 L.W. 767 = 25 Bom. L.R. 568 = A.I.R 1923 P.C. 37 = 28 C.W.N. 446 = 71 I.C. 933 = 44 M.L.J. 615.**

———*See also* HINDU LAW—WIDOW—MORTGAGE BY—INTEREST PROVIDED BY—RATE OF—NECESSITY FOR—ABSENCE OF—PLEA OF.

(1924) 51 I.A. 278 (279-81) = 5 P. 19.

———*Rate of—Necessity for—Mortgagee's failure to prove—His rights in case of.*

Where a mortgagee of an ancestral joint family property proves that there was legal necessity for borrowing the principal sum, but fails to prove that there was necessity to borrow at the rate of interest contained in the mortgage deed, it follows that there was necessity and, in virtue of that necessity, authority to borrow upon reasonable commercial terms, and that the mortgage stands as good security to that extent, but that all the terms of the mortgage in excess of the necessity are outside the scope of the authority. (*Lord Parmoor.*) RAM BUJHAWAN PROSAD SINGH *v.* NATHU RAM. **(1922) 50 I.A. 14 (19-20) = 2 P. 285 = 4 Pat. L.T. 29 = 32 M.L.T. 129 = 38 C.L.J. 25 = 1923 M.W.N. 382 = 1 Pat.L.R. 445 = 18 L.W. 767 = 25 Bom. L.R. 568 = 28 C.W.N. 446 = A.I.R. 1923 P.C. 37 = 71 I.C. 933 = 44 M.L.J. 615.**

———*Rate of, and other terms of borrowing—Necessity for—Proof of—Onus on mortgagee.*

It is incumbent on those who support a mortgage made by the manager of a joint Hindu family to show not only that there was necessity to borrow, but that it was not unreasonable to borrow at some such high rate and upon such terms as are provided by the mortgage, and if it is not shown that there was necessity to borrow at that rate and upon those terms, that rate and those terms cannot stand. (1) (*Lord Phillimore.*) NAZIR BEGAM *v.* RAO RAGHUNATH SINGH. **(1919) 46 I. A. 145 (149-50) = 41 A. 571 (575-6) = 23 C. W. N. 700 = 26 M. L. T. 40 = 17 A. L. J. 591 = 21 Bom. L. R. 484 = 30 C. L. J. 86 = 11 L. W 188 = 1919 M. W. N. 498 = 50 I. C. 434 = 36 M. L. J. 521.**

———and (2) (*Lord Phillimore.*) MANNA LAL *v.* KARU SINGH. **(1919) 13 L. W. 652 (656-7) = 1 Pat. L. T. 6 = 56 I. C. 766 = 39 C. L. J. 256.**

———*Rate of, and other terms of borrowing—Reasonableness and propriety of—Decision of Indian Courts as to—Privy Council's interference with—Decision reducing terms—Decision maintaining them—No distinction between.*

HINDU LAW—(*Contd.*)

Joint Family—Manager—Mortgage by—(*Contd.*)

Interest provided by- (*Contd.*)

In cases in which the question arises as to the terms of borrowing and rates of interest, which would be within the authority of the Karta of a joint Hindu family, the Board will not presume in default of evidence to lay down for itself that judicial notice should be taken of the terms of borrowing and rates of interest, which would be within the authority of the Karta, but will be content, in each case, to accept the decision of the local Court as being at any rate better informed on such a subject than their Lordships can be. The importance of the experience of the Indian Court in supplying their Lordships' lack of knowledge is equally great, whether that Court reduces the terms of the loan or maintains them. There is no rule which binds their Lordships, when the terms of a loan are challenged, to lean to their reduction, or to presume that simple interest must always be judicially preferable to compound interest, or that rates, because they might seem high here, must be unreasonable in India. (*Viscount Sumner.*) SUNDER MULL *v.* SATYA KINKAR SAHANA. **(1927) 55 I. A. 85 = 7 Pat. 294 = 1928 M. W. N. 242 = 27 L. W. 461 = 26 A. L. J. 364 = 9 Pat. L. T. 203 = 5 O. W. N. 400 = 47 C. L. J. 403 = 32 C. W. N. 657 = 108 I. C. 337 = 30 Bom. L. R. 793 = I. L. T. 40 Pat. 120 = A. I. R. 1928 P. C. 64 = 54 M. L. J. 427.**

———*Rate of, and other terms of borrowing—Reasonableness and propriety of—Evidence of—Borrowing on similar onerous terms under other instruments—Evidence of—Admissibility.*

The Privy Council in L.R. 51 I. A. 278 did not lay down the rule that, where a borrower has previously borrowed under other instruments, but on similar onerous terms, this cannot be evidence that the borrowing on the occasion in question was a reasonable and proper transaction. (*Viscount Sumner.*) SUNDER MULL *v.* SATYA KINKAR SAHANA. **(1927) 55 I. A. 85 = 7 Pat. 294 = 1928 M. W. N. 242 = 27 L. W. 461 = 26 A. L. J. 364 = 9 Pat. L. T. 203 = 5 O. W. N. 400 = 47 C. L. J. 403 = 32 C. W. N. 657 = 108 I. C. 337 = 30 Bom. L. R. 793 = I. L. T. 40 Pat. 120 = A. I. R. 1928 P. C. 64 = 54 M. L. J. 427.**

———*Rate of, in excess of ordinary commercial terms—Necessity for—Onus on mortgagee to prove.*

In a suit to enforce a mortgage of ancestral joint family property made by the manager of a joint Hindu family, the onus of establishing that there was a necessity to pay a rate of interest in excess of the ordinary commercial terms is on the plaintiff. (*Lord Parmoor.*) RAM BUJHAWAN PROSAD SINGH *v.* NATHU RAM. **(1922) 50 I. A. 14 (21) = 2 P. 285 = 4 Pat. L. T. 29 = 32 M. L. T. 129 = 38 C. L. J. 25 = 1923 M. W. N. 382 = 1 Pat. L. R. 445 = 18 L. W. 767 = 25 Bom. L. R. 568 = 28 C. W. N. 446 = A. I. R. 1923 P. C. 37 = 71 I. C. 933 = 44 M. L. J. 615.**

———*Rate of—Reduction of, on ground of absence of necessity for same—Power of Court—Discretion of High Court—Interference by Privy Council with.*

In a suit upon a mortgage bond executed by the manager of a joint Hindu family, it is open to the Court to find that a mortgage upon the terms of the suit document, the lands charged being of such value as to make the security ample, was an unnecessary extravagance, and to make a decree allowing a reduced rate. What in such a case the particular rate of interest should be, and whether the money could have been borrowed at simple, instead of compound, interest are matters of detail upon which the High Court with its local knowledge can well be left to decide, and their Lordships would not be disposed to interfere with its decision upon such points. (*Lord Phillimore.*) NAZIR BEGAM *v.* RAO RAGHUNATH SINGH. **(1919) 46 I. A. 145 (149-50) = 41 A. 571 (575-7) = 23 C. W. N. 700 = 26 M. L. T. 40 = 17 A. L. J. 591 = 21 Bom. L. R. 484 = 30 C. L. J. 86 = 11 L. W. 188 = 1919 M. W. N. 498 = 50 I. C. 434 = 36 M. L. J. 521.**

HINDU LAW—(*Contd.*)

Joint Family—Manager—Mortgage by—(*Contd.*)

Interest provided by—(*Contd.*)

INVALID MORTGAGE—VALIDITY OF, AS REGARDS MANAGER'S SHARE.

——— Bengal and N. W. Provinces—Mitakshara Law in. *See* HINDU LAW—JOINT FAMILY—FATHER—MORTGAGE BY—INVALID MORTGAGE—VALIDITY OF, ETC.

JUNIOR MEMBER.

———*Binding character of mortgage on—Evidence of—Mortgage deed subsequent by junior members to mortgagee—Statement in, that property had already been mortgaged to mortgagee.*

A mortgage deed, to which the defendants, the junior members of a joint Hindu family, were parties, stated that the whole of their ancestral property was already mortgaged to the plaintiff. The mortgage deed to the plaintiff was executed, while the defendants were minors, by the manager of the family.

Semble: the statement in the second deed might be evidence against the defendants that the mortgage to the plaintiff was binding upon them, and that it included the entire property mortgaged, and not merely the mortgagor's share therein (192-3). (*Sir Barnes Peacock.*) DOULAT RAM *v.* MEHR CHAND. **(1887) 14 I. A. 187 = 15 C. 70 (77) = 5 Sar. 84 = 1 P. R. 1888.**

———*Binding character of mortgage on—Mortgage for discharge of debts binding on junior member but executed as sole proprietor—Statement in deed that executant was in ancestral possession of mortgaged property.*

In a mortgage bond deed executed by the managers of a joint Hindu family, the mortgagors stated that they held ancestral possession of the mortgaged property, that it was purchased and built by them and that they owned it to the exclusion of every one else. The debt for which the bond was executed was stated in the bond to be a debt due by the firm, the proprietors of which were the executants of the bond and the other members of the joint family.

Held, that though the mortgagors stated that they were the sole proprietors, the statement that they were in ancestral possession showed that they intended to mortgage the whole of what they held as ancestral property, and that the mortgage passed the whole of the property which they professed to mortgage (191-2). (*Sir Barnes Peacock.*) DOULAT RAM *v.* MEHR CHAND. **(1887) 14 I. A. 187 = 15 C. 70 (77) = 5 Sar. 84 = 1 P. R. 1888.**

———*Binding character of mortgage on—Mortgage for discharge of father's debts but executed not as manager of joint Hindu family but as absolute owner of impartible estate.*

A mortgage deed purported to have been made between Sheoraj, mortgagor, of the first part, Maharaj, his only brother, of the second part, and the Bank of Upper India, Ltd., of the third part. Sheoraj was the sole mortgagor, and by the deed of mortgage, he, declaring himself to be absolute owner in possession of the property comprised in the deed and that there was no sharer in the said property, purported to mortgage the same to the Bank. Maharaj was not a mortgagor, nor did it appear by the mortgage deed that he had any proprietary interest in the mortgaged property or was obtaining any benefit from the loan to his brother.

HINDU LAW—(*Contd.*)

Joint Family—Manager—Mortgage by—(*Contd.*)

Junior member—(*Contd.*)

Maharaj, who was a minor at the date of the mortgage deed, was made a party thereto in order that the fact of his having signed the deed might afford evidence that he had assented to the taking of the loan by his brother and the granting of the mortgage (113).

The property comprised in the mortgage deed was in fact the ancestral property of the joint Hindu family which at the date of the mortgage consisted of Sheoraj and Maharaj; and the amount advanced under the mortgage was borrowed by Sheoraj to discharge the debts which had been contracted by their father and was applied by Sheoraj to the discharge of those debts. It appeared, however, that Sheoraj, after the death of his father, assumed without authority title of Raja, and asserted that the family estate was impartible, and as an impartible estate had descended to him as the elder son of his father, and that his brother Maharaj was entitled only to maintenance, and that it was in that assumed position as the absolute owner of an impartible estate, and not as manager of a joint Hindu family, that he obtained the loan from the Bank, and made the mortgage in favour of the Bank.

Held, that as Sheoraj did not make the mortgage as manager of a joint Hindu family but made it as the absolute owner of an impartible estate and the Bank took it from him as such owner, and as the discharge of the father's debts by Sheoraj with the money raised by the mortgage was made by him in his own interests, and not as representing Maharaj, the latter's interest in the mortgaged property was not liable for the mortgage debt (117-8). (*Sir John Edge.*) BALWANT SINGH *v.* CLANCY.

(1912) 39 I. A. 109 = 34 A. 296 (302 3) = 1912 M.W.N. 462 = 11 M. L. T. 344 = 9 A. L. J. 509 = 15 C.L. J. 475 = 16 C. W. N. 577 = 14 Bom. L. R. 422 = 14 I. C. 629 = 23 M. L. J. 18.

———*Minor member—Validity of mortgage against—Certificate of guardianship of minor's property—Person obtaining—Joint execution of deed by, without sanction of court—Effect.*

A mortgage deed in respect of the property of an undivided Mitakshara family was executed by *K* and *J*, the adult members of the family, and by Mussumat *L*, as guardian of the third member, who, on the face of the mortgage deed appeared to be a minor. *K* was admittedly the Karta of the joint family. It appeared that Mussumat *L* had obtained a certificate of guardianship (presumably of property) as regards the minor member. The mortgage was executed for purposes which would make it binding on all the members of the family.

In a suit brought to enforce the mortgage, it was contended that the mortgage was mortgage of a guardian, and that, inasmuch as Mussumat *L*, had not admittedly obtained the sanction of the court for making the mortgage, it was invalid for want of such sanction. The High Court in India upheld that contention.

Held, that the view of the High Court was wrong (170). Their Lordships think that the mortgage under consideration was not a mortgage by the guardian, assuming the mother to have been a guardian, but a mortgage by the family, entered into by the karta of the family with the concurrence of *J*, the only other adult member of the family (170). (*Sir Arthur Wilson.*) GHARIB-UL-LAH *v.* KHALAK SINGH. **(1903) 30 I. A. 165 = 25 A. 407 (416-7) = 7 C. W. N. 681 = 5 Bom. L. R. 478 = 8 Sar. 483.**

———*Personal liability of, for portion of mortgage money not advanced for necessity—Member of full age under Hindu law, though not under Act IX of* 1875, *joining in execution of deed as being of full age.*

HINDU LAW—(*Contd.*)

Joint Family—Manager—Mortgage by—(*Contd.*)

Junior member—(*Contd.*)

A mortgage of the property of an undivided Mitakshara family was executed by *K*, the then karta of the family, *J*, and *L*, as the mother and guardian of a minor member. It appeared that *L* had been appointed guardian of *J* also, with the possible result that he was also a minor by reason of Act IX of 1875, S. 3, at the time of the mortgage. But he was at that time of full age according to the general Hindu law, and he executed the mortgage himself as a person of full age. He was of full age at the date of the suit brought to enforce the mortgage. Necessity was not established for a portion of the mortgage money.

Held, that the onus was on *J* to shew the grounds, if any, for exempting him from liability, and that he, having failed to do so, was liable personally for the portion of the mortgage money not shown to have been advanced for binding purposes (170-1). (*Sir Arthur Wilson.*) GHARIB-UL-LAH *v.* KHALAK SINGH. **(1903) 30 I. A. 165 = 25 A. 407 (416-7) = 7 C. W. N. 681 = 5 Bom. L.R. 478 = 8 Sar. 483.**

NECESSITY FOR.

———Borrowing and terms—Necessity for—Proof of—Onus on mortgagee. *See* HINDU LAW—JOINT FAMILY—MANAGER—MORTGAGE BY—AUTHORITY AS TO—BORROWING AND TERMS. **(1927) 55 I. A. 85 = 7 Pat. 294.**

———Interest stipulated for, in mortgage—Necessity for. *See* HINDU LAW—JOINT FAMILY—MANAGER—MORTGAGE BY—INTEREST PROVIDED BY.

———Interest at rate stipulated for—Necessity for—Absence of—Plea of—What amounts to. *See* HINDU LAW—JOINT FAMILY—MANAGER—MORTGAGE BY—INTEREST PROVIDED BY—RATE OF—NECESSITY FOR—ABSENCE OF.

———Interest at rate stipulated for and other terms of borrowing—Necessity for—Reasonableness and propriety of. *See* HINDU—LAW—JOINT FAMILY—MANAGER—MORTGAGE BY—INTEREST PROVIDED BY—RATE OF, AND OTHER TERMS OF BORROWING.

———*Partial necessity—Proof only of—Decree in case of, in suit brought to enforce mortgage.*

In a suit to enforce a mortgage of joint estate made by the manager, the mortgagee, on whom the burden of proving the necessity for the mortgage rested, adduced evidence which showed necessity for raising only a portion of the amount secured by the mortgage.

Held, that the High Court was perfectly right in deciding that the security stood to the limited extent only of the necessity proved (176). (*Lord Buckmaster.*) ANANT RAM *v.* COLLECTOR OF ETAH. **(1917) 40 A. 171 = 1918 M. W. N. 446 = 7 L. W. 323 = 23 M. L. T. 228 = 16 A. L. J. 245 = 22 C. W. N. 484 = 27 C. L. J. 363 = 4 Pat. L. W. 226 = 20 Bom. L. R. 524 = 44 I. C. 290 = 34 M. L. J. 291.**

———*Proof of—Onus on mortgagee.*

In a suit to enforce as against joint family property of a Mitakshara family a mortgage of that property made by its karta (or manager) the burden of proving necessity for the mortgage is on the mortgagee (656). (*Lord Phillimore.*) MANNA LAL *v.* KARU SINGH.

(1919) 13 L. W. 652 = 1 Pat. L. T. 6 = 56 I. C. 766 = 39 C. L. J. 256.

———In a suit brought to enforce a mortgage executed by the manager of a joint Hindu family the onus is on the plaintiff to establish legal necessity in order to bind the joint family by the acts of the manager. The principle

HINDU LAW—(*Contd.*)

Joint Family—Manager—Mortgage by—(*Contd.*)

Necessity for—(*Contd.*)

applicable to a case where it is sought to bind the joint family by the acts of the managing member has been clearly enunciated in the case of Hunoomanpersaud Panday. (*Mr. Ameer Ali.*) GAJADHAR MAHTON *v.* AMBIKA PRASAD TEWARI. **(1925) 47 A. 459 = 41 C. L. J. 450 = 27 Bom. L. R. 853 = 22 L. W. 306 = A. I. R. 1925 P. C. 169 = 1925 M. W. N. 532 = 87 I. C. 292 = 49 M. L. J. 238.**

———*Proof of—Onus on mortgagee—Evidence required.*

A mortgage of joint estate made by the manager of the property, who is not the father of the other members of the joint family, can only be justified so far as it is wanted for the joint family purposes. If the necessity cannot be established by direct evidence it may be assumed, if it can be shown that reasonable care was taken to ascertain if such circumstances existed and the transferee acted in good faith (S. 38 of the Transfer of Property Act). In either case the burden of proof lies on the person who claims the benefit of the mortgage. There is no difference between the burden of proof when it is desired to support a mortgage made by a manager of a joint estate and that which is required to support the mortgage made, for example, by a widow who has only a similar limited power of disposition. The burden of proving that such dispositions were lawful rests upon the persons who seek to claim benefits under them (175-6). (*Lord Buckmaster.*) ANANT RAM *v.* COLLECTOR OF ETAH. **(1917) 40 A. 171 = 1918 M. W. N. 446 = 7 L. W. 323 = 23 M. L T. 228 = 16 A. L. J. 245 = 22 C. W. N. 484 = 27 C. L. J. 363 = 4 Pat. L. W. 226 = 20 Bom. L. R. 524 = 44 I. C. 290 = 34 M. L. J. 291.**

SUIT TO ENFORCE.

———Decree in. *See under* HINDU LAW — JOINT FAMILY—MANAGER—DECREE AGAINST.

———*Personal decree against manager in—Claim to—Privy Council appeal—Maintainability for first time in.*

In a suit brought to enforce a mortgage executed by the manager of a joint Hindu family, neither in the plaint nor in either of the courts below, nor in the grounds of appeal to the Privy Council, nor even in the case as originally lodged by the mortgagee, did he pray for a decree against the manager (the executant of the mortgage) on his personal covenant, in the event of the mortgage being found to be unenforceable as such. At the hearing of the Privy Council appeal for the first time the mortgagee claimed for a simple money decree against the manager.

Held that, under the circumstances, the claim could not be entertained. (*Mr. Ameer Ali.*) GAJADHAR MAHTON *v.* AMBIKA PRASAD TEWARI. **(1925) 47 A. 459 = 41 C. L. J. 450 = 27 Bom. L. R. 853 = 22 L. W. 306 = A. I. R. 1925 P. C. 169 = 1925 M. W.N. 532 = 87 I. C. 292 = 49 M. L. J. 238.**

TERMS OF.

———Interest at rate stipulated for and other terms—Necessity for—Reasonableness and propriety of. *See* HINDU LAW—JOINT FAMILY—MANAGER—MORTGAGE BY—INTEREST PROVIDED BY—RATE OF, AND OTHER TERMS OF BORROWING.

———Reasonable commercial terms. *See* HINDU LAW—JOINT FAMILY—MANAGER—MORTGAGE BY—AUTHORITY AS TO—REASONABLE COMMERCIAL TERMS.

Joint Family—Manager—Partition by.

———*See under* HINDU LAW—JOINT FAMILY—MANAGER—FAMILY ARRANGEMENT, ETC.

HINDU LAW—(*Contd.*)

Joint Family—Manager—Religious charity—Dedication of family property to.

———*Validity*—Inter vivos *dedication — Dedication by will—Distinction.*

The dedication by the Karta of a joint Hindu family of a portion of the family property for the purpose of a religious charity would be valid if assented to in any way, however informally, by the other members of the family. Such an appropriation may even (if the property allotted be small as compared with the total means of the family) be made by the Karta without consent. But the appropriation or alienation must be made by the manager by an act *inter vivos*, and must not be an alienation *de futuro* by will (140). (*Lord Phillimore.*) GANGI REDDI *v.* TAMMI REDDI. **(1927) 54 I. A. 136 = 50 M. 421 = 45 C. L. J. 512 = 25 A. L. J. 593 = 1927 M. W. N. 502 = 26 L.W. 139 = 31 C. W. N. 799 = 8 Pat. L. T. 681 = 29 Bom. L.R. 856 = 4 O. W. N. 482 = 101 I. C. 79 = A. I. R. 1927 P. C. 80 = 52 M. L. J. 524.**

Joint Family—Manager—Sale by.

———Contract for. *See* HINDU LAW—JOINT FAMILY—MANAGER—CONTRACT FOR SALE, ETC.

———*Necessity—Sale for—Balance of price—Failure to account for—Effect of, on validity of sale.*

Where the manager of a joint Hindu family sold part of the joint family property for Rs. 43,500, which was the full value, *held* that proof that the property had been sold for that sum to satisfy pre-existing debts to the amount of Rs. 38,400 would have been enough to support the sale without showing how the balance had been applied (216). (*Sir John Wallis.*) NIAMAT RAI *v.* DIN DAYAL. **(1927) 54 I. A. 211 = 8 Lah. 597 = 4 O. W. N. 537 = 1927 M. W. N. 453 = 25 A. L. J. 599 = 45 C. L. J. 548 = 28 Punj. L. R. 463 = 8 Pat. L.T. 647 = 26 L. W. 442 = 9 Lah. L. J 496 = 39 M. L. T. 345 = 29 Bom. L. R. 886 = 101 I. C. 373 = A. I. R. 1927 P. C. 121 = 52 M. L. J. 729.**

———*See also* HINDU LAW—JOINT FAMILY—FATHER—SALE BY—SON'S SUIT TO SET ASIDE, AND TO RECOVER PROPERTY SOLD.

———*See also* HINDU LAW—WIDOW—SALE BY—NECESSITY—SALE FOR—BALANCE OF SALE PRICE. **(1922) 16 L. W. 478 (481).**

———Unauthorised sale—Validity of, as regards manager's share—Bengal and N. W. Provinces Mitakshara—Law in. *See* HINDU LAW—JOINT FAMILY—FATHER—MORTGAGE BY—INVALID MORTGAGE—VALIDITY OF, AS REGARDS FATHER'S SHARE.

———*Unauthorised sale—Void or voidable—Mithila Law.*

The Karta of a joint Hindu family governed by the Mithila law sold a portion of the joint family property without the consent of the other members in order to raise money on his account, and not for the benefit of the family.

Semble the sale was not necessarily void, but was only voidable if objection were taken to it by the other members of the joint family (164). (*Sir Richard Couch.*) HANUMAN KAMUT *v.* HANUMAN MANDAR. **(1891) 18 I. A. 158 = 19 C. 123 = 6 Sar. 91.**

———*Validity of—Debts binding at time of negotiation for sale—Debts binding incurred subsequently but before execution of sale deed—No distinction between.*

Held that, in considering the validity of a sale of family property by the manager for discharge of debts binding on the family, the High Court erred in making a distinction between debts owing when the sale was negotiated and debts incurred subsequently but before the execution of the sale deed (216). (*Sir John Wallis.*) NIAMAT RAI *v.* DIN DAYAL. **(1927) 54 I. A. 211 = 8 Lah. 597 = 4 O. W. N 537 = 1927 M. W. N. 453 =**

HINDU LAW—(*Contd.*)

Joint Family—Manager—Sale by—(*Contd.*)

25 A. L. J. 599 = 45 C. L. J. 548 = 28 Punj. L R. 463 = 8 Pat. L. T. 647 = 26 L. W. 442 = 9 Lah. L. J. 496 = 39 M. L. T. 345 = 29 Bom. L. R. 886 = 101 I C. 373 = A. I. R. 1927 P. C. 121 = 52 M. L. J. 729.

———*Validity of—Suspicion against—Grounds for—Indemnity clause in deed containing undertaking by manager to indemnify vendee against claim by minor not a.*

A sale deed in respect of joint family property executed by the manager of the family and the mother of the minor members as their guardian contained a covenant by them both to indemnify the vendors in full should they suffer loss by reason of the minors putting forward a claim after attaining majority. The High Court regarded the insertion of that clause as a circumstance throwing suspicion on the validity of the alienation as against the minors.

Held that the clause might have been no more than a reasonable precaution against the undoubted risk that the vendors who were majors might afterwards make common cause with the vendors who were minors and endeavour by *suppressio veri* and *suggestio falsi* to get the sale set aside (214-5). (*Sir John Wallis.*) NIAMAT RAI *v.* DIN DAYAL.

(1927) 54 I. A. 211 = 8 Lah. 597 = 4 O. W. N. 537 = 1927 M. W. N. 453 = 25 A. L. J. 599 = 45 C.L.J. 548 = 28 Punj. L. R. 463 = 8 Pat. L. T. 647 = 26 L. W. 442 = 9 Lah. L. J. 496 = 39 M. L. T. 345 = 29 Bom. L. R. 886 = 101 I. C. 373 = A. I. R. 1927 P. C. 121 = 52 M. L. J. 729.

Joint Family—Manager—Self-acquisitions of.

———Bond in his name—Presumption as to. *See* HINDU LAW—JOINT FAMILY—MANAGER—BOND IN NAME OF.

(1921) 26 C. W. N. 406.

———Debt due to joint family—Purchase by manager in settlement of. *See* HINDU LAW—JOINT FAMILY—MANAGER—DEBT DUE TO JOINT FAMILY.

(1894) 21 I. A. 47 (55) = 21 C. 590 (601 2).

———*Joint Family property — Presumption—Onus of proof.*

Two brothers, who were members of a joint Hindu family, separated, but there was no regular partition of the estate. The effect of the separation was that the lands remained undivided, but each brother, being no longer a member of a joint Hindu family, took his share of the rents. The younger brother had then a large claim against the elder brother, who had been the manager of the estate, in respect of the rents and profits received previous to the partition. After a period of eleven months, the brothers re-united, and, on the re-union, a putni which had been purchased by the elder brother during the period of separation and, indeed all the properties of the brothers, were thrown into the joint fund. The brothers again separated, and the elder brother thereupon brought a suit against the younger brother for the recovery of the moiety of the price paid for the putni, on the ground that it had been advanced from out of the elder brother's private funds.

Held, that, in the absence of proof by the elder brother that the price had been paid by him from out of his private funds, he was not entitled to recover (411).

It is not even alleged upon these proceedings, that the parties originally had any separate property; the presumption of Hindu law is, that property not shown to be separate is joint; and it is an admitted fact that the plaintiff was long in the management of the joint estate, had received the collections from it, and was accountable for them to his younger brother. And if the moneys employed in the purchase of the putni formed part of those so drawn from the joint estate, it follows that the younger brother on the re-union was entitled, upon the general principles of Hindu Law, to share

HINDU LAW—(*Contd.*)

Joint Family—Manager—Self-acquisitions of—(*Contd.*)

in them, as acquisitions made by the use of the joint funds (411-2). (*Sir James Colvile.*) PRANKISHEN PAUL CHOWDRY *v.* M. PAUL CHOWDRY. **(1865) 10 M.I.A. 403 = 5 W.R. 11 = 1 Suth. 609 = 2 Sar. 164.**

———*Throwing into common stock of—Evidence of.*

The head and managing member of a joint Hindu family kept one account of the income of his ancestral and self-acquired property (obtained as a reward for services rendered to the Government in the Indian Mutiny) and treated the income of both kinds of property as one amalgamated fund. No distinction was made by him between the income derived from the different classes of property and the whole of the income was thrown into one common stock and was devoted to the expenditure of the whole of the joint family. There was nothing to indicate that he wished to or did treat the property acquired by him as his separate property. *Held*, that the property acquired by the managing member as his self-acquired property had, by his conduct, become the property of the joint family and could not be disposed of by him by will without the consent of the other members of the family. (*Sir John Edge.*) INDAR SAHAI *v.* SHAIAM BAHADUR. **(1912) 13 M. L. T. 156 = 1913 M. W. N. 122 = 17 C. L. J. 299 = 17 C.W.N. 509 = 15 Bom.L.R. 418 = 17 I.C. 760 = 25 M.L.J. 57 (59-60).**

Joint Family—Manager—Suit against.

———Capacity in — Presumption. *See* HINDU LAW—JOINT FAMILY—MANAGER—DECREE AGAINST—CAPACITY OF MANAGER IN. **(1879) 6 I. A. 233 (236-7).**

———Decree in—Sale in execution of—Effect of, against other members. *See* HINDU LAW—JOINT FAMILY—MANAGER—DECREE AGAINST.

Joint Family—Manager—Suit by—Junior members if necessary parties to.

———Contract in sole name of manager—Suit on. *See* HINDU LAW—JOINT FAMILY—BUSINESS OF—MANAGER OF FAMILY. **(1911) 38 I.A. 45 = 33 A. 272.**

Joint Family—Manager—Trade by.

———*See* HINDU LAW—JOINT FAMILY—BUSINESS OF—MANAGER OF FAMILY.

Joint Family—Manager—Will by.

———*Consent of other members to—Evidence of—Omission to deal with property bequeathed at subsequent partition between them if.*

A portion of joint family property bequeathed by will by the head and managing member of a joint Hindu family was bequeathed to the widow of a deceased member of the family to enure for her life. She would under the Hindu law have been entitled to maintenance from out of the joint family property. At a partition made after the death of the manager between the surviving members of the family the property bequeathed to the said widow was not dealt with. From that circumstance it was sought to draw the inference that the will of the managing member was made with the consent of the family.

Held, that the inference was not one which could properly be drawn.

The omission to include that property in the partition was probably owing to the reluctance of the members of the family to interfere during the widow's lifetime with what was certainly the wishes of their ancestor, the manager. It is also to be observed that the widow was entitled to maintenance. (*Sir John Edge.*) INDAR SAHAI *v.* KUNWAR SHAIAM BAHADUR. **(1912) 13 M. L. T. 156 = 1913 M.W.N. 122 = 17 C. L. J. 299 = 17 C.W.N. 509 = 15 Bom. L. R. 418 = 17 I.C. 760 = 25 M. L. J. 57 (60).**

HINDU LAW—(*Contd.*)

Joint Family—Manager—Will by.

——*—Consent of other members to—Indication usual of—Recital of consent in body of will- Attestation of will by them.*

Their Lordships agree with the opinion of the High Court that had the making of the will (by the head and managing member of the joint family) been assented to by the other members of the joint family, the fact that they consented would have been mentioned in the body of the will, and their signatures to it would have been obtained as attesting witnesses. (*Sir John Edge.*) INDAR SAHAI *v.* KUNWAR SHAIAM BAHADUR.

(1912) 13 M. L. T. 156 = 1913 M.W.N. 122 = 17 C. L. J. 299 = 17 C.W.N. 509 = 15 Bom. L. R. 418 = 17 I. C. 760 = 25 M. L. J. 57 (61).

———*Consent of other members to—Onus of proof of.*

Where it was alleged that a will by the head and managing member of a joint Hindu family bequeathing joint family property was valid because it was made with the consent of the other members of the family, *held*, that the onus of proving that it was made with such consent lay upon the party alleging it. (*Sir John Edge.*) INDAR SAHAI *v.* KUNWAR SHAIAM BAHADUR. **(1912) 13 M.L.T. 156 = 1913 M.W.N. 122 = 17 C. L.J. 299 = 17 C.W. N 509 = 15 Bom. L. R. 418 = 17 I.C. 760 = 25 M.L. J. 57 (60).**

———*Joint family property—Will bequeathing—Validity.*

A disposition by will of joint family property by the head and managing member of a joint Hindu family is invalid if it is not made by him with the consent of the other members of the family. (*Sir John Edge.*) INDAR SAHAI *v.* KUNWAR SHAIAM BAHADUR. **(1912) 13 M.L.T. 156 = 1913 M. W. N. 122 = 17 C. L. J. 299 = 17 C. W. N. 509 = 15 Bom. L. R. 418 = 17 I. C. 760 = 25 M. L. J. 57 (61).**

Joint Family—Manager—Zemindary land of family—Creation of new Zirat land out of.

——*—Validity of.*

S was the head of a joint Hindu family of Zemindars, governed by the Mitakshara law. He executed, what was loosely called, a deed of gift in favour of his only son, *R*. There were other members of the family beside *S* and *R*. By that deed he recited that among other family properties there was an 8 annas share in Mouzah *N* and he conveyed by gift to his son all his rights and interests in that and other properties and then declared that—

"400 rupees per month . . . shall continue to be paid to me .... for defraying the expenses of the maintenance of me, the declarant, and for meeting my personal expenses, and, over and above that, 150 bighas of land by measurement, situate in Mouzah *P*, or in any other Mouzah, shall remain in my possession and occupancy as Zirat land, and the measurement and the demarcation of the boundaries thereof shall be made as soon as possible, and the said land shall be held by me in my possession as Zirat without paying any rent therefor."

Quaere, whether *S* had, as head of a joint family, any right to make such an arrangement, although no separation of the family had taken place, nor had its properties been divided, or to create a new Zirat land out of that which had been theretofore merely part of the Zemindary land of his family. (*Lord Sumner.*) THAKUR SRI RADHA KRISHNA *v.* RAM BAHADUR. **(1917) 23 M. L. T. 26 = 16 A. L. J. 33 = 7 L. W. 149 = 27 C. L. J. 191 = 22 C W.N. 330 = 1918 M.W.N. 163 = 4 P. L. W. 9 = 20 Bom. L.R. 502 = 43 I. C. 268 = 34 M.L.J. 97 (100).**

HINDU LAW—(*Contd.*)

Joint Family—Member of.

ADJUDICATION AS INSOLVENT OF.
ALIENATION BY.
BUSINESS CARRIED ON BY.
CHARITY—DEDICATION OF JOINT PROPERTY TO.
CONFIRMATION OF RIGHT AS MEMBER OF JOINT FAMILY OR PARTITION — SUIT FOR — MESNE PROFITS—RIGHT TO.
CONVERSION TO MAHOMEDANISM OF.
DEBT PERSONAL OF—DECREE FOR, AGAINST HIS WIDOW AS LEGAL REPRESENTATIVE—SALE OF HIS SHARE IN JOINT FAMILY PROPERTY IN EXECUTION OF.
DECEASED MEMBER—SHARE OF, IN JOINT PROPERTY—SUIT BY ONE OF SURVIVING MEMBERS TO RECOVER HIS SHARE OF.
DECREE FOR OR AGAINST.
DEVOLUTION OF SHARE OF, IN JOINT FAMILY PROPERTY.
ELDEST MEMBER.
ENDOWMENT DEED EXECUTED BY—BENAMI OR NOT.
FAMILY ARRANGEMENT BY.
FORFEITURE AGAINST—DECLARATION OF.
GIFT BY.
GREAT-GRANDSON IF A.
JOINT FAMILY PROPERTY.
LEASE IN FAVOUR OF A—CONFISCATION OF, UNDER BENGAL REGN. XI OF 1796.
MARRIAGE EXPENSES OF—PROVISION FOR.
MINOR MEMBER—GUARDIAN OF INTEREST OF, IN JOINT FAMILY PROPERTY.
MORTGAGE BY.
MORTGAGE IN FAVOUR OF—PURCHASE OF MORTGAGED PROPERTY SUBSEQUENTLY BY ANOTHER MEMBER FROM A STRANGER—ADVERSE POSSESSION—PLEA BY HIM OF.
POWER OF ATTORNEY EXECUTED IN FAVOUR OF A, BY THE OTHERS—MORTGAGE BY MEMBER IN CASE OF—POWER OF.
PROPERTY IN NAME OF—CLAIM OF OTHER MEMBERS TO, ON GROUND OF ITS BEING JOINT FAMILY PROPERTY—ESTOPPEL.
PROPERTIES PURCHASED IN NAMES OF DIFFERENT STRANGERS TO FAMILY AT DIFFERENT TIMES—SUITS DIFFERENT FOR SHARES IN.
PURCHASE IN NAME OF A, WITH FAMILY FUNDS AND FUNDS OF STRANGER TO FAMILY.
REVENUE RECORDS—RECORD OF MEMBER AS SOLE PROPRIETOR OF JOINT FAMILY IN - EFFECT OF.
RIGHT AS MEMBER OF JOINT FAMILY—CONFIRMATION OF—SUIT FOR.
SALE BY.
SELF-ACQUISITIONS OF.
TRADE CARRIED ON BY.
WILL BY.

Joint Family—Member of—Adjudication as insolvent of.

———Property vesting in assignee by reason of. *See* PRESIDENCY TOWNS INSOLVENCY ACT OF 1909, Ss. 17, 2, 52—HINDU LAW—JOINT FAMILY—MEMBER OF.

(1924) 52 I. A. 22 = 6 Lah. 1.

Joint Family—Member of—Alienation by.

———*Inconsistent with strict theory of Mitakshara joint family—Right of alienation established in Madras and Bombay founded on purchaser's equity.*

HINDU LAW—(*Contd.*)

Joint Family—Member of—Alienation by—(*Contd.*)

There can be little doubt that all alienations by one co-parcener of his share in undivided property, whether voluntary or compulsory, are inconsistent with the strict theory of a joint and undivided Hindu family ; and the law as established in Madras and Bombay has been one of gradual growth, founded upon the equity which a purchaser for value has to be allowed to stand in his vendor's shoes, and to work out his rights by means of a partition (102). (*Sir James W. Colvile.*) SURAJ BUNSI KOER *v.* SHEO PROSHAD SINGH. **(1879) 6 I. A. 88 = 5 C. 148 (163-7) = 4 C. L. R. 226 = 4 Sar. 1 = 3 Suth. 589.**

———(*Sir James W. Colvile.*) LAKSHMAN DADA NAIK *v.* RAMACHANDRA DADA NAIK. **(1880) 7 I. A. 181 (195) = 5 B. 48 (62) = 7 C. L. R. 320 = 4 Sar. 173 = 3 Suth. 778.**

———Invalid alienation—Validity of, as regards alienor's share—Bengal and N. W.-P.—Mitakshara law in. *See* HINDU LAW—JOINT FAMILY—FATHER—MORTGAGE BY—INVALID MORTGAGE—VALIDITY OF, ETC.

———*Right of—Extension of, beyond decided cases—Question as to—Point for consideration in case of.*

Whenever an attempt is made to extend the doctrine of the alienability by a co-parcener of his undivided share beyond the decided cases, the question is, not so much whether an admitted principle of Hindu law shall be carried out to its apparently logical consequences, as what are the limits of an exceptional doctrine established by modern jurisprudence (195). (*Sir James W. Colvile.*) LAKSHMAN DADA NAIK *v.* RAMACHANDRA DADA NAIK. **(1880) 7 I. A. 181 = 5 B. 48 (62) = 7 C. L. R. 320 = 4 Sar. 173 = 3 Suth. 778.**

———*Right of—Extension of, to alienation by will.*

Their Lordships refused to extend the doctrine of the alienability by a co-parcener of his undivided share without the consent of his co-sharers to an alienation by him of such share by will (195) (*Sir James W. Colvile.*) LAKSHMAN DADA NAIK *v.* RAMACHANDRA DADA NAIK. **(1880) 7 I. A. 181 = 5 B. 48 (62) = 7 C. L. R. 320 = 4 Sar. 173 = 3 Suth. 778.**

———*Right of—Law in different Presidencies as to—Alienation for value—Alienation by gift—Distinction.*

It has been settled law in the Presidency of Madras that one co-parcener may dispose of ancestral undivided estate, even by contract and conveyance to the extent of his own share (101-2).

The same law now obtains in the Presidency of Bombay. But it appears that, in order to support the alienation by one co-parcener of his share in undivided property, the alienation must be for value. The Madras Courts, on the other hand, seem to have gone so far as to recognise an alienation by gift (102).

In Bengal, however, the law which prevails in the other Presidencies as regards alienation by private deed has not yet been adopted. In a leading case on the subject, that Court held that, according to the Mitakshara law as received in the Presidency of Fort William, one co-parcener had no authority without the consent of his co-sharers to mortgage his undivided share in a portion of the joint family estate, in order to raise money on his own account, and not for the benefit of the family (102-3). (*Sir James W. Colvile.*) SURAJ BUNSI KOER *v.* SHEO PROSHAD SINGH. **(1879) 6 I. A. 88 = 5 C. 148 (166-7) = 4 C.L.R. 226 = 4 Sar. 1 = 3 Suth. 589.**

———*Right of, before and after partition—Bengal Mitakshara—Nature of partition required.*

Under the Bengal Mitakshara law, so long as the interest of a member of a joint family in the joint family property is

HINDU LAW—(*Contd.*)

Joint Family—Member of—Alienation by—(*Contd.*)

indefinite, he is not in a position to dispose of it, at his own hand, and for his own purposes ; but, as soon as partition is made, he becomes the sole owner of his share, and has the same powers of disposal as if it had been his acquired property. Actual partition is not in all cases essential. An agreement by the members of an undivided family to hold the joint property individually in definite shares, or the attachment of a member's undivided share in execution of a decree at the instance of his creditor, will be regarded as sufficient to support the alienation of a member's interest in the estate, or a sale under the execution (196-7). (*Lord Watson.*) MADHO PARSHAD *v.* MEHRBUN SINGH. **(1890) 17 I. A. 194 = 18 C. 157 (161) = 5 Sar. 586 = R. & J.'s No. 121.**

———*Right of, without consent of co-sharers—Law in Madras and Bombay.*

Comparatively modern decisions of the Courts of Madras and Bombay have been recognised by this Committee as establishing that one of several co-parceners has, to some extent, a power of disposing of his undivided share without the consent of his co-sharers (193-4). (*Sir James W. Colvile.*) LAKSHMAN DADA NAIK *v.* RAMACHANDRA DADA NAIK. **(1880) 7 I.A. 181 = 5 B. 48 (61) = 7 C.L.R. 320 = 4 Sar. 173 = 3 Suth. 778.**

———*Right of other members to impeach—Mitakshara law as to.*

The rights of co-parceners in an undivided Hindu family governed by the law of the Mitakshara to impeach an alienation made by one member of the family without their authority, express or implied, has of late years been frequently before the Courts of India, and it cannot be said that there has been complete uniformity of decision respecting it (101). (*Sir James W. Colvile.*) SURAJ BUNSI KOER *v.* SHEO PROSHAD SINGH. **(1879) 6 I. A. 88 = 5 C. 148 (165) = 4 C.L.R. 226 = 4 Sar. 1 = 3 Suth. 589.**

———*Validity of—Alienation made on member's own account and without consent of co-sharers—Wholly invalid under N. W. P. Mitakshara.*

Under the well-known rule of the Mitakshara (N.W. Provinces), as clearly laid down in Sahu Ram's Case, joint family property "cannot be the subject of a gift, sale or mortgage by one co-parcener except with the consent, express or implied, of all the other co-parceners. Any deed of gift, sale or mortgage granted by one co-parcener on his own account of or over the joint family property is invalid ; the estate is wholly unaffected by it, and it stands entirely free of it." This law has been, in substance, repeated again and again. It is in entire accord with the ancient texts. The exception to this rule is where the consideration for the transaction is an antecedent debt of the vendor or mortgagor. (*Lord Shaw.*) CHET RAM *v.* RAM SINGH. **(1922) 49 I. A. 228 (232-3) = 44 A. 368 (374) = 16 L. W. 89 = 31 M. L. T. 50 = 1922 M. W. N. 455 = 3 P. L. R. 1922 = 24 Bom. L. R. 1231 = 27 C. W. N. 150 = 21 A. L. J. 114 = 37 C. L. J. 79 = 3 Pat. L. T. 363 = 4 U. P. L. R. (P.C.) 64 = A. I. R. 1922 P. C. 247 = 67 I. C. 569 = 43 M. L. J. 98.**

Joint Family—Member of—Business carried on by.

———*See* HINDU LAW—JOINT FAMILY—BUSINESS OF —MEMBER OF FAMILY.

Joint Family—Member of—Charity—Dedication of joint property to.

———*Validity of—Other member's right to dispute—Effect on, of ratification of dedication by them.*

R, a Hindu merchant carrying on business in the city of Bombay, by his will, devoted a lac of rupees to the establish-

HINDU LAW—(*Contd.*)

Joint Family—Member of—Charity—Dedication of joint property to—(*Contd.*)

ment and maintenance of a dhurmasala in Bombay for the benefit of Sadhoos and Saints. The plaintiff-respondent was one of the trustees named in the will. The defendant-appellant was the son of the testator's only brother, who was dead at the date of the will. Either as heir or as the residuary devisee and legatee of his uncle, the testator, the appellant was entitled to the whole residue of the testator's property. He contended that the property of which the testator was in possession during his lifetime was joint family property, and that under the provisions of the Mitakshara law the testator had no power of disposing of it to the dhurmasala or other charitable objects indicated by his will.

The will of *R* stated that the appellant had a right of inheritance to the whole of his (*R's*) moveable and immoveable property ; and provided that when he attained the age of 21 years the executors appointed in the will should entrust to the appellant the whole of the testator's property, moveable and immoveable that might remain after defraying the expenses agreeably to all the conditions stated in the will. As regards the dhurmasala, the will provided that the management thereof should be conducted by the executors appointed in the will up to the time the appellant attained the age of 21 years, and that after he attained the age of 21 years the executors and the appellant should jointly conduct the management of the charity.

After the testator's death, a specific part of his estate was set apart by the executors to answer the charitable trusts created by his will, and, after the appellant attained the age of majority, the residue of the testator's estate was made over to him. Further as part of the same arrangement a deed was executed, the parties to which were the executors who proved and acted of the first part, and the appellant of the second part. That deed recited that the appellant was satisfied with the management and administration of the testator's estate by the executors, that they being willing to make over and assign to him the estates and property of the testator remaining in their hands, not subject to charitable and other trusts, the appellant had agreed to receive the same, and to execute the release absolving them from any manner of liability in respect of the administration of the estate of the testator. The appellant not only released the executors from such liability, but agreed to become, and did become, joint trustee of the trusts and charities, including the charity in question.

Held, affirming the High Court, that even if the testator had not such an ownership of the property as entitled him to devote a lac of rupees to the charity in question, the effect of the transactions referred to above, was to make a valid dedication of the property set apart to the charity in question (94). (*Sir Arthur Hobhouse.*) PURMANUNDASS JEEVUNDASS *v.* VENAYAK RAO. **(1882) 9 I. A. 86 = 7 B. 19 (29-30) = 12 C.L.R. 92 = 4 Sar. 366.**

Joint Family—Member of—Confirmation of right as member of joint family or partition—Suit for—Mesne Profits—Right to.

———*C. P. Code, provisions as to such profits — Inapplicability of.*

The provisions of the Code of Civil Procedure as to mesne profits are intended for and are applicable to suits for land or other property in which the plaintiff has a specific interest, and not to a suit by members of a joint Hindu family for a decree confirming them in the enjoyment of their rights as members of a joint Hindu family without being deprived of the same by the manager, or to a suit for a partition where the plaintiff has no specific interest until decree (59). (*Sir Richard Couch.*) PIRTHI PAL SINGH *v.* THAKUR JEWAHIR SINGH. **(1887) 14 I. A. 37 = 14 C. 493 (509) = 4 Sar. 758.**

HINDU LAW—(*Contd.*)

Joint Family—Member of—Conversion to Mahomedanism of.

———Share in joint property—Effect on. *See* HINDU—CONVERSION TO MAHOMEDANISM.

(1911) 38 I. A. 87 (98) = 33 A. 356 (363).

Joint Family—Member of—Debt personal of—Decree for, against his widow as legal representative—Sale of his share in joint family property in execution of.

———*Binding nature of decree and of sale against surviving members.*

In this case, one of the questions referred by the Division Bench of the High Court to the consideration of the Full Bench was :—

B, a member of a Hindu family living under the Mitakshara law. and having joint family property, died entitled to an undivided share in such property, and leaving two widows him surviving. After the death of *C*, his widows were sued in their representative capacity in respect of debts incurred by him in his lifetime on his own account, and not for the benefit of the joint family, and decrees were obtained against the widows in that capacity. In execution of one or more of these decrees, an interest in certain portions of the joint family property, to the extent of the share to which *B* was entitled in his lifetime, has been sold by auction, and the purchasers have taken possession. Can the nephew of *B*, who is one of the surviving members of the joint family, recover from the purchasers possession of the interests which they have purchased, or any part of them ?

The Full Bench unanimously answered that question in the affirmative. The result of their opinion was thus expressed by the Chief Justice :—" I think, therefore, that this property, not being the property of the widows, and not being the property of the heirs of the deceased, could not be made available under the decree against the widows ; that if it could be made available at all for payment of the debts of the deceased, it must be in a suit against the survivors to charge the share of the deceased in the joint estate with the payment of the decree, by suing the survivors for the debt, and asking to have the deceased's share of the estate made available in the hands of the survivors to the same extent as that to which it would have been made available if the deceased had left a son and the estate had gone to him by inheritance, instead of to the survivors by survivorship. I think, then, that the question must be answered in the affirmative ; that the plaintiff has a right to sue the purchaser under the decree to recover back the estate, inasmuch as the property belongs to him, and the title of the purchaser under the decree against the widows is an invalid title (21-2)."

Held, that no objections could be urged to the answer given by the Full Bench (27). (*Sir James W. Colvile.*) MUSSUMAT PHOOLBAS KOONWAR *v.* LALLA JOGESHUR SAHOY. **(1876) 3 I. A. 7 = 1 C. 226 (245) = 25 W. R. 285 = 3 Sar. 573 = 3 Suth. 236.**

Joint Family—Member of—Deceased member—Share of, in joint property—Suit by one of surviving members to recover his share of.

———*Maintainability—Conditions.*

On the death of a childless Hindu, *S*, one of his two cousins, alleging that they and the deceased were joint in estate and that on the death of the latter they became entitled to his share by survivorship, sued the widows of the deceased and recovered possession of one moiety of the deceased's share in the joint family property. Subsequently the remaining half-share of the deceased in portions of the joint family property was seized and sold in execution of decrees obtained against his widows as representatives. Thereupon the other cousin of the deceased sued to recover

HINDU LAW—(*Contd.*)

Joint Family—Member of—Deceased member—Share of, in joint property—Suit by one of surviving members to recover his share of—(*Contd.*)

possession of his share of the joint family property of deceased, and to set aside the said execution sales. *S* was also made a party-defendant to that suit, and he disclaimed all interest in the suit, on the ground that he had already obtained possession of his share in execution of the decree in his own suit.

Held, that under the circumstances of the case the objection to the frame of the suit, *viz.*, that it was a suit by one of the surviving members of a joint and undivided family for his separate share of the share of a deceased member in the joint property, was one of form rather than of substance, and that the suit ought not to have been dismissed on that ground (26-7). (*Sir James W. Colvile.*) MUSSUMAT PHOOLBAS KOONWAR *v.* LALLA JOGESHUR SAHOY.
(1876) 3 I. A. 7 = 1 C. 226 (243-4) = 25 W. R. 285 = 3 Sar. 573 = 3 Suth. 236.

Joint Family—Member of—Decree for or against.

ATTACHMENT AND SALE OF UNDIVIDED SHARE OF MEMBER IN EXECUTION OF.

———*Purchaser at—Right of.*

The right of the purchaser at an execution sale of the share of a co-sharer in joint family property must be limited to that of compelling the partition which his debtor might have compelled, had he been so minded, before the alienation of his share took place (255). (*Sir James W. Colvile.*) DEENDYAL LAL *v.* JUGDEEP NARAIN SINGH.
(1877) 4 I. A. 247 = 3 C. 198 (208-9) = 1 C. L. R. 49 = 3 Sar. 730 = 3 Suth. 468.

———Purchasers of the right of a member of a joint Hindu family in family property at a sale held in execution of a decree against that member acquire the right of compelling the partition which the debtor might have compelled had he been so minded before the alienation by the sale of his share took place (122). (*Sir Richard Couch.*) BALGOBIND DAS *v.* NARAIN LAL. **(1893) 20 I. A. 116 = 15 A. 339 (349-50) = 6 Sar. 313.**

———*Validity of.*

Mr. Leith referred in his argument to the family property of Hindoos, and urged that such a share in such property may be attached and sold in execution. No doubt can be entertained that such a share is property, and that a decree-holder can reach it. It is specific, existing, and definite (50). (*Lord Justice James.*) SYUD TUFFUZZOOL HOSSEIN KHAN *v.* RUGHOONATH PERSHAD.
(1871) 14 M. I. A. 40 = 7 B. L. R 186 = 2 Suth. 434 = 2 Sar. 656 = R. & J's. No. 10 (Oudh).

———Validity of—Bengal Mithakshara. *See* HINDU LAW—JOINT FAMILY—MEMBER OF—SALE BY—VALIDITY OF—ATTACHMENT OF SHARE IN EXECUTION.
(1890) 17 I. A. 194 (197) = 18 C. 157 (161).

———*Validity of—Dayabhaga Law—Mithakshara Law in Madras and Bengal—Law in Bombay Presidency—Decree for personal debt of member.*

In lower Bengal, that is, under the law of the Dayabhaga, it is settled law that the right, title, and interest of one co-sharer in a joint estate may be attached and sold in execution to satisfy his personal debt; and that the purchaser under such an execution stands in the shoes of the judgment-debtor, and acquires the right as against the other co-sharers to compel a partition (251-2).

A similar rule prevails in the South of India, though the law there administered is founded on the Mithakshara. The law is to the same effect in the Presidency of Bombay (252).

HINDU LAW—(*Contd.*)

Joint Family—Member of—Decree for or against—(*Contd.*)

ATTACHMENT AND SALE OF UNDIVIDED SHARE OF MEMBER IN EXECUTION OF—(*Contd.*)

Held, that, as regards the question whether the share of one co-sharer in a joint family estate can be taken and sold in execution of a decree against him alone, the law should be declared to be the same under the Bengal Mithakshara as that which exists in Madras (255). (*Sir James W. Colvile.*) DEENDYAL LAL *v.* JUGDEEP NARAIN SINGH.
(1877) 4 I. A. 247 = 3 C. 198 (205) = 1 C. L. R. 49 = 3 Sar. 730 = 3 Suth. 468.

———*Validity of—Law in Madras, Bombay and Bengal as to.*

In Madras the share of one co-parcener in ancestral undivided estate may be seized and sold in execution for his separate debt. As regards Bengal that question must be taken to have been set at rest by the recent decision of this tribunal in Deendyal Lall *v.* Jugdeep Narain, by which the law has so far been assimilated to that prevailing in Madras and Bombay, that it has been ruled that the purchaser of undivided property at an execution sale *during the life of the debtor* for his separate debt does acquire his share in such property with the power of ascertaining and realising it by a partition (102-3). (*Sir James W. Colvile.*) SURAJ BUNSI KOER *v.* SHEO PROSHAD SINGH.
(1879) 6 I. A. 88 = 5 C. 148 (166-7) = 4 C. L. R. 226 = 4 Sar. 1 = 3 Suth. 589.

———*Validity of—Law in Madras and Bombay.*

Comparatively modern decisions of the courts of Madras and Bombay have established that the undivided share of one several co-parceners in ancestral property may be seized and sold in execution for the separate debt of the co-sharer, at least in the lifetime of the judgment-debtor, and that it may also be made the subject of an alienation by deed executed for valuable consideration (193-4). (*Sir James W. Colvile.*) LAKSHMAN DADA NAIK *v.* RAMACHANDRA DADA NAIK. **(1880) 7 I. A. 181 = 5 B. 48 (61) = 7 C. L. R. 320 = 4 Sar. 173 = 3 Suth. 778.**

DECREE AGAINST MEMBER IN REPRESENTATIVE CAPACITY.

———*What amounts to—Sale of family property in execution of—Binding nature of, on other members.*

A Hindu died, leaving a son. That son died subsequently, leaving two sons. *M* and *C*. Subsequent to his father's death, *M* was sued as the heir of his grandfather, and a decree was passed in that suit for the recovery of a sum of money on account of the rents of a certain mouzah, and it was stated that the grandfather had taken a lease of that mouzah from 1847 to 1854. It was further ordered that the decree was not to be executed against the person and self-acquired property of defendant, but against the property left by the deceased leaseholder, the grandfather. In execution of that decree the mouzah in respect of which the rent was due was sold.

It was found that the family was joint, that the grandfather, in taking the lease of the said mouzah, took it on behalf of the family, and the debt in respect of which the decree was passed was therefore a debt from the family, and that the mouzah in respect of which the rent was due and which was sold in execution of the decree was part of the joint family property.

Held, that *M*, must be deemed to have been sued as a representative of the family, that the decree was substantially a decree in respect of a joint debt of the family and against the representative of the family, and that it might be properly executed against the joint family property (236-7).

HINDU LAW—(*Contd.*)

Joint Family—Member of—Decree for or against—(*Contd.*)

DECREE AGAINST MEMBER IN REPRESENTATIVE CAPACITY—WHAT AMOUNTS TO—(*Contd.*)

With respect to the order as to the execution, it appears to their Lordships that the fair construction of it—though it may not be drawn up with much accuracy—is that the decree is not to be executed against the self-acquired property of *M*, but against the family property which is there described as that left by the grandfather for the purpose of distinguishing it from the separate property which may have belonged to *M*. Looking to the substance of the case, it appears to their Lordships that the decree was a decree against the representative of the family in respect of a family debt, and that it is one which could be properly executed against the joint property of the family (237). (*Sir Robert P. Collier.*) BISSESSUR LALL SAHOO *v.* MAHARAJAH LUCHMESSUR SINGH. **(1879) 6 I. A. 233 = 5 C. L R. 477 = 4 Sar. 76 = 3 Suth. 686 = Bald. 331.**

DECREE FOR OR AGAINST MEMBER IN REPRESENTATIVE CAPACITY.

———*Binding nature of, on other members.*

This case cannot in any degree be likened to those which sometimes occur in India, wherein the interest of a joint and undivided family being in issue, one member of that family has prosecuted a suit or has defended a suit, and a decree has been made in that suit which may afterwards be considered as binding upon all the members of the family, their interest being taken to have been sufficiently represented by the party in the original suit (376). (*Sir James W. Colvile.*) JOGENDRO DEB ROY KUT *v.* FUNINDRO DEB ROY KUT. **(1871) 14 M. I. A. 367 = 11 B. L. R. 244 P.C. = 17 W. R. 104 = 2 Suth. 517 = 3 Sar. 32.**

SALE IN EXECUTION OF, OF JOINT FAMILY PROPERTY AS PROPERTY OF MEMBER.

——— *Purchaser's title to property sold.*

A creditor of a co-parcener of a joint Hindu family governed by the law of the Mithakshara may, under certain circumstances, obtain a partition of his debtor's share in joint family property, and when in executing a decree a Court sells what is joint family property as the property of the judgment-debtor the purchaser at the Court sale may under certain circumstances obtain a good title to what he purchases (25). (*Sir John Edge.*) SAT NARAIN *v.* BEHARI LAL. **(1924) 52 I. A. 22 = 6 Lah. 1 = (1925) M. W. N. 1 = 23 A. L. J. 85 = 6 L. R. P. C. 1 = 21 L. W. 375 = 27 Bom. L. R. 135 = 29 C. W. N. 797 = 26 P. L. R. 81 = A. I. R. 1925 P. C. 18 = 84 I. C. 883 = 47 M. L. J. 857.**

Joint Family—Member of—Devolution of share of, in joint family property.

———*Dayabhaga law.*

Admitting the family to have been joint, and the sons joint in estate, the right of any one of the co-sharers would not, under the Hindu law, pass over, upon his death, to the other co-sharers; it would be part of the estate of the deceased co-sharer, and would devolve upon his legatees, or his natural heirs (553). (*Lord Justice Turner.*) SREEMUTTY SOORJEEMONEY DOSSEE *v.* DENOBUNDOO MULLICK. **(1857) 6 M. I. A. 526 = 4 W. R. 114 = 1 I. J. N. S. 37 = 1 Suth. 291 = 1 Bur. Rep. 228 = 1 Sar. 583.**

———According to the ordinary law of Bengal upon the death of any one of the brothers constituting a Hindu family joint in estate the share of the joint property to which at the time of his death he might be entitled would descend to his

HINDU LAW—(*Contd.*)

Joint Family—Member of—Devolution of share of, in joint family property—(*Contd.*)

heirs (116). (*Sir Barnes Peacock.*) ROBERT WATSON & CO. *v.* RAM CHAND DUTT. **(1890) 17 I. A. 110 = 18 C. 10 (17) = 5 Sar. 535**

———In the case of a Hindu joint family governed by the Dayabhaga law, on the death of a joint owner his share in the joint properties does not pass to the survivor but to his own heirs. (*Lord Salvesen.*) HEMLATA DEVI *v.* SATYA CHARAN BANERJI. **(1928) 5 O. W. N. 652 = 109 I. C. 642 = A. I. R. 1928 P. C. 248.**

———*Mithila Law—Widow—Brothers—Right of.*

According to the Mithila Law, the share of a member of a joint Hindu family who dies without male issue but leaving a widow and brothers would pass to his brothers, to the exclusion of his widow, who would be entitled only to maintenance (415-6). (*Sir James W. Colvile.*) MUSSUMAT ANUNDEE KOONWAR *v.* KHEDOO LAL. **(1872) 14 M. I. A. 412 = 18 W. R. 69 = 2 Suth. 591 = 3 Sar. 50.**

Joint Family—Member of—Eldest member.

———Ancestral Property—Mutation of names on death of father in favour of eldest son in respect of—Effect of—Exclusion of other members merely by reason of. *See* HINDU LAW—ANCESTRAL PROPERTY—MUTATION OF NAMES, ETC. **(1926) 53 I. A. 220 (227-8) = 48 A. 259.**

———Ancestral property—Settlement of, in name of eldest member—Effect of, on rights of other members—Joint enjoyment and exercise of equal rights by all—Proof of. *See* HINDU LAW—ANCESTRAL PROPERTY—SETTLEMENT OF, ETC. **(1870) 13 M, I. A. 542 (546, 548).**

———Father—Property held under grant by—Re-grant of, in his lifetime, to his eldest son—Nature of property in that son's hands—Question between him and his brothers. *See* HINDU LAW—ANCESTRAL PROPERTY—SELF-ACQUISITION—FATHER—PROPERTY HELD UNDER GRANT BY. **(1847) 4 M. I. A. 246.**

———*Property in name of, and dealt with as his own by—Claim by other members to share in—Onus of proof on them.*

Where, in a case in which the grant of certain property was in the name of *P*, the eldest of four brothers constituting a joint Hindu family, and he appeared alone to have dealt with a large portion of it in his own sole name, another brother claimed a share in the said property, *held* that it was for the latter to make out his title to a share of any portion which he claimed (256). (*Mr. Pemberton Leigh.*) MUSSUMAT GOLAB KOONWAR *v.* THE COLLECTOR OF BENARES. **(1847) 4 M. I. A. 246 = 7 W. R. (P. C.) 47 = 1 Suth. 186 = 1 Sar. 343.**

Joint Family—Member of—Endowment deed executed by—Benami or not.

———*Evidence.*

G, *R* and *P* were brothers, and constituted a joint Hindu family governed by the ordinary law of Bengal. In 1877 *P* executed two deeds of endowment, or nirdes patras, one on the 24th of July and the other on the 12th of December. On the former of those dates the three brothers were entitled to a 12-anna share of a certain pergunnah which they held in patni. The question was whether *P* divested himself of his one third of the 12-anna share held in putni by the deeds of endowment executed by him.

It appeared that from the time of the execution of the deed of the 24th of July, 1877, until after the death of *P*, a period of about three years and three months, no change

HINDU LAW—(*Contd.*)

Joint Family—Member of—Endowment deed executed by—Benami or not—(*Contd.*)

took place in the accounts, or in the management, or of dealing with the business or estates, or the proceeds thereof. Mortgages were executed, in which *P* joined, and everything appeared to have gone in the same manner as if the deeds had never been executed, except that the family idol was removed from the house of *G* to that of *P*. No act was done by *P* or his brothers in which he was described as shebait.

Held, reversing the High Court and restoring the District Judge that it was not the intention of *P* or of his brothers that the deeds should be acted upon, or that *P* should thereby divest himself of his share of the property, and that the deeds were merely fictitious, or benami (116-7). (*Sir Barnes Peacock.*) ROBERT WATSON & CO. *v.* RAM CHAND DUTT. **(1890) 17 I. A. 110 = 18 C. 10 (18) = 5 Sar. 535.**

Joint Family—Member of—Family arrangement by.

———Will by member invalid as such if may be good evidence of, with consent of other members *See* HINDU LAW—JOINT FAMILY—MEMBER OF—WILL BY—DEED INVALID AS A. **(1926) 53 I. A. 123 (132-3) = 48 A. 313.**

Joint Family—Member of—Forfeiture against—Declaration of.

———Ancestral estate—Forfeiture of (1) Benefit of—Right of other members to (2) Maintenance of widow of ancestor—Right of—Effect on & (3) Shares of other members—Effect on. *See* BENGAL REGULATIONS — RESISTING PROCESS REGULATION XI OF 1796—HINDU LAW—JOINT FAMILY. **(1847) 4 M. I. A. 246.**

———Effect of, on rights of other members—Zemindary held by joint family—Forfeiture of interest of member in, under Bengal Regulation XI of 1796—Delinquent registered proprietor of estate—Delinquent not such—Distinction. *See* BENGAL REGULATIONS—RESISTING PROCESS REGULATION XI OF 1796, S. 4. **(1867) 11 M. I. A. 223 (238-9).**

Joint Family—Member of—Gift by.

———*Setting aside of—Suit by other members for—Decree in—Form of—Decree affirming gift to extent of donor's share—Validity—Mithakshara law.*

The suits out of which the appeals arose related to the validity and effect of two deeds of gift made by one *D*, deceased, the father of the 1st plaintiff and appellant, and grandfather of the other plaintiffs and appellants. The son asserted that he and his father were joint members of a Hindu family, and that the properties to which the gifts related were part of the joint family estate.

The Subordinate Judge, who held that the properties dealt with by the deeds in question were joint family properties and that the deeds were therefore invalid, however, gave a judgment only in respect of five-sixths of the property, taking it that at the time of *D's* death, there were six members of the family, and being of opinion that *D* had therefore one-sixth share in the properties which he could pass by the deeds of gift.

Held that that was an error (747).

D had no separate sixth share. The whole property belonged to the one Hindu family, and accrued upon his death to the surviving members (747). (*Sir Walter Phillimore.*) RADHAKANT LAL *v.* NAZMA BEGUM. **(1917) 45 C. 733 = 22 C. W. N. 649 = 27 C. L. J. 632 = 16 A. L. J. 537 = 5 P. L. W. 72 = 23 M. L. T. 392 = 45 I. C, 806 = (1918) M. W. N. 386 = 20 Bom. L. R. 724 = 35 M. L. J. 99.**

HINDU LAW—(*Contd.*)

Joint Family—Member of—Gift by—(*Contd.*)

———*Validity—Mithakshara law—Bombay—Madras.*

The Madras High Court has ruled that an alienation by gift, or other voluntary conveyance *inter vivos*, will be valid against the non-assentient co-parceners. The Bombay High Court has, on the other hand, ruled that a co-parcener cannot, without the consent of his co-sharers, make a gift of his share. Their Lordships do not think it necessary to decide between the conflicting authorities of the Bombay and the Madras High Courts (194-5). (*Sir James W. Colvile.*) LAKSHMAN DADA NAIK *v.* RAMACHANDRA DADA NAIK. **(1880) 7 I.A. 181 = 5 B. 48 (61) = 7 C.L.R. 320 = 4 Sar. 173 = 3 Suth. 178.**

———Validity of, to extent of donor's share—Mithakshara law. *See* HINDU LAW—JOINT FAMILY—MEMBER OF—GIFT BY—SETTING ASIDE OF. **(1917) 45 C. 733 (747).**

Joint Family—Member of—Great-grandson if a.

———*Mithakshara law.*

Under the law of the Mithakshara the great-grandson is as much a member of the joint family as a son or grandson (208). (*Mr. Ameer Ali*). MASIT-ULLAH *v.* DAMODAR PRASAD. **(1926) 53 I.A. 204 = 48 A. 518 = 1926 M. W. N. 816 = 3 O.W.N. 721 = 7 P.L.T. 815 = 31 C.W.N. 293 = A.I.R. 1926 P.C. 105 = 98 I.C, 1031 = 25 A.L.J. 1 = 28 Bom L R. 1402 = 44 C.L.J. 321 = 24 L.W. 551 = 51 M.L.J. 792.**

Joint Family—Member of—Joint family property.

CO-PARCENARYSHIP IN, AND SURVIVORSHIP FOLLOWING UPON IT—SEPARATELY ACQUIRED PROPERTY OF MEMBER IN SUCH FAMILY.

———Principle inapplicable to. *See* HINDU LAW—JOINT FAMILY—CO-PARCENARY IN—MEMBERS OF FAMILY. **(1863) 9 M.I.A. 539 (611).**

CO-PARCENARYSHIP IN, AND SURVIVORSHIP FOLLOWING UPON IT—SEVERANCE OF CO-PARCENARYSHIP

———What amounts to. *See* HINDU LAW—JOINT FAMILY—CO-PARCENARY IN.

EXCLUSION FROM.

———*See* LIMITATION ACT OF 1908, ART. 127.

EXCLUSIVE POSSESSION OF.

———Meaning of. *See* POSSESSION—EXCLUSIVE POSSESSION. **(1918) 9 L.W. 123 (123-4).**

INTEREST IN—NATURE OF.

———According to the true notion of an undivided family in Hindoo law, no individual member of that family, whilst it remains undivided, can predicate of the joint and undivided property, that he, that particular member, has a certain definite share. No individual member of an undivided family could go to the place of the receipt of rent, and claim to take from the collector or receiver of the rents, a certain definite share. The proceeds of undivided property must be brought, according to the theory of an undivided family, to the common chest or purse, and then dealt with according to the modes of enjoyment by the members of an undivided family (89-90). (*Lord Westbury.*) APPOVIER *v.* RAMA SUBBA AIYAN. **(1866) 11 M.I.A 75 = 8 W.R. (P.C.) 1 = 1 Suth. 657 = 2 Sar. 218.**

——— Until partition no member of a joint Hindu family is entitled to a definite portion of the family estate (59).

HINDU LAW- (*Contd.*)

Joint Family—Member of—Joint family property —(*Contd.*)

INTEREST IN—NATURE OF—(*Contd.*)

(*Sir Richard Couch.*) PIRTHI PAL SINGH *v.* THAKUR JEWAHIR SINGH. (1887) **14 I.A 37**= **14 C. 493** (509) = **4 Sar. 758.**

———The interest of a member of an undivided Mithakshara family in the property of the joint family is not individual property at all (170). (*Sir Arthur Wilson.*) GHARIB-UL-LAH *v.* KHALAK SINGH. (1903) **30 I.A. 165**= **25 A. 407** (416) = **7 C.W.N. 681**= **5 Bom. L.R. 478** = **8 Sar. 483.**

———A member of a Mithakshara joint family has a mere co-parcenary interest in the family property. *He* has no defined share in it. His interest is not individual property. (*Sir John Edge.*) GULABSINGH *v.* SETH GOKULDAS. (1913) **40 I. A. 117** (125-6) = **40 C. 784** (798) = **17 C.L.J. 619** = **15 Bom. L.R. 613** = **17 C.W.N. 918** = (1913) **M.W.N. 542** = **14 M.L.T. 55** = **19 I.C. 521** = **9 N.L.R. 117** = **25 M.L.J. 179.**

———*Co-parceners—Co-parcenary—Use of English terms of—Propriety of.*

It is one of the inevitable inconveniences of translating an Eastern language into the technical law terms of a foreign system of the West.

This observation was made with reference to the use of the words "co-parceners" and "co-parcenary" with reference to the members of a joint Hindu family and their interest in the joint family property. (*Lord Dunedin.*) BAIJNATH PRASAD SINGH *v.* TEJ BALI SINGH. (1921) **48 I.A. 195** (211) = **43 A. 228** (243) = **23 Bom. L.R. 654** = **3 U.P.L.R. (P.C.) 35** = **29 M.L.T. 358** = (1921) **M. W. N. 300** = **19 A.L.J. 317** = **2 P.L.T. 257** = 33 **C.L.J. 388** = **60 I.C. 534** = **40 M.L.J. 387.**

———*Minor member—Guardian of interest of—Appointment of—Validity.*

A guardian of the property of an infant cannot properly be appointed in respect of the infant's interest in the property of an undivided Mithakshara family, because the interest of a member of such a family is not individual property at all, and, therefore, a guardian, if appointed, would have nothing to do with the family property (170). (*Sir Arthur Wilson.*) GHARIB-UL-LAH *v.* KHALAK SINGH. (1908) **30 I. A. 165** = **25 A. 407** (416) = **7 C. W. N. 681** = **5 Bom. L. R. 478** = **8 Sar. 483.**

———*Mithakshara law—Partition—Right to—Northern India.*

It is well-established law that in families governed by the Mithakshara law no co-parcener has in the joint family property any separate and defined share, although in Northern India at least a co-parcener of such joint family property has a right to obtain a partition and on such partition he will obtain a separated and defined share of the joint family property (25). (*Sir John Edge.*) SAT NARAIN *v.* BEHARI LAL. (1924) **52 I. A. 22** = **6 Lah. 1** = (1925) **M. W. N. 1** = **23 A.L.J. 85** = **6 L.R.P.C. 1** = **21 L.W. 375** = **27 Bom. L.R. 135** = **29 C. W. N. 797** = **26 P. L. R. 81** = **A. I. R. 1925 P. C. 18** = **84 I. C. 883** = **47 M. L. J. 857.**

PARTICIPATION IN.

———*What amounts to.*

It is not necessary for a member of an undivided family to prove possession of a specific share of the joint fund, nor participation in the profits of the joint property to the full extent of his share. It is very common among joint families that the expenses of the family are paid out of the common fund, and that each member draws a certain sum as he requires it, but there is no account taken between the members of the family to see whether each member receives his full share (63-4, 64-5). (*Sir Barnes Peacock.*) LUCHMUN SINGH *v.* SHUMSHERE SINGH. (1874) **2 I. A. 58** = **14 B. L. R. 373** = **3 Sar. 437** = **R. & J.'s No. 33 (Oudh)** = **3 Suth. 67.**

HINDU LAW—(*Contd.*)

Joint Family—Member of—Joint family property —(*Contd.*)

PARTICIPATION IN—(*Contd.*)

PROFITS OF—SUIT FOR SHARE OF, BEFORE PARTITION.

———*Right of.*

A member of a joint Hindu family cannot sue for a share of profits as he has no definite share until partition (58). (*Sir Richard Couch.*) PIRTHI PAL SINGH *v.* THAKUR JEWAHIR SINGH. (1887) **14 I.A. 37** = **14 C. 493** (509) = **4 Sar. 758.**

RELEASE OF INTEREST IN, IN FAVOUR OF ELDEST MEMBER ON RECEIPT OF MAINTENANCE.

———Binding character of. *See* **HINDU LAW—FAMILY** ARRANGEMENT—SONS YOUNGER AND ELDEST. (1871) **14 M.I.A. 24** (36-7).

RIGHT IN, UNDER GENERAL HINDU LAW—CUSTOM IN DEROGATION OF.

———*Proof of—Quantum.*

An allegation of a custom, that members of a joint Hindoo family are not entitled to their share in the joint estate but are entitled only to maintenance in addition to the seer allowance which they were found to have received out of the estate, would require to he supported by clear evidence of the custom which is in abrogation of the general Hindoo law. SHEO BUKSH SINGH *v.* KALKA BUKSH. (1872) **8 M. J. 183.**

RIGHT TO SHARE IN.

———*Declaration of—Suit for—Effect of — Declaration of his right to joint interest in joint estate — Intention to obtain—Suit not inconsistent with.*

A suit by a member of a joint Hindu family for a declaration of his right to a share in the joint family property would not be inconsistent with an intention on the part of the plaintiff to obtain a declaration of his being entitled to a joint interest in a joint estate (232-3.) (*Sir Robert P. Collier.*) JOY NARAIN GIRI *v.* GRISH CHUNDER MYTI. (1878) **5 I.A. 228** = **4 C. 434** (437-8) = **3 Sar. 871.**

———*Profits of estate—Annual division of—Omission to prove—Effect.*

The appellants sued to establish their right, as representatives of one branch of a joint and undivided Hindoo family, to their share in the family estate. Their right was disputed on the ground that they were not in fact members of the family at all ; and the parties went to trial upon these issues ; (1) "were the plaintiff, or his father, and the defendant, or his father, members of an undivided Hindoo family within the period of limitation ? (2) If so, what was the plaintiff's share ? (3) If not, has the plaintiff held possession of any share in the estate within the period of limitation ?"

The issues were all issues more or less of fact ; they were all found by the trial Judge and the lower appellate Court in favour of the appellants.

On special appeal, the Financial Commissioner reversed the decision of the lower Court, and dismissed the claim of the plaintiffs ; but he declared that the plaintiffs were enti-

HINDU LAW—(*Contd.*)

Joint Family—Member of—Joint family property—(*Contd.*)

RIGHT TO SHARE IN—(*Contd*).

tled to maintenance in addition to the seer allowance which they were found to have received out of the estate.

Held, that the order of the Financial Commissioner could not be maintained.

There is no ground in the case on which it can properly be held that the ordinary consequences which under the Hindoo law would result to the appellants from the findings of the Courts below on the issues of fact, which were binding on the Financial Commissioner, ought not to follow upon those findings. There was really no issue in the case of any special custom which would take the enjoyment of this estate out of the ordinary Hindu Law.

The judgment of the Financial Commissioner may be based upon the opinion that the appellants had failed to prove such a division of profits as was required by law to establish their right as co-sharers in the estate. As it was not customary to give each sharer an account of his share of the profits every year, no safe inference could be drawn against the appellants from their omission to prove an annual division of profits. SHEO BUKSH SINGH *v.* KALKA BUKSH. (1872) 8 M. J. 183.

Joint Family—Member of—Lease in favour of a—Confiscation of, under Bengal Regulation XI of 1796.

———Effect of, on rights of other members of family. *See* BENGAL REGULATIONS—RESISTING PROCESS REGULATION XI OF 1796, S. 4—FARM, ETC.
(1867) 11 M. I.A. 223 (239-40).

Joint Family—Member of—Marriage expenses of—Provision for.

———Right to, at partition—Division in status of that member from other branches—Marriage after. *See* HINDU LAW—JOINT FAMILY — PARTITION—MARRIAGE EXPENSES OF CO-PARCENERS. (1922) 49 I.A. 168 (173-4)= 45 M. 489 (495.)

Joint Family—Member of—Minor member—Guardian of interest of, in joint family property.

———Appointment of—Validity. *See* HINDU LAW—JOINT FAMILY—MEMBER OF — JOINT FAMILY PROPERTY—INTEREST IN. (1902) 30 I. A. 165 (170)= 25 A. 407 (416).

Joint Family—Member of—Mortgage by.

———Invalid mortgage—Validity of, as regards mortgagor's share—Bengal and N.-W. P.—Mithakshara law in. *See* HINDU LAW—JOINT FAMILY — FATHER — MORTGAGE BY—INVALID MORTGAGE—VALIDITY OF, ETC.

———*Suit to set aside, and to recover property mortgaged must be brought by or on behalf of all the members of the family—Suit by some only to recover their shares only not maintainable.*

In 12 W. R. 483 it was ruled that two only of the members of a joint and undivided family could not sue to set aside a charge created by one member of the family, and to recover their particular shares in the property charged, but that the suit must be brought by or on behalf of all the members of the joint family. Their Lordships do not mean in any way to impugn the authority of that case, or to dispute the general principle affirmed by it (26). (*Sir James W. Colvile.*) MUSSUMAT PHOOLBAS KOONWUR *v.* LALLA JOGESHUR SAHOY. (1876) 3 I. A. 7 = 1 C. 226 (243-4) = 25 W. R. 285 = 3 Sar. 573 = 3 Suth. 236.

———*Validity of — Mortgage made to raise money on member's own account and without consent of co-sharers—Bengal Mithakshara.*

HINDU LAW—(*Contd.*)

Joint Family—Member of—Mortgage by—(*Contd.*)

In this case the Full Bench of the High Court held that, according to the law of the Mithakshara, as settled by authority in the Presidency of Bengal, one of the members of a joint and undivided family had no authority, without the consent of his co-sharers, to mortgage his undivided share in the joint family property in order to raise money on his own account, and not for the benefit of the family (22).

Their Lordships abstained from pronouncing any opinion upon that question (30). (*Sir James W. Colvile,*) MUSSUMAT PHOOLBAS KOONWUR *v.* LALLA JOGESHUR SAHOY.
(1876) 3 I.A. 7 = 1 C. 226 (248) = 25 W. R. 285 = 3 Sar. 573 = 3 Suth. 236.

———In Sadabart Persad's case, a Full Bench of the High Court of Calcutta held that, under the law of the Mithakshara as administered in the Presidency of Fort William, one co-sharer had no authority, without the consent of his co-sharers, to mortgage his undivided share in a portion of the joint family property, in order to raise money on his own account, and not for the benefit of the family. Their Lordships do not think it necessary or right in this case to express any dissent from the ruling in that case as to voluntary alienations (255). (*Sir James W. Colvile.*) DEENDYAL LAL *v.* JUGDEEP NARAIN SINGH.
(1877) 4 I. A. 247 = 3 C. 198 (208-9) = 1 C. L. R. 49 = 3 Sar. 730 = 3 Suth. 468.

———*Validity of — Mortgage made to raise money on member's own account and without consent of co-sharers—Bengal and N.-W. P. Mithakshara.*

Under the Mithakshara law as administered in Bengal and the North-Western Provinces, a member of a Hindu family cannot, without the consent of his co-shares, mortgage or sell his undivided share in the joint family property in order to raise money on his own account, and not for the benefit of the family (122-3). (*Sir Richard Couch,*) BALGOBIND DAS *v.* NARAIN LAL. (1893) 20 I. A. 116 = 15 A. 339 (348) = 6 Sar. 313.

———Validity of—Mortgage made on member's own account and without consent of other members—Wholly void under N. W. P. Mithakshara. *See* HINDU LAW—JOINT FAMILY—MEMBER OF—ALIENATION BY — VALIDITY OF. (1922) 49 I, A. 228 (232-3) = 44 A. 368 (374).

———*Validity of, against remaining member acquiring interest of mortgagor by purchases at execution sales — Mortgage made to raise money on member's own account and without consent of co-sharers—Bengal and N.-W. P. Mithakshara.*

A joint Hindu family governed by the law of Mithakshara as administered in the North-Western Provinces consisted of a father and a son. The son executed a simple mortgage, whereby, in consideration of a sum of Rs. 93,000 received by him from the appellant, he pledged a 4-anna share owned by him under the Hindu law out of the 8-anna share of his father in the ancestral property, of which a detail was given at the end of the deed.

The appellant instituted a suit against the son and certain others on foot of the mortgage. The father, though not originally made a party, was subsequently added as a defendant. His defence was that he and his son were under the law of the Mithakshara, and that the mortgage deed was invalid; that out of the properties mentioned in the plaint the properties in the first schedule to the written statement were sold to the extent of the rights and interests of the son in execution of decrees held by third parties before the date of the plaintiff's mortgage bond sued on and were purchased by him with his own money in the name of his wife; that the rights of the son in the properties mentioned in the Second Schedule were purchased

HINDU LAW—(*Contd.*)

Joint Family—Member of—Mortgage by—(*Contd.*)

in good faith by him with his own money, some in his own name, some in the name of his wife, and some through his mokhtar. The whole of the purchases were made at sales by auction in execution of decrees, and it was found that the defendants were *bona fide* purchasers who had no notice or knowledge of the mortgage to the plaintiff. The main question in the case was whether the mortgage was valid, and created a charge which was to have priority over the purchases at the execution sales made *bona fide* and without notice of it.

Held, that the mortgage was invalid, and that the father was entitled to set up its invalidity (125-6).

In the case of Madho Parshad *v.* Mehrban Singh (L. R. 17 I. A. 194) it was held that, according to the Bengal Mithakshara law, a sale by a member of a Hindu family, without the consent of his co-parcener, of his undivided share in the family estate for his own benefit was invalid; that the surviving co-parcener was entitled to recover the property sold; and that the purchaser had not even an equity against the surviving co-parcener for the repayment of the purchase money. In the present case the interest of the son has passed to the father, not by survivorship, but by purchases at sales in execution of decrees. Although it is not the same interest as he would acquire by survivorship, it is sufficient to entitle him to set up the invalidity of the mortgage deed (125-6). (*Sir Richard Couch.*) BALGOBIND DAS *v.* NARAIN LAL. (1893) 20 I. A. 116 = 15 A. 339 (351-2) = 6 Sar. 313.

Joint Family—Member of—Mortgage in favour of—Purchase of mortgaged property subsequently by another member from a stranger—Adverse possession—Plea by him of.

———Partition between the two members prior to date of purchase—Purchase with separate funds—Effect. *See* MORTGAGE—MORTGAGOR AND MORTGAGEE—ADVERSE POSSESSION BETWEEN—PLEA OF—MAINTAINABILITY.

(1912) 34 A. 289 (294-5).

Joint Family—Member of—Power of Attorney executed in favour of a, by the others—Mortgage by member in case of—Power of.

———*Limits to—Construction of Power-of-Attorney.*

Two out of three brothers, who were members of a joint and undivided Hindu family, executed a power-of-attorney in favour of the third, which provided as follows:—

"If in any Civil or Criminal Court subordinate to the Calcutta High Court, it be necessary for us, the executants, to appear personally and make defence there the said Am Mokhtar himself shall appear and make defence in the case on behalf of us, the executants, and in case of necessity shall depose on solemn affirmation or in respect of any mouza or share of land owned and possessed by us, the executants, the said Mokhtar-Am shall grant simple, or, Zurpeshgi-Thika or make mortgage with possession, or in times of necessity after borrowing up to Rs. 4,000 from anyone for expenses of cases, purchase of Milkiat and Mokrari payment of public demands and other necessary and incumbent work relating to us, the executants, the Mokhtar-Am may execute mortgage deeds jointly with himself or in case of necessity may make our signatures upon the aforesaid bonds."

Held, that the words in the power-of-attorney "or in respect of any mauza or share of land owned and possessed by us,...or make mortgage with possession" authorized the Am-Mokhtar to execute the suit mortgage bonds, each of which was for less than Rs. 4,000, but the aggregate amount of which exceeded Rs. 4,000, for debts for which the joint family was liable.

Quaere, whether the power authorized the Am-Mokhtar to borrow in excess of Rs. 4,000 by different mortgage

HINDU LAW—(*Contd.*)

Joint Family—Member of—Power of Attorney executed in favour of a, by the others—Mortgage by member in case of—Power of—(*Contd.*)

transactions for debts which were not so binding. (*Lord Carson*). DWARKA NATH SINGH *v.* KESHRI MALL.

(1927) 31 C. W. N. 890 = 39 M. L. T. 270 = (1927) M. W. N. 433 = 101 I. C. 377 = A. I. R. 1927 P. C. 111 = 53 M. L. J. 592.

Joint Family—Member of—Property in name of—Claim of other members to, on ground of its being joint family property—Estoppel.

———*Holding out of member in question as sole owner to enable him to obtain fictitious credit—Effect.*

The mere fact that a member of a joint Hindu family, when trading on his separate account, was permitted by the family to appear to the world as the sole owner of joint family estates which stood in his sole name, and so, perhaps, to obtain a fictitious credit, can be no foundation for the defence that the other members of the family have thereby forfeited their right to assert their title to those estates as against a purchaser thereof in execution of a decree obtained against that member for his separate debt (845). (*Sir James Colvile.*) BODH SING DOODHOORIA *v.* GUNESCHUNDER SEN. (1873) 2 Suth. 840 = 19 W. R. 356 = 12 B. L. R. 317 = 3 Sar. 253,

———*Plea of—Onus of Proof in case of.*

The appellants were the purchasers of the right, title, and interest of one *R* in the property in dispute in execution of a decree for his separate debt. The respondents were the other members of the joint family of which *R* was a member, and they claimed their shares in the said property on the ground that it was purchased by *R* with joint family funds and was therefore joint family property. It was held that they had established their case that the property was joint family property. But the appellants contended that the respondents had forfeited their right to assert their title against the appellants by reason of their own conduct, or the acts of any of those with whom they were connected.

Held that those who set up such a defence were bound to show clearly both the facts on which it was founded, and that the legal consequences on which they insisted necessarily flowed from those facts (844-5). (*Sir James W. Colvile.*) BODH SING DOODHOORIA *v.* GUNESCHUNDER SEN.

1873) 2 Suth. 840 = 19 W. R. 356 = 12 B. L. R. 317 = 3 Sar. 253.

———*Security to third party—Property in question given as, on false representation of its being separate property of member—Acceptance thereof by third party on faith of representation.*

The appellants were the purchasers of certain property, which stood in the sole name of *R*, a member of a joint Hindu family but which was found to be really joint family property, in execution of a decree obtained against *R* for his separate debt. The respondents, the other members of the joint family, asserted their title to the property against the appellants. The question was whether the respondents had, by their conduct, forfeited their right to do so. The conduct relied upon for the purpose consisted in *R* having, probably with the concurrence of the adult members of the family, falsely represented that the property in question was his separate property and given it as security to the Collector who acted on the faith of that representation.

Held that such a false representation, though it might possibly have been used as an estoppel against the family, had any question in respect of the security arisen between them and the Collector, had no bearing upon the question as between the appellants and the respondents, except as an admission or as an instance of tortuous dealing, which

HINDU LAW—(*Contd.*)

Joint Family—Member of—Property in name of—Claim of other members to, on ground of its being joint family property—Estoppel—(*Contd.*)

affected the general credit due to the respondents (845). (*Sir James W. Colvile.*) BODH SINGH DOODHORIA *v.* GUNESCHUNDER SEN. (1873) 2 Suth. 840 = 19 W. R. 356 = 12 B. L. R. 317 = 3 Sar. 253.

Joint Family—Member of—Properties purchased in names of different strangers to family at different times—Suits different for shares in.

———*O. 2, R. 2 of C. P. Code not a bar to.*

Where a member of a joint Hindu family first instituted a suit for the recovery of his share of property purchased in the name of one *G*, on the ground that it was joint family property, and subsequently instituted another suit for the recovery of his share in other property purchased at another time in the name of another person. *M*, on the ground that it also was joint family property, *held* that the causes of action in the two suits were different, that the claim in the second suit to property purchased in the name of *M* did not arise out of the cause of action in respect of the claim in the first suit to property purchased in the name of *G*, and that the second suit was not therefore barred under S. 7 of C,P. Code of 1859 (909). RAMHURRY MONDUL *v.* MOTHOOR MOHUN MONDUL. (1873) 2 Suth. 906 = 20 W. R. 450.

Joint Family—Member of—Purchase in name of a, with family funds and funds of stranger to family.

———*Rights of parties in case of.*

A was the husband of a sister of *K* and his brothers constituting a joint Hindu family governed by the Mithakshara law. An estate was purchased in the name of *K* with family funds and the funds of *A*, and *A* was entitled, by reason of the use of the funds in the purchase, to an undivided fourth share in the estate.

Held that *A* was not entitled to such share as a member of the joint family of *K* and his brothers, for, as the husband of a sister of *K*, he would not become a member of the joint family, nor would his share be inheritable by the members of the joint family according to the Mithakshara law (153).

His share would be inheritable by his own heirs, and the other three-fourths would pass to the surviving members of the joint family by survivorship (153). (*Sir Barnes Peacock.*) COLLECTOR OF GODAVERY *v.* ADDANKI RAMANNA PANTULU.

(1886) 13 I. A. 147 = 9 M. 482 (491) = 4 Sar. 728.

Joint Family—Member of—Revenue records—Record of member as sole proprietor of joint family poperty in—Effect of.

———It has been ruled, and is consistent with reason, that one member of a joint Hindoo family may be recorded as sole proprietor of the property of the joint family on behalf of the family (530). (*Sir Edward V. Williams.*) JOWALA BAKSH *v.* DHARUM SINGH.

(1866) 10 M. I. A. 511 = 2 Sar. 189.

———Ancestral villages, which at one time admittedly constituted the joint family property of two brothers *D* and *K*, were at one time recorded in the name of *K*, at another time were recorded partly in his name and partly in that of *D*, and came ultimately to be all recorded in the name of *D*, as if he were the sole Zemindar thereof, or, at least, the sole Lumbardar, or person liable for the due payment of the revenue assessed thereon. From those proceedings *D's* widow asked the Court to infer that *K* had duly parted with or relinquished his proprietary interest in the villages, and allowed them to become the separate estate of his brother, *D*.

HINDU LAW—(*Contd.*)

Joint Family—Member of—Revenue records—Record of member as sole proprietor of joint family property in—Effect of—(*Contd.*)

Held that that inference could not legitimately be drawn from the mere fact that the villages were recorded in the sole name of *D* (381).

As the law stands, the mere record of one name does not establish the exclusive proprietary right of the individual so recorded (381). (*Sir James W. Colvile.*) MUSSUMAT CHEETHA *v.* BABOO MIHEEN LALL.

(1867) 11 M. I. A. 369 = 2 Sar. 303.

———*Female member entitled only to maintenance—Record in name of—Male member entitled to property in existence at the time—Effect.*

In an ordinary case, the fact that one member of a joint Hindu family is recorded as proprietor of the joint property on behalf of the family is a circumstance of little moment. Where, however, the name in which the alleged joint property was recorded was that of a female (plaintiff's paternal uncle's wife), while, according to plaintiff's case, she had only a right to maintenance and the property should on the uncle's death have been recorded in the name of the plaintiff's father, the male member entitled, according to plaintiff, to the whole estate on the uncle's death, *held* that the recognition of the widow, apparently as sole proprietor, raised presumption against the case of joint possession and enjoyment set up by the plaintiff (529-30) (*Sir Edward V. Williams.*) JOWALA BAKSH *v.* DHARUM SINGH.

(1866) 10 M. I. A. 511 = 2 Sar. 189.

———*Statement in proceeding that member is sole lambardar and that on his death property is to descend to his son, heir, or appointee—Effect.*

Whenever property is, for whatever reasons, recorded in the sole name of one of several co-proprietors for fiscal purposes, it must obviously be part of the arrangement to make him who is to pay the Government revenue, and through whose hands the collection from the ryots must, for that purpose, pass, appear to be the sole owner. Yet, it is admitted, that one so recorded may be really what we should term a trustee for the other member of a joint family, and that the rights of the co-parceners *inter se* may not be affected by the arrangement (382-3).

Held, therefore, that the expressions in the public documents relating to the settlements of the revenue and other proceedings before the Collectors that the Zemindar or Lumbardar with whom the settlement was made was sole Zemindar or Lumbardar and without partners, and that on the death of the Lumbardar, or person settling for the revenue, his son or next heir, or even an appointee, should be substituted for him, were all consistent with such an arrangement the essence of which was that the person in question should be made ostensibly and on the face of the Revenue records the sole owner of the Zemindary rights, and that no argument could be founded on those expressions that the property in respect of which they were used were the separate property of the Lumbardar, or person settling for the revenue (382-3). (*Sir James W. Colvile.*) MUSUMAT CHEETHA *v.* BABOO MIHEEN LALL. (1867) 11 M. I. A. 369 = 2 Sar. 303.

———*Uncle—Property entered in sole name of—Nephew's application for transfer of, to his name—Application as heir—Inference from.*

The question was whether property recorded in the Settlement Registers in the name of *D*, one of the members of a joint Hindu family was his separate property or was joint family property. On *D's* death, his nephew applied to the Revenue authorities to be admitted as heir to his uncle. It was argued that that circumstance showed that the

HINDU LAW—(*Contd.*)

Joint Family—Member of—Revenue records—Record of member as sole proprietor of joint family property in—Effect of—(*Contd.*)

property was the separate property of *D* and not joint family property.

Held that the inference suggested was not legitimate (383).

On the face of the Revenue records *D* was the sole registered proprietor. It was, therefore, only as his heir that the applicant could claim to be substituted as sole Zemindar and ostensible owner in his place, A suggestion of joint interest was unnecessary, if, indeed, it would not have been improper, on that occasion. And, it is to be observed that, inasmuch as it appeared before the Collector by the Kanoongoe's reports that *D* had left a widow, the claim of his nephew as heir implied that the property was not the separate estate of the deceased, and that the succession to it was to be governed by the law which regulates the descent of the property of a joint and undivided Hindoo family (383). (*Sir James W. Colvile.*) MUSSUMAT CHEETHA *v.* BABOO MIHEEN LALL.

(1867) 11 M. I. A. 369 = 2 Sar. 303.

Joint family—Member of—Right as member of joint family—Confirmation of—Suit for.

———Mesne profits in—Right to. *See* HINDU LAW—JOINT FAMILY—MEMBER OF—CONFIRMATION OF RIGHT AS. **(1887) 14 I.A. 37 (59) = 14 C. 493 (509).**

Joint family—Member of—Sale by.

———*Deceased member — Sale by—Surviving member's suit to recover property sold—Decree for posession in, conditional upon payment by plaintiff to purchaser of portion of price paid to deceased vendor — Propriety—Berar Mithakshara.*

A member of a joint Hindu family subject to the Berar Mithakshara law sold his moiety of the family property for the stated sum of Rs. 20,000. On the death of the alienor, the surviving member of the family instituted a suit for the recovery of the property sold to the purchaser and in his possession on the ground that the family was down to the date of the death of the alienor joint in estate and that the surviving member became entitled to the entire family property by survivorship. The lower Court found that the family had continued to be joint as alleged by the plaintiff and that only Rs. 5,000 out of the stated consideration of Rs. 20,000 had been paid to the alienor, and made a decree that the plaintiff be put into possession upon paying Rs. 5,000 to the purchaser.

Their Lordships did not think it necessary to express any opinion on the question whether, even if it was proved that part only of the purchase money was paid, the form of decree adopted by the Court below was appropriate to the case. (*Viscount Cave.*) SYED KASAM *v.* JORAWAR SINGH.

(1922) 49 I.A. 358 (364) = 50 C. 84 (91) = 27 C.W.N. 179 = 25 Bom. L.R. 1 = 21 A.L.J. 57 = 37 C.L.J. 73 = 31 M.L.T. 46 = 16 L.W. 223 = A.I.R. (1922) P.C. 353 = 68 I.C. 573 = 43 M.L.J. 676.

———*Deceased member — Sale invalid by—Surviving member's suit to recover property sold—Vendee's right in, to equitable charge in respect of price paid to deceased.*

The plaintiff-respondent, and his paternal uncle *Z*, were members of an undivided Hindu family governed by the N. W. P. Mithakshara law, and, as such were co-sharers of land in three villages. *Z* died childless. Prior to his death he and his wife executed and delivered three deeds of sale to the appellant of his undivided share and interest in each of those villages for a consideration of Rs. 10,000, which was duly paid by the appellant. Those sales were

HINDU LAW—(*Contd.*)

Joint Family—Member of—Sale by—(*Contd.*)

made by the deceased for his own personal benefit, without the consent of the respondent, and without legal necessity.

The suit out of which the appeal arose was brought by the respondent after the death of *Z* for cancellation of those three deeds of sale. The sales by *Z*, being without the consent of his co-parcener, and not justified by legal necessity were admitted to be invalid according to the Mithakshara law governing the family. The only question was whether, the transactions being real and the prices actually paid, the respondent could only recover the shares sold, subject to an equitable charge in favour of the appellant for the Rs. 10,000 which were received by *Z*.

Held, affirming the Court below that the respondent was entitled to recover the shares sold unconditionally, and that the appellant was not entitled to an equitable charge for the Rs. 10,000 paid by him to *Z* (198-9).

The respondent took in his own right by survivorship, and is not liable for the personal debts and obligations of his uncle *Z*; and it appears to their Lordships, that an equity which might have been enforced against *Z's* interest whilst it existed cannot be made to affect that interest when it has passed to a surviving co-parcener, except by repealing the rule of the Mithakshara law (199). (*Lord Watson.*) MADHO PARSHAD *v.* MEHRBAN SINGH.

(1890) 17 I.A. 194 = 18 C. 157 (163) = 5 Sar. 586 = R. & J.'s No. 121.

———Invalid sale—Validity of, as regards alienor's share—Bengal and N.-W.-P.—Mithakshara law in. *See* HINDU LAW—JOINT FAMILY—FATHER—MORTGAGE BY—INVALID MORTGAGE—VALIDITY OF, ETC.

———*Purchaser's rights under — Purchase money not fully paid—Effect—Mithakshara law in Berar.*

It was argued that the sale by *N* (a member of a joint Hindu family subject to the Berar Mithakshara law, only gave to the purchaser an equity to enforce a partition, and that such equity was displaced by the fact that the purchase money was not fully paid. Their Lordships do not think it necessary to deal with the point. (*Viscount Cave.*) SYED KASAM *v.* JORAWAR SINGH.

(1922) 49 I.A. 358 (364) = 50 C. 84 (91) = 27 C.W.N. 179 = 25 Bom. L.R. 1 = 21 A.L.J. 57 = 37 C.L.J. 73 = 31 M.L.T. 46 = 16 L.W. 223 = A.I.R. 1922 P.C. 353 = 68 I.C. 573 = 43 M.L.J. 676.

———*Suit by remaining member to recover property sold—Decree in, directing partition and charging vendor's share with price paid to him—Propriety—Bengal Mithakshara.*

The plaintiff-respondent, and his paternal uncle *Z*, were members of an undivided family governed by the Bengal Mithakshara law. *Z* died childless. Shortly before his death he sold his undivided share in the joint family property to the appellant for the sum of Rs. 10,000, which was duly paid by the appellant. The sale by *Z*, being without the consent of his co-parcener, and not justified by legal necessity, was invalid; and the respondent was held entitled to recover the property sold unconditionally in a suit brought by him for that purpose after the death of *Z*. The question what would have been the appellant's rights in such a suit if it had been brought during *Z's* lifetime, however, arose for discussion.

Their Lordships considered it unnecessary to decide whether, if *Z* had been alive, and so entitled to resume his undivided share on cancellation of the sale-deed, it would have been possible to order partition and to charge *Z's* divided share with the Rs. 10,000 paid to him by the appellant. They, however, added:—"It might have been quite consistent with equitable principles to refuse to *Z* restitution of the interest which he sold, except on condi-

HINDU LAW—(*Contd.*)

Joint Family—Member of—Sale by—(*Contd.*)

tion of its being made at once available for repayment of the price which he received (198-9). (*Lord Watson.*) MADHO PARSHAD *v.* MEHRBAN SINGH.

(1890) 17 I.A. 194 = 18 C. 157 (163) = 5 Sar. 586 = R. & J.'s No. 121.

———*Validity of—Attachment of share in execution—Sale in case of—Bengal Mithakshara.*

Under the Bengal Mithakshara law, the attachment of the undivided share of a member in joint family property in execution of a decree at the instance of his creditor will be regarded as sufficient to support the alienation of a member's interest in the estate, or a sale under the execution (197). (*Lord Watson.*) MADHO PARSHAD *v.* MEHRBAN SINGH. **(1890) 17 I.A. 194 = 18 C. 157 (161) = 5 Sar. 586 = R. & J's No. 121.**

———*Validity of—Berar Mithakshara.*

It is said that the law of the Mithakshara is to be interpreted in Berar in the same manner as in Bombay, and that according to that law as so interpreted a member of a joint family has power to sell his undivided share in the joint family property without the consent of his co-owners; and their Lordships do not doubt that this statement is correct. (*Viscount Cave.*) SYED KASAM *v.* JORAWAR SINGH.

(1922) 49 I. A. 358 (364) = 50 C. 84 (91) = 27 C.W.N. 179 = 25 Bom. L.R. 1 = 21 A.L.J. 57 = 37 C.L.J. 73 = 31 M.L.T. 46 = 16 L.W. 223 = A. I. R. 1922 P.C. 353 = 68 I. C. 573 = 43 M.L.J. 676.

———*Validity of—Sale made on member's own account and without consent of co-sharers—Bengal and N. W. P.—Mithakshara law in.*

The respondent, plaintiff in the suit, and his paternal uncle, *Z*, were the members of an undivided Hindu family governed by the Mithakshara law in Oudh, which was the same as the Mithakshara law which prevailed in the courts of Bengal, and, as such, were co-sharers of land in certain villages. *Z* died childless in 1885. Shortly before his death he and his wife executed and delivered three deeds of sale to the appellant of his undivided share and interest in each of those villages. Those sales were made by the deceased for his own personal benefit, without the consent of the respondent, and without legal necessity.

It was conceded in argument for the appellant that the sales by *Z*, being without the consent of his co-parcener, and not justified by legal necessity, were according to the Bengal Mithakshara law invalid (195-6). (*Sir Barnes Peacock.*) MADHO PARSHAD *v.* MEHRBAN SINGH.

(1890) 17 I. A. 194 = 18 C. 157 (160) = 5 Sar. 586 = R. & J's. No. 121.

———Validity of—Sale made on member's own account and without consent of co-sharers—Wholly void under N.W.P. Mithakshara. *See.* HINDU LAW—JOINT FAMILY—MEMBER OF—ALIENATION BY—VALIDITY OF.

(1922) 49 I. A. 228 (232-3) = 44 A. 368 (374).

Joint family—Member of—Self-acquisitions of.

CLAIM BY OTHER MEMBERS TO.
CONDITION OF PROPERTY BEING, UNDER MITHAKSHARA.
CUSTOM BY WHICH IT BECOMES PART OF ANCESTRAL PROPERTY.
EVIDENCE.
IMMOVEABLE PROPERTY FORMIMG—WILL BEQUEATHING.
JOINT FAMILY PROPERTY OR—
BANKING FIRM OF FAMILY.
BUSINESS CARRIED ON BY MEMBER—PROFITS OF, AND PURCHASES WITH PROFITS.

HINDU LAW—(*Contd.*)

Joint Family—Member of—Self-acquisitions of—(*Contd.*)

JOINT FAMILY PROPERTY OR—
CONFISCATION AND RE-GRANT OF JOINT FAMILY PROPERTY.
EDUCATION—PROPERTY ACQUIRED BY MEMBER BY MEANS OF.
GAINS OF SCIENCE OF MEMBER.
GRANT BY GOVERNMENT TO MEMBER—PROPERTY SUBJECT OF.
INHERITANCE—PROPERTY GOT BY.
LEARNING—PROPERTY GOT BY MEMBER BY MEANS OF.
PROPERTY PURCHASED IN NAME OF MEMBER.
PROPERTY STANDING IN NAME OF MEMBER—PRESUMPTION AS TO.
REVENUE RECORDS—PROPERTY IN RESPECT OF WHICH MEMBER ENTERED AS SOLE PROPRIETOR IN.
THROWING INTO COMMON STOCK OF.
TRANSFER *inter vivos* TO JOINT FAMILY OF.
CLAIM BY OTHER MEMBERS TO.

———*Agreement by acquirer to give him the share—Onus of proof of, or of consent amounting to.*

Even under the Hindu law, where a share is claimed by one member in property acquired by another with the aid of a nucleus which was his separate, unaided acquisition, unaided either by funds or labour of the claimant, the onus is on the claimant to prove an agreement, or consent amounting to an agreement between him and the acquirer, to give the former the share claimed (246). (*Lord Kingsdown.*) ABRAHAM *v.* ABRAHAM. **(1863) 9 M. I. A. 195 = 1 W. R. (P. C.) 1 = 1 Suth. 501 = 2 Sar. 10.**

———*Maintainability—Conditions.*

A member of a joint undivided Hindu family can make separate acquisitions of property for his own benefit and unless it can be shown that the business (with the profits of which the acquisitions were made) grew from joint family property or that the earnings were blended with joint family estate, they remain free and separate. (*Lord Buckmaster.*) ANNAMALAI CHETTY *v.* SUBRAMANIAN CHETTY. **(1928) 56 M. L. J. 435 (437).**

CONDITION OF PROPERTY BEING, UNDER MITHAKSHARA.

———*Acquisitions through member's own exertions alone and without use of family funds.*

It was considered by the lower Courts that although *C* was the active member of the joint family, and the property was acquired principally through his ability, energy, and exertions, no part of it could be considered as his "self-acquired property," that is to say, as having been acquired within the meaning of the Mithakshara, through his own exertions alone and without the use of any part of the family funds.

Their Lordships are of opinion that the above view is correct (267). (*Sir Barnes Peacock.*) HURPURSHAD *v.* SHEO DYAL. **(1876) 3 I. A. 259 = 26 W. R. (P.C.) 55 = 3 Sar. 611 = 3 Suth. 304 = Bald. 25 = R. & J's No. 41 (Oudh).**

CUSTOM BY WHICH IT BECOMES PART OF ANCESTRAL PROPERTY.

———*Possibility of—Mithakshara law.*

Possibility of—Mithakshara law. (*Mr. Ameer Ali.*) MURTAZA HUSSAIN KHAN *v.* MAHOMED YASIM ALI.

(1916) 43 I. A. 269 (281-2) = 38 A. 552 (557-8) = 14 A. L. J. 1083 = 20 M. L. T. 362 = (1916) 2 M. W. N. 555 = 4 L. W. 358 = 19 O. C. 290 = 18 Bom. L. R. 884 = 25 C. L. J. 1 = 1 Pat. L. W. 122 = 21 C. W. N. 410 = 36 I. C. 299 = 31 M. L. J. 804.

HINDU LAW—(*Contd.*)

Joint Family—Member of—Self-acquisitions of—(*Contd.*)

EVIDENCE.

———Admission by member that his education was with aid of his father but with self-acquisitions of father—Reliance on former part of, ignoring latter—Permissibility. *See* ADMISSION—DEED — ADMISSION IN—MUST BE TAKEN AS A WHOLE—(3). **(1877) 4 I. A. 109 (117) = 1 M. 252 (260-1).**

IMMOVEABLE PROPERTY FORMING—WILL BEQUEATHING.

———Validity—Mithakshara law. *See* HINDU LAW—JOINT FAMILY—MEMBER OF—WILL BY—SELF-ACQUIRED IMMOVABLE PROPERTY. **(1898) 25 I. A. 54 (73) = 20 A. 267 (290).**

JOINT FAMILY PROPERTY OR—BANKING FIRM OF FAMILY.

———*Money drawn by member out of—Acquisitions with—Joint family property or self-acquisition—Agreement entitling each member to make separate acquisitions with money so drawn out.*

The joint family property of a Hindu joint family came out of the transactions of a banking firm founded by the common ancestor. An arrangement, embodied in writing, was entered into between the members of the family, the effect of which was to entitle each partner to draw money at his own discretion out of the firm, and to employ that money in his separate trade or separate acquisitions, the firm not being responsible for the losses sustained, and not being entitled to share in the profits arising from those speculations; but, subject to that modification, all the members of the family retained the interest which they previously had as joint members of the firm.

Held, on a construction of the agreement, that the acquisitions made by a member of the family with money drawn out of the firm constituted his self-acquisition and not joint family property (352). (*Sir Barnes Peacock.*) RAI NURSINGH DOSS *v.* NARAIN DOSS.

(1876) 3 **Suth.** 349 = **Bald.** 98.

———*Pledge by member of credit of—Acquisitions with—Joint family property or self-acquisition—Agreement entitling each member to draw money out of firm and to make separate acquisitions therewith.*

The joint family property of a Hindu joint family came out of the transactions of a banking firm founded by the common ancestor. An arrangement, embodied in writing, was entered into between the members of the family, the effect of which was to entitle each partner to draw money at his own discretion out of the firm, and to employ that money in his separate trade or separate acquisitions, the firm not being responsible for the losses sustained, and not being entitled to share in the profits arising from those speculations; but, subject to that modification, all the members of the family retained the interest which they previously had as joint members of the firm.

Held, on the construction of the agreement, affirming the High Court, that a distinction ought to be drawn between pledging the credit of the firm and drawing out money actually belonging to the firm, and that acquisitions made by a member by pledging the credit of the firm belonged to the firm and not separately to the acquirer (353).

The agreement was certainly a very extraordinary one, leaving it as it did in the power of each member to draw to an unlimited amount upon the assets of the firm, an arrangement of which the abuse could only be corrected by a dissolution of the partnership. Their Lordships would not be inclined to extend the operation of such an agreement

HINDU LAW—(*Contd.*)

Joint Family—Member of—Self-acquisitions of—(*Contd.*)

JOINT FAMILY PROPERTY OR—BANKING FIRM OF FAMILY—(*Contd.*)

one iota beyond its terms (352-3.) (*Sir Barnes Peacock.*) RAI NURSING DOSS *v.* RAI NARAIN DOSS.

(1876) 3 **Suth.** 349 = **Bald.** 98.

JOINT FAMILY PROPERTY OR—BUSINSSS CARRIED ON BY MEMBER—PROFITS OF, AND PURCHASES WITH PROFITS.

———*See* HINDU LAW—JOINT FAMILY—BUSINESS OF—MEMBER OF FAMILY. **(1917) 45 C. 733 (746).**

JOINT FAMILY PROPERTY OR—CONFISCATION AND RE-GRANT OF JOINT FAMILY PROPERTY.

———Estate in grantee's hands—Nature of. *See* OUDH ESTATE—JOINT FAMILY ESTATE—CONFISCATION AND RE-GRANT OF. **(1910) 37 I.A. 161 = 32 A. 415.**

JOINT FAMILY PROPERTY OR—EDUCATION—PROPERTY ACQUIRED BY MEMBER BY MEANS OF.

———*See* HINDU LAW—JOINT FAMILY—MEMBER OF—SELF-ACQUISITIONS OF—JOINT FAMILY PROPERTY OR—LEARNING.

JOINT FAMILY PROPERTY OR—GAINS OF SCIENCE OF MEMBER.

———*See* HINDU LAW—JOINT FAMILY—MEMBER OF—SELF-ACQUISITIONS OF JOINT FAMILY PROPERTY OR—LEARNING.

JOINT FAMILY PROPERTY OR—GRANT BY GOVERNMENT TO MEMBER—PROPERTY SUBJECT OF.

———*Property which was previously joint family property—Grant of.*

By the 8th paragraph of the Oudh Proclamation of March, 1858, it was declared, amongst other things, that *C. L.* Zemindar of Mourawan, and 5 other persons therein mentioned, were thenceforward the sole hereditary proprietors of the lands which they held when Oudh came under British rule. *C. L.* had died in 1854, long before the Mutiny. Subsequently summary settlements were made with *G. S.* (the son of *C. L.*) by the Government between the dates specified in S. 3 of Act I of 1869; and a talookdari sannad was granted to him before the passing of the Act, and subsequently to the 1st of April, 1858, *viz.*, on the 11th of December, 1859, by which the Government bound itself to maintain him and his heirs as sole proprietors of the estate. The name of *G. S.* was not contained in the 2nd schedule annexed to the Act, but that of *C. L.* was. *C. L.* did not enter into a kaboolyat for the lands to which the suit related, but *G. S.* did.

Held, as regards the estates which were exempted from confiscation, that the sunnud and summary settlements were a mere grant by Government to one member of the family of property which belonged to the family jointly, and that they could not of themselves affect the rights of the family (269-70).

It can scarcely be supposed that the Governor-General intended to injure any member of this loyal family, and by confiscation and re-grant to transfer the beneficial interest in the joint estates of the whole family from the several members of it to a single member of the family for his own sole benefit (269). (*Sir Barnes Peacock.*) HURPURSHAD *v.* SHEO DYAL. **(1876) 3 I. A. 259 = 26 W. R. 55 = 3 Sar. 611 = 3 Suth. 304 = Bald. 25 = R. & J.'s No. 41 (Oudh).**

———*Services rendered to it with use of family funds — Grant in consideration of.*

HINDU LAW—(*Contd.*)

Joint Family—Member of—Self-acquisitions of—(*Contd.*)

JOINT FAMILY PROPERTY OR—GRANT BY GOVERNMENT TO MEMBER—PROPERTY SUBJECT OF—(*Contd.*)

In regard to property granted by Government to a member of a joint Hindu family, *held* that, even though it was not previously part of the joint family estate, it could not be held to be the separate self-acquired property of the grantee within the meaning of the Hindu law, as it was granted as a reward for loyalty and for the support and assistance rendered to British officers, and such services could not have been rendered without the use of funds which must be presumed to have been those of the joint family (270). (*Sir Barnes Peacock.*) HURPURSHAD *v.* SHEO DYAL. **(1876) 3 I. A. 259 = 26 W. R. 55 = 3 Sar. 611 = 3 Suth. 304 = Bald. 25 = R. & J.'s No. 41 (Oudh).**

JOINT FAMILY PROPERTY OR—INHERITANCE—PROPERTY GOT BY.

———*See* HINDU LAW—JOINT FAMILY—JOINT FAMILY PROPERTY—SELF-ACQUISITION—INHERITANCE.

JOINT FAMILY PROPERTY OR—LEARNING—PROPERTY ACQUIRED BY MEMBER BY MEANS OF.

———*Education ordinary and suitable to member of family—Effect.*

S, who was a member of a joint Hindu family which carried on a money-lending business, was educated at the expense of the joint family at a Government High School. When he was twenty-two years old, *S* became a pleader's clerk and continued as a pleader's clerk for some years. Thereafter he was employed in several firms until his death at the age of 52. The knowledge of English which *S* acquired at the Government school was of use to him as a pleader's clerk and in the other employments in which he was subsequently engaged. From the savings out of his salaries and brokerage, and from the profits which he derived from a money-lending business which he personally carried on, *S* acquired a fortune of over 2 lakhs of rupees which he purported to dispose of by his will and codicil. The money-lending business which *S* personally carried on was started by him with capital derived from the savings out of his salary as a pleader's clerk, and without the aid of the joint fund. There was no evidence to show that the education received by *S* had been of an exceptionally high standard and more expensive than the education which ordinarily would be provided for a member of such a family as he belonged to.

Held, that the property acquired by *S* was his self-acquired, and not joint family property, and that he had the power of disposing of the same by will.

There is no authority for the contention in this case that the gains made as a clerk, as a broker, or as a money-lender, personally and without the aid of the joint funds, by a member of a joint family who received an ordinary education suitable to his position as a member of the family to which he belonged should in law be regarded as partible and not as his self-acquired property (53). (*Sir John Edge.*) MATHARAM RAMRAKHIOMAL *v.* REWACHAND RAMRAKHIOMAL. **(1917) 45 I. A. 41 = 45 C. 666 (684 5) = 16 A.L. J. 281 = 20 Bom. L. R. 566 = 22 C. W. N. 377 = (1918) M. W. N. 587 = 4 P. L. W. 197 = 7 L. W. 361 = 22 M. L. T. 218 = 27 C. L. J. 345 = 44 I. C. 269 = 34 M. L. J. 327.**

———*Equal learning possessed by other members—Effect.*

Learning is one of the undeniable exceptions to the general rule of partition known to the Hindu law; and if that shall be proved, it brings the property within the exception. But it is added, if it shall be shown there was equal learning possessed by the other parts of the family, that gives them a claim to it notwithstanding the circumstances of its being brought within the exception. (*The Lord Chancellor.*) LUXIMON ROW SADASEW *v.* MULLAR ROW BAJEE. **(1831) 5 W. R. 67 = 1 Suth. 1 = 2 Knapp. 60 = 1 Norton's L. C. 169 = 1 Sar. 19.**

———*Father's self-acquisition—Education with aid of.*

Property which was acquired by a deceased Hindu by his successful trading and by the execrcise of his industry and intelligence must, it was contended by his son, be deemed in point of law to have been derived from his (the deceased's) father, because the deceased was educated out of the funds of the family. It appeared, however, that, whatever were the charges of the education of the deceased, those charges were borne by the separate property of his (the deceased's) father, over which he had an absolute power of disposition.

Held, that the foundation of fact upon which the legal inference was sought to be based failed (117). (*Sir Robert P. Collier.*) PAULIEM VALLOO *v.* PAULIEM SOORYAH. **(1877) 4 I. A. 109 = 1 M. 252 (260-1) = 3 Sar. 698 = 3 Suth. 387.**

———*Gains not result of education but of peculiar skill, mental abilities, and effort of member—Effect.*

When the author of the Mithakshara laid down that the gains obtained from an education received at the expense of a joint family should be partible, he could not have intended that such gains should include the gains which were the result, not of the education received at the expense of the joint family, but of the peculiar skill, mental abilities, and individual effort in applying and improving such education exercised by the person who had been educated at the expense of the joint family (53). (*Sir John Edge.*) METHARAM RAMRAKHIOMAL *v.* REWACHAND RAMRAKHIOMAL. **(1917) 45 I. A. 41 = 45 C. 666 (684) = 16 A. L. J. 281 = 20 Bom. L. R. 566 = (1918) M. W. N 587 = 22 Bom. L. R. 377 = 4 P. L. W. 197 = 22 M. L. T. 218 = 7 L. W. 361 = 27 C. L. J. 345 = 44 I. C. 269 = 34 M. L. J. 327.**

———*I. C. S.—Salary as officer of—Education in England at family expense.*

The appellant, who held a salaried appointment in the Indian Civil Service, was a member of a Mithakshara joint family, which carried on in a firm name a joint ancestral business as money-lenders. In a suit brought on hundis given by the firm, in the course of its business, in respect of a firm debt, the question was whether the appellant's earnings, being the gains of science, were his self-acquisitions and were not liable for the suit claim. The appellant took no part in the conduct of the family business. He was not privy to the debts incurred.

In his youth the appellant was for seven years absent from India for the purpose of being specially trained in England for the I. C. S. There was no evidence as to his education and early life. His family being a family of hereditary money-lenders, the ordinary education, which all its male members would naturally and appropriately enjoy was one of considerable extent and included varied attainments. The appellant did not adduce evidence to show that his specialised education in England was obtained by other means than the use of his family property.

Held, that the appellant's official salary was partible property of the joint family, and that the appellant was liable upon the hundis to the extent of his share in the

HINDU LAW—(*Contd.*)

Joint Family—Member of—Self-acquisitions of—(*Contd.*)

JOINT FAMILY PROPERTY OR—LEARNING—PROPERTY ACQUIRED BY MEMBER BY MEANS OF—(*Contd.*)

joint family property, including his partible earnings. (*Lord Sumner.*) AMAR NATH AND GOKUL CHAND *v.* FIRM OF HUKAM CHAND NATHU MAL.

(1921) 48 I. A. 162 = 2 Lah. 40 = 23 Bom. L. R. 671 = 14 L. W. 435 = 2 P. L. T. 201 = 3 U. P. L. R. (P.C.) 12 = 19 A. L. J. 249 = (1921) M W. N. 175 = 29 M. L. T. 258 = 25 C. W. N. 534 = 33 C. L. J. 355 = 60 I. C. 379 = 40 M. L. J. 327.

———Law as to—Development of—Anomalies in—Present state of. (*Lord Sumner.*) AMAR NATH AND GOKUL CHAND *v.* FIRM OF HUKAM CHAND NATHU MAL.

(1921) 48 I. A. 162 = 2 Lah 40 = 23 Bom. L. R. 671 = 14 L. W. 435 = 2 P. L. T. 201 = 3 U.P.L.R. (P. C.) 12 = 19 A. L. J. 249 = (1921) M. W. M. 175 = 29 M. L. T. 258 = 25 C. W. N. 534 = 33 C. L. J. 355 = 60 I. C. 379 = 40 M. L. J. 327.

———*Nature of education required to be received.*

Very strong and clear authority would be required to support the somewhat startling proposition of law that if a member of a joint Hindu family receives any educution whatever from the joint funds, he becomes for ever after incapable of acquiring by his own skill and industry any separate property. No texts which have been cited go to the full extent of the proposition which has been contended for (117).

It may hereafter possibly become necessary for this Board to consider whether or not the more limited and guarded expression of the law upon this subject of the courts of Bengal is not more correct than what appears to be the doctrine of the courts of Madras (118). (*Sir Robert P. Collier.*) PAULIEM VALLOO *v.* PAULIEM SOORYAH.

(1877) 4 I. A. 109 = 1 M. 252 (261-2) = 3 Sar. 698 = 3 Suth. 387.

———*Partibility of such property—Test—Use of family property in acquiring science by means of which property in question is acquired—Sufficiency of—Use of family property directly for purpose of acquiring property in question—Necessity.*

Can it be said that the gains, which are partible, are such as result only directly from the use of joint family funds, and that emoluments, which are the consideration for the personal services of an official selected for his special personal qualifications, result remotely only and too remotely from any family outlay? Not only is no authority forthcomming for the first part of this contention, but the contrary has been continuously assumed in all the cases which turn on "gains of science". The point of all of them is, that persons qualified for earning money by specialised education, enjoyed to the detriment of family funds, become, as it were, a continuing investment for the family benefit. No decision attempts to distinguish between the personal and the family elements in the ultimate gains; it would practically be impossible to do so. There is equally little ground for contending that partibility depends on *causa proxima*, or is negatived by the intervention of the personal element of the individual co-parcener's character. It is true that in the very learned judgment of Mr. Collett in 2 M. H. C. R. 53, he expresses the view, that logically the rule should have regard to the use of family property in acquiring the partible gains themselves "during and for the purposes of the acquisition", and not to its use in acquiring the science by means of which they are gained. This view was, however, over-ruled on appeal, and has never been re-established. For fifty years and more the current of authority has run the other way, and, in any case, it is now too late to change it. (*Lord Sumner.*) AMAR NATH AND GOKUL CHAND *v.* FIRM OF HUKAM CHAND NATHU MAL.

(1921) 48 I. A. 162 (172) = 2 Lah. 40 (50-1) = 23 Bom. L. R. 671 = 14 L. W. 435 = 2 P. L. T. 201 = 3 U. P. L. R. (P.C.) 12 = 19 A. L. J. 249 = (1921) M.W.N. 175 = 29 M.L.T. 258 = 25 C. W.N. 534 = 33 C. L. J. 355 = 60 I. C. 379 = 40 M. L.J. 327 (336).

———*Presumption—Onus of proof.*

One of the recognised exceptions to the rule that the acquisitions of the members of a joint Hindu family are joint property and partible is property acquired by the possession of special "science" or "learning".

Among the unseparated members of a joint Hindu family, possessed of ancestral property by means of which the science, whose gains are in question might itself have been acquired, the presumption, even in the case of such special gains, is that the acquisitions of all members are partible, until the contrary is proved. It is true that a distinction may be drawn between a presumption in favour of partibility, which is a legal attribute of the gains in question, and a presumption in favour of detriment to the patrimony involved in acquiring the specialised training, the use of which has produced the gain, which is a question of fact; but if it is in general incumbent upon the joint family member to prove that his case is an exception to the prevailing rule of partibility, it is also incumbent upon him to prove the particular facts, which are needed to establish the exception. (*Lord Sumner.*) AMAR NATH AND GOKUL CHAND *v.* THE FIRM OF HUKAM CHAND NATHU MAL.

(1921) 48 I. A. 162 (166-7) = 2 Lah. 40 (44, 49) = 23 Bom. L R. 671 = 14 L. W. 435 = 2 P. L. T. 201 = 3 U. P. L. R. (P.C.) 12 = 19 A. L. J. 249 = (1921) M.W.N. 175 = 29 M.L.T. 258 = 25 C.W. N. 534 = 33 C. L. J. 355 = 60 I. C. 379 = 40 M. L. J. 327.

———"*Science*" *in text of Mithakshara—Meaning of—Technical meaning—Learning.*

The word in S. 4, Chapter I of the Mithakshara, which Mr. Colebroke has translated as "science" means learning; and that is apparently the meaning which has been generally accepted by the Courts in India. It gives the Sanskrit word a wider meaning than it would otherwise have. It would be difficult, if not impossible, to ascertain what would have been the science or sciences which the author of the Mithakshara, who wrote his commentary in the latter part of the 11th century, had in contemplation if he used a word which meant "science" strictly so called and is not susceptible of the wider and more comprehensive meaning "learning".

Education beyond that of a very elementary kind must have been limited to very few of the people for whose guidance the Mithakshara was written, and for that limited few there could have been then no education attainable in the arts, sceinces, and professions of that time comparable with the education now obtainable and necessary for a successful career in the arts, sciences, and professions of the present day. It may be assumed that the author of the Mithakshara, who was construing and explaining the more ancient texts of the Hindu law for the benefit and guidance of the Hindu community, could not have intended to penalise an education which was not in his contemplation and of which necessarily he knew nothing. Nor can it be assumed that his intention was to penalise and discourage self-acquired skill, or the exercise of high mental abilities or great individual effort in winning success in an art or science, or in a profession. He must have been writing of

HINDU LAW—(*Contd.*)

Joint Family—Member of—Self-acquisitions of—(*Contd.*)

JOINT FAMILY PROPERTY OR—LEARNING—PROPERTY ACQUIRED BY MEMBER BY MEANS OF—(*Contd.*)

education—learning—such as he knew it to be (52-3). (*Sir John Edge.*) METHARAM RAMRAKHIOMAL *v.* REWACHAND RAMRAKHIOMAL. (1917) 45 I. A. 41 = 45 C. 666 (683-4) = 16 A. L. J. 281 = 20 Bom. L. R. 566 = (1918) M. W. N. 587 = 22 C. W. N. 377 = 4 Pat. L. W 197 = 22 M. L. T. 218 = 7 L W. 361 = 27 C. L. J. 345 = 44 I. C. 269 = 34 M. L. J. 327.

JOINT FAMILY PROPERTY OR—PROPERTY PURCHASED IN NAME OF MEMBER.

———*Criterion as to—Purchase-money—Source of.*

In cases in which the question is whether property purchased in the name of a member of a joint Hindu family is his self-acquisition or part of the joint family property, the criterion is to consider from what source the money came with which the purchase-money was paid.

Where there was no evidence that the member in whose name the purchase was made had any separate property, or that it was from his funds that any part of the purchase-money was paid, *held*, that the property purchased must be considered to be joint property (240). (*Lord Campbell*) DHURM DAS PANDEY *v.* MUSSUMAT SHAMA SOONDARI DEBIAH. (1843) 3 M. I. A. 229 = 6 W. R. (P.C.) 43 = 1 Suth. 147 = 1 Sar. 271.

———On the trial of the issue whether property purchased by a member of a joint Hindu family is joint family property or the separate property of the member purchasing, the principal fact to be ascertained is the source from which the purchase-money of the property in question was derived, *i.e.*, whether it came from the joint family chest or from the separate funds of the member purchasing (843). (*Sir James W. Colvile.*) BODH SINGH DOODHOORIA *v.* GUNESCHUNDER SEN. (1873) 2 Suth. 840 = 19 W.R. 356 = 12 B. L.R. 317 = 3 Sar. 253.

———Where there is a dispute whether a property standing in the name of a junior member of a Hindu family was his self-acquisition, the criterion is "to consider from what source the money comes with which the purchase-money is paid" (*Mr. Ameer Ali.*) PARBATI DASI *v.* BAIKUNTHA NATH DE. (1913) 15 M. L. T. 66 = (1914) M. W. N. 42 = 12 A. L. J. 79 = 19 C. L. J. 129 = 18 C.W.N. 428 = 16 Bom. L.R. 101 = 22 I. C. 51 = 26 M. L J. 248 (250).

———*Evidence — Family accounts—Private accounts of member—Value of—Issue between other members and purchaser of property in execution of decree for separate debt of that member,*

Appellants were the purchasers at a sale held in execution of a decree obtained against a member of a joint Hindu family for his separate debt of his right, title, and interest in certain property standing in the name of that member. Their case was that the said property was the separate property of their judgment-debtor in which the other members of the family had no interest whatever. The case of the other members of the family was that the property had been purchased by the member, who was the judgment-debtor, with joint family funds, and was therefore joint-family property.

Held, that in such a case the family accounts taken by themselves would be admissible only as corroborative evidence, but that the private accouuts of the judgment-debtor might be direct evidence, in the nature of admissions on his part, against the appellants (844). (*Sir James W. Colvile.*) BODH SINGH DOODHOORIA *v.* GUNESCHUNDER SEN. (1873) 2 Suth. 840 = 19 W.R. 356 = 12 B.L.R. 317 = 3 Sar. 253.

HINDU LAW—(*Contd.*)

Joint Family—Member of—Self-acquisitions of—(*Contd.*)

JOINT FAMILY PROPERTY OR—PROPERTY PURCHASED IN NAME OF MEMBER—(*Contd.*)

———*Evidence — Receipts in his name respecting it — Value of.*

The fact that property was purchased in the name of one member of a joint family, and that there are receipts in his name respecting it is perfectly consistent with the notion of its having been joint property (240). (*Lord Campbell.*) DHURM DAS PANDEY *v.* MUSSUMAT SHAMA SOONDARI DEBIAH. (1843) 3 M.I.A. 229 = 6 W. R. (P.C.) 43 = 1 Suth. 147 = 1 Sar. 271.

———*Presumption.*

K, who, with his two brothers, constituted a joint Hindu family governed by the Mithskshara law of inheritance, purchased an estate in his own name. There was no direct evidence to show what funds were employed in the purchase of the estate.

Held, that the presumption, in the absence of evidence to the contrary, would be, that it was purchased with joint family funds, and that the estate so purchased became the joint estate of the family (149). (*Sir Barnes Peacock.*) COLLECTOR OF GODAVERY *v.* ADDANKI RAMANNA PANTULU. (1886) 13 I. A. 147 = 9 M. 482 (487) = 4 Sar. 728.

JOINT FAMILY PROPERTY OR—PROPERTY STANDING IN NAME OF MEMBER—PRESUMPTION AS TO.

———It is allowed that this was a family who lived in commensality, eating together and possessing joint property. It is allowed that they had some joint property, and there can be no doubt that, under these circumstances, the presumption of law is, that all the property they were in possession of was joint property until it was shown by evidence that one member of the family was possessed of separate property. Such evidence may be received (240). (*Lord Campbell.*) DHURM DAS PANDEY *v.* MUSSUMAT SHAMA SOONDARI DEBIAH. (1843) 3 M.I.A. 229 = 6 W. R. (P.C,) 43 = 1 Suth. 147 = 1 Sar. 271.

———The presumption of the Hindu law, in a joint undivided family, is, that the whole property of the family is joint estate, and the onus lies upon a party claiming any part of such property as his separate estate, to establish that fact. (*Lord Justice Knight Bruce.*) GOPEEKRIST GOSAIN *v.* GUNGAPERSAUD GOSAIN. (1854) 6 M. I. A. 53 (85) = 2 Suth. 13 = 4 W. R. 46 = 1 Sar. 493.

———A purchase by a member of a joint Hindu family will be presumed to be a purchase, not on his own account, but for the joint family (236). (*Sir Robert P. Collier.*) BISSESSUR LALL SAHOO *v.* MAHARAJAH LUCHMESSUR SINGH. (1879) 6 I.A. 233 = 5 C.L.R. 477 = 4 Sar. 76 = 3 Suth. 686 = Bald. 331.

———In the case of an ordinary Hindu family who are living together, or who have their entire property in common, the presumption is, that all that any one member of the family is found in possession of, belongs to the common stock. That is the ordinary presumption, and the *onus* of establishing the contrary is thrown on the member of the family who disputes it (317). (*Sir Montague E. Smith.*) BANNOO *v.* KASHEE RAM. (1877) 3 C. 315 = 3 Suth. 490 = 3 Sar. 781 = R. & J.'s No. 49.

———In a joint Hindu family governed by the Mithakshara law, the rule is that the acquisitions of the members are joint property and partible, that is to say, liable to be shared with the other members of the family, and imparti-

HINDU LAW—(*Contd.*)

Joint Family—Member of—Self-acquisitions of—(*Contd.*)

JOINT FAMILY PROPERTY OR—PROPERTY STANDING IN NAME OF MEMBER—PRESUMPTION AS TO—(*Contd.*)

bility is the exception. (*Lord Sumner*). AMAR NATH AND GOKUL CHAND *v.* THE FIRM OF HUKAM CHAND NATHU MAL. (1921) 48 I. A. 162 (166) = 2 Lah. 40 (44) = 23 Bom. L.R. 671 = 14 L. W. 435 = 2 P.L.T. 201 = 3 U.P.L.R. (P.C.) 12 = 19 A.L.J. 249 = (1921) M.W.N. 175 = 29 M.L.T. 258 = 25 C. W N. 534 = 33 C.L.J. 355 = 60 I.C. 379 = 40 M.L.J. 327 (331).,

———*Ancestral nucleus admitted.*

In a case in which a nucleus exists and the family is joint, the onus is on the party setting up a case of separate estate.

In a suit for partition of family property instituted by the respondent, the question was whether the property was joint and ancestral.

Held, affirming the High Court on appeal, that the property was ancestral and joint and that, there having been no exclusion of the respondent from use and enjoyment for the period of limitation, his suit was not barred by limitation. (*Lord Robertson.*) ANANDRAO GANPATRAO *v.* VASANTRAO MAHADEVRAO. (1907) 11 C.W.N. 478 = 5 C. L. J. 378 = 2 M. L. T. 151 = 9 Bom. L. R. 595 = 17 M.L J. 184.

———*Effect.*

Where, in a suit for partition of joint family properties held by the members of a Mithakshara family, one of the parties claims that certain properties were the self-acquisitions of his father but admits an ancestral nucleus, the onus is on him to prove that those properties were the self-acquisitions of his father. (*Mr. Ameer Ali.*) RAJANGAM AYYAR *v.* RAJANGAM AYYAR.

(1922) 50 I.A. 134 (141) = 46 M. 373 (381) = 31 M.L.T. 136 = 16 L.W. 615 = 4 U.P.L.R. (P.C.) 85 = A. I. R. 1922 P.C. 266 = 21 A. L. J. 460 = 37 C.L.J. 435 = 27 C.W.N. 561 = 69 I.C. 123 = 44 M.L.J. 745.

———*Evidence rebutting—Acquisitions of separate property by some of members from their own funds and dealing by them with it on their own account if—Ancestral property held in joint possession.*

Where it appeared that, while a Hindu family had some ancestral property in joint possession, some of the members of the family acquired separate property from their own funds and dealt with it as their own without reference to the other members of the famiy, *held*, that such a state of things might be fairly held to weaken, if not altogether to rebut, the ordinary presumption of Hindu law as to property in the name of one member of a joint family, and to throw upon those who claim, as joint property, that of which they have allowed their co-parcener, trading and incurring liabilities on his separate account, to appear to be the sole owner, the obligation of establishing their title by clear and cogent evidence (841). (*Sir James W. Colvile.*) BODH SING DOODHOORIA *v.* GUNESCHUNDER SEN.

(1873) 2 Suth. 840 = 19 W.R. 356 = 12 B.L.R. 317 = 3 Sar. 253.

———*Decision of family admitted to a certain extent—Members living separately and no commensality between them—Applicability of presumption to case of.*

The appeal arose out of a suit brought by the plaintiff-respondent for the recovery of one-half of all the property in possession of one *R*, the plaintiff's uncle, at the time of his death. The suit was brought against the widows of *R*, and against his grandson, the son of his daughter. The plaintiff's case was that *R*, at the time of his death, was a

HINDU LAW—(*Contd.*)

Joint Family—Member of- Self-acquisitions of—(*Contd.*)

JOINT FAMILY PROPERTY OR—PROPERTY STANDING IN NAME OF MEMBER—PRESUMPTION AS TO—(*Contd.*)

member of a joint family, consisting of himself and of the plaintiff and his brother *K*, who did not join in the suit. The question for decision was whether the plaintiff was joint with *R* at his death.

The plaintiff admitted in his plaint that his grandfather divided the ancestral property amongst his four sons, including *R* and the father of the plaintiff. He alleged, however, that the four sons did not take separately, but that *R* and his (plaintiff's) father took one-half and remained a joint family. while the other half was taken by the other two sons jointly, who accordingly formed a separate family. There was no distinct proof, one way or the other, as to the nature of the division by the grandfather. It further appeared that. in the lifetime of *R*, the plaintiff and his brother *K*, as between themselves, separated, and therefore the family was still further broken up. It also appeared that, whatever the division of the property might have been by the grandfather, all the members of the family lived separately, and there was no commensality between them.

Held that it lay upon the plaintiff to establish by evidence the foundation of his case, *viz.*, that the property of *R* was joint property to which he and his brother *K*, as surviving members, were entitled.

Held further, reversing the Courts below, that the plaintiff had failed to discharge the onus which lay upon him.

In the case of an ordinary Hindu family who are living together, or who have their entire property in common, the presumption is, that all that any one member of the family is found in possession of, belongs to the common stock. That is the ordinary presumption, and the onus of establishing the contrary is thrown on the member of the family who disputes it. Having regard, however, to the state of this family when the present dispute arose, their Lordships think that that presumption cannot be relied upon as the foundation of the plaintiff's case, and therefore, as he seeks to recover property which was in the possession of *R* and was ostensibly his own at the time of his death, it lies upon him to establish by evidence the foundation of his case, *viz.*, that the property was joint property to which he and his brother *K*, as surviving members, were entitled. (*Sir Montague E. Smith.*) BANNOO *v.* KASHEE RAM.

(1877) 3 C. 315 = 3 Suth. 490 = 3 Sar. 781 = R. & J.'s No. 49.

JOINT FAMILY PROPERTY OR—REVENUE RECORDS—PROPERTY IN RESPECT OF WHICH MEMBER ENTERED AS SOLE PROPRIETOR IN.

———*See* HINDU LAW—JOINT FAMILY—MEMBER OF—REVENUE RECORDS.

THROWING INTO COMMON STOCK OF.

———*Concurrent findings as to—Privy Council's interference with.*

Findings accepted in a case in which the findings depended upon matters of inference from written documents. CHELLAYAMMAL *v.* MUTHIALAMMAL.

(1870) 15 W. R. 1.

———*Conditional offer for—Non-acceptance of—Effect.*

In a case in which the question was whether the suit property was acquired by *S*, a member of a joint Hindu family, with the assistance of joint family funds, and, if not, whether *S* joined the property to the common ancestral property, the courts below found that the property was the self-acquisition of *S*, and that he did not throw it into the common stock. It was contended before their Lordships that

HINDU LAW –(*Contd.*)

Joint Family—Member of—Self-acquisitions of— (*Contd.*)

THROWING INTO COMMON STOCK OF—(*Contd.*)

in arriving at the above finding the courts below misconstrued a letter written by *S* to his elder brother and which was as follows :—" I am ready to join my property with the family property, and take my share from it."

Held, agreeing with the courts below, that the letter was a conditional offer made by *S* to throw his self-acquisition into the common stock if the brother would come to a partition, and that, as the offer was never accepted, the letter had no effect on the rights of the parties (45-6). (*Sir John Edge.*) METHARAM RAMRAKHIOMAL *v.* REWACHAND RAMRAKHIOMAL. **(1917) 45 I. A. 41 = 45 C. 666 (675-6) = 16 A. L. J. 281 = 20 Bom. L. R. 566 = (1918) M. W. N. 587 = 22 C. W. N. 377 = 4 Pat. L. W. 197 = 22 M.L.T. 218 = 7 L. W. 361 = 27 C. L. J. 345 = 44 I. C. 269 = 34 M. L. J. 327.**

———*Conveyance for—Necessity.*

It is open to a member of a joint Hindu family, who has taken a farm of land in his own name, to put his co-sharers in the estate into the full enjoyment of that farm, and no actual conveyance would, under the Hindu law, be required for that purpose (239-40). (*Sir James W. Colvile.*) JUGGOMOHUN BUKSHEE *v.* ROY MOTHOORANATH CHOWDRY. **(1867) 11 M. I. A. 223 = 7 W. R. (P. C.) 18 = 1 Suth. 673 = 2 Sar. 246.**

———*Effect of.*

It is well established that a member of a Hindu family may convert his self-acquired property into ancestral family estate by throwing it into the common stock (740). (*Sir Walter Phillimore.*) RADHAKANT LAL *v.* NAZMA BEGUM. **(1917) 45 C. 733 = 22 C. W. N. 649 = 27 C. L. J. 632 = 16 A. L. J. 537 = 5 P. L. W. 72 = 23 M. L. T. 392 = (1918) M. W. N. 386 = 20 Bom. L. R. 724 = 45 I. C. 806 = 35 M. L. J. 99.**

———*Effect of—Property if can be taken out of common stock again.*

Properties once brought into a common stock cannot be taken out of it again (744). (*Sir Walter Phillimore.*) RADHAKANT LAL *v.* NAZMA BEGUM. **(1917) 45 C. 733 = 22 C. W. N. 649 = 27 C. L. J. 632 = 16 A. L. J. 537 = 5 P. L. W. 72 = 23 M. L. T. 392 = (1918) M.W.N. 386 = 20 Bom. L. R. 724 = 45 I. C. 806 = 35 M. L. J. 99.**

———*Evidence of.*

The question was whether certain property, which was assumed to have been originally acquired property of one Paupa Reddy, had been thrown by him, although his separate acquisition, into a common stock.

Upon that question the court below considered that two documents were themselves sufficient evidence of the fact. The one was a document which was called Ex. I and it was as follows :—"The humble petition of Paupa Reddy. The muttas registered in my name" (the properties in dispute) "and those registered in the name of myself and my elder brother's son, Polam Reddy, and also those property enjoyed by us, as also the choultry and the charities, belong after my death to the said Polam Reddy, and to none else." The court below was of opinion that that writing was a writing evidencing a very deliberate recognition and admission by Paupa Reddy of the then existing condition of the property that it was part of a joint property of himself and Polam Reddy.

The other document was an income-tax return; in which Paupa Reddy lumped the properties in dispute together with the other lands which were undoubtedly the joint property

HINDU LAW—(*Contd.*)

Joint Family—Member of—Self-acquisitions of— (*Contd.*)

THROWING INTO COMMON STOCK OF—(*Contd.*)

of himself and Polam Reddy, and treated them all alike as joint property.

Held, that it was utterly impossible for their Lordships to come to the conclusion that the Court below was wrong in treating those documents as very important evidence, and in drawing the conclusion that the proper inference from them was, that it was a recognition of the fact that the separate property had become joint property. CHELLAYAMMAL *v.* MUTHIALAMMAL. **(1870) 15 W. R. (P. C.) 1.**

———*Evidence of—Evidence held sufficient except with regard to purchases in name of son-in-law.*

While it is possible that a member of a joint Hindu family should make separate acquisitions, and keep moneys and property so acquired as his separate property, yet the question whether he has done so is to be judged from all the circumstances of the case.

A, a member of a joint Hindu family whose house was at Lucknow, practised as a pleader at Hardoi, and made considerable savings from his professional earnings. He eventually became managing member but was all along entrusted with the management of the joint family property in Hardoi district. Throughout he kept the accounts of the joint property and of his own earnings in one account book. He purchased sundry properties out of the funds so entered in the name of his son-in-law, *B*, and stated that he made such purchases to provide for *B*.

Held that, by blending his private earnings with the receipts and payments on joint account, *A* showed an intention to make them joint property, but that this fact was not conclusive as to the question whether all purchases entered in the book were made for the joint family, and that as regards the purchases in the name of *B* the evidence showed that the properties were intended to be given away to *B* and he was therefore entitled to the same. (*Lord Buckmaster, L.C.*) SURAJ NARAIN *v.* RATAN LAL. **(1917) 44 I.A. 201 = 40 A. 159 = 21 C.W.N. 1065 = 20 O.C. 211 = 22 M.L.T. 121 = 2 Pat. L.W. 160 = 15 A.L.J. 684 = 26 C.L.J. 287 = 19 Bom. L.R. 737 = 6 L.W. 509 = 40 I.C. 988 = 33 M. L. J. 180.**

———*Evidence of — Inheritance from collateral—Property got by—Throwing into common stock of.*

The question was whether *D*, a member of a Hindu family, threw into the common stock property which he got by inheritance from a collateral and which was therefore his self-acquisition. It appeared that *K*, the brother of *D*, also got some of the other properties of the same collateral by inheritance from him. It further appeared that, at "a deorh partition" between *D* and *K*, *D* gave ancestral family property, and received *K's* share in property coming from the collateral, and that *D* gave property got by him from the collateral and received *K's* share of ancestral family property.

Held, that a more striking proof of the throwing together of the two properties into a common stock there could hardly be (742). (*Sir Walter Phillimore*) RADHAKANT LAL *v.* NAZMA BEGUM. **(1917) 45 C. 733 = 22 C.W.N. 649 = 27 C.L.J. 632 = 16 A.L.J. 537 = 5 P.L.W. 72 = 23 M.L.T. 392 = (1918) M.W N. 386 = 20 Bom. L.R. 724 = 45 I.C. 806 = 35 M. L. J. 99.**

———*Evidence of — Purchases with self-acquisition in name of son-in-law—Intention as to—Evidence of—Statement by acquirer that he intended purchases as a provision for his son-in-law — Admissibility of—Evidence Act, S.* 32 (3).

On an issue as to whether, in a case in which a member of a joint Hindu family made purchases with his self-acqui-

HINDU LAW—(*Contd.*)

Joint Family—Member of—Self-acquisitions of—(*Contd.*)

THROWING INTO COMMON STOCK OF—(*Contd.*)

sitions in the name of his son-in-law, he intended to incorporate the properties so purchased with the joint family property as in the case of his other acquisitions, or whether he intended to give them away to his son-in-law, *held*, that a statement by the member that the purchases in the name of his son-in-law were made to provide for him was a statement against his own interest and was admissible in evidence under S. 32 (3) of the Evidence Act. (*Lord Buckmaster, L. C.*) SURAJ NARAIN *v.* RATAN LAL.

(1917) 44 I.A. 201 = 40 A. 159 = 21 C.W.N. 1065 = 20 O.C. 211 = 22 M.L.T. 121 = 2 Pat. L.W. 160 = 15 A.L.J. 684 = 26 C.L.J. 287 = 19 Bom. L.R. 737 = 6 L.W. 509 = 40 I.C. 988 = 33 M. L. J. 180.

———*Evidence—Trading acquisitions made without aid of ancestral property—Throwing into common stock of—Evidence of—Rights created by.*

In a suit for partition, the question was whether, as alleged by plaintiff, the suit property, and in particular, the property of five banking firms, was the joint and undivided property of the family of plaintiff and his brothers or their children, and consequently, whether by the Hindu law governing the parties, the issueless widow of *D*, one of the brothers, was incapable of taking a share of it. The defendant's case was that the suit property was in no degree acquired by the use of ancestral property, that *D* left his native village to seek his fortunes some years after his father's death with nothing but his drinking vessel; that he took service with a native banker at Agra; that, whilst in that service, he realized a small capital by means of some private adventure; that with the capital so acquired and its accretions he established the suit Banking firms; that he associated his brothers with himself from motives of family affection; employing them in the business rather as dependants than as partners on an equal footing with himself; and that the property of the different firms was partnership property to be dealt with according to the rules which regulate mercantile partnerships between strangers and was not subject to the rule of Hindu law which excludes a widow from the succession to her husband's share of the joint property of an undivided family (502 3).

The evidence fell far short of proof that the ancestral property contributed in any material degree to the acquisition of the funds employed in trade which formed the bulk of the property in dispute. It appeared that the family was, however, an undivided family, and that there was a nucleus of ancestral property and that *D* laid the foundation of the future fortune of the family. But there was no proof that he kept as separate, or treated as separate, property that which he acquired at Agra. On the other hand, it was shown that many years before his death he associated his brothers with himself as partners, and that thenceforward they carried on business together each contributing by his exertions to the increase of the common stock (505).

Held, there was nothing *prima facie* improbable in the hypothesis that *D* brought his earlier gains voluntarily into the common stock, making them the capital on which he and his brothers were to trade. All subsequent gains being made by their joint exertions would, according to the general principle of Hindu Law, be the joint property of the family whilst undivided, and be partible as such on a partition. The onus lay on the defendants of proving a special contract which impressed the character of partnership as distinguished from joint or separate property in the Hindu sense of those terms, upon the property in question (506). (*Sir James W. Colvile.*) RAMPRASHAD TEWARY *v.* SHEOCHURN DOSS. **(1866) 10 M. I. A. 490 = 2 Sar. 177.**

HINDU LAW—(*Contd.*)

Joint Family—Member of—Self acquisitions of—(*Contd.*)

TRANSFER INTER VIVOS TO JOINT FAMILY OF.

———What amounts to—Oudh talookdar—Property got as self-acquisition under sunnud—Transfer of. *See* OUDH ESTATES ACT OF 1869, SS. 11, 14 AND 15.

(1876) 3 I.A. 259 (277).

Joint family—Member of—Trade carried on by.

———*See* HINDU LAW—JOINT FAMILY—BUSINESS OF —MEMBER OF FAMILY.

Joint family—Member of—Will by.

———*Deed invalid as a—Validity of, as a family arrangement with consent of other members.*

A will by a member of a joint Hindu family bequeathing his co-sharer's interest which does not operate as a will at all may be good evidence of a family arrangement contemporaneously made and acted upon by all the parties (132).

A and *B*, two brothers, were members of a joint Hindu family governed by the Mithakshara law. *A* fell seriously ill and was not expected to recover. He was desirous that after his death the name of his widow should be entered in respect of his share in the joint property, and that after the death of the said widow his share in the property should devolve upon his daughter and daughter's son, and that a document to effect that object should be executed. Accordingly *A* and *B* jointly executed a document called a will, which provided that on the death of *A* his wife should have and enjoy for her life an interest in a moiety of the joint property equivalent to the interest which the widow of a sonless and separated Hindu would have in her deceased husband's estate. After the death of *A*, the name of his wife was entered by *B* in the revenue papers in respect of a moiety of the property. It also appeared that the risk of a partition at any moment was in the contemplation of *A* and *B* when they executed the document in question.

Held that the document, though invalid as a will, was good evidence of a mutual agreement by *A* and *B* that the interest which *A's* widow obtained by the agreement should continue for the benefit of her life, notwithstanding the birth, if it should happen, of "male issue" to *B* (132-3). (*Sir John Edge*). LAKSHMI CHAND *v.* ANANDI.

(1926) 53 I.A. 123 = 48 A. 313 = 24 A.L.J. 609 = 28 Bom. L.R. 910 = 43 C.L.J. 513 = (1926) M. W. N. 529 = 3 O. W. N. 581 = 31 C.W.N. 101 = A.I.R. 1926 P.C. 54 = 95 I.C. 566 = 51 M. L. J. 52.

———*Self-acquired immovable property—Will bequeathing—Validity—Mithakshara law.*

A member of an undivided family subject to Mithakshara law has the power of disposition over self-acquired immoveable property at his will (73).

In this case the member was the father. (*Lord Hobhouse*). RAO BALWANT SINGH *v.* RANI KISHORI.

(1898) 25 I.A. 54 = 20 A. 267 (290) = 2 C.W.N. 273 = 7 Sar. 279.

———*Validity of—Effect of, on status of family—Dayabhaga law.*

Under the Dayabhaga law it is possible for one of several brothers constituting a joint family to make a valid bequest of his share of the joint family property, but except to the extent to which that will affects the joint family it remains joint. (*Lord Buckmaster*). RAJANI KANTA PAL *v.* JAGA MOHAN LAL. **(1923) 50 I.A. 173 (177) = 50 C. 439 (443) = 32 M.L.T. 149 = 25 Bom. L. R. 683 = 37 C. L. J. 515 = (1923) M.W.N. 438 = 27 C.W.N. 997 = 18 L.W. 387 = 9 O. & A.L.R. 805 = 73 I.C. 252 = A.I.R. 1923 P.C. 57 = 44 M. L. J. 561**

HINDU LAW—(*Contd.*)

Joint family—Member of—Will by—(*Contd.*)

———*Validity of—Mithakshara law.*

The High Court of Madras has ruled that a co-parcener cannot dispose of his undivided share by will. Its reasons for making this distinction between a gift and a devise are, that the co-parcener's power of alienation is founded on his right to a partition ; that that right dies with him ; and that, the title of his co-sharers by survivorship vesting in them at the moment of his death, there remains nothing upon which the will can operate. This principle was fully recognised by their Lordships in Suraj Bunsi Koer's case. Their Lordships are of opinion that the principles upon which the Madras Court has decided against the power of alienation by will are sound, and sufficient to support that decision (194-5). (*Sir James W. Colvile.*) LAKSHMAN DADA NAIK *v.* RAMACHANDRA DADA NAIK.

(1880) 7 I. A. 181 = 5 B. 48 (62-3) = 7 C. L. R. 320 = 4 Sar. 173 = 3 Suth. 778.

———A will by a member of a joint Hindu family of his co-sharer's interest is not a valid devise. The co-parcener's power of alienation is founded on his right to a partition ; that right dies with him ; and the title of his co-sharers by survivorship vesting in them at the moment of his death, there remains nothing upon which the will can operate (131-2). (*Sir John Edge.*) LAKSHMI CHAND *v.* ANANDI.

(1926) 53 I.A. 123 = 48 A. 313 = 24 A. L. J. 609 = 28 Bom. L. R. 910 = 43 C. L. J. 513 = 3 O. W. N. 581 = (1926) M, W. N. 529 = 31 C W. N. 101 = 95 I. C. 566 = A.I.R. 1926 P. C. 54 = 51 M. L. J. 52.

Joint family—Members of.

ADULT MEMBERS OF DAYABHAGA FAMILY CARRYING ON BUSINESS—INSOLVENCY OF.
ADVERSE POSSESSION BETWEEN.
AGREEMENT BETWEEN.
BEQUEST TO, OR BEQUEST TO PERSONS AS.
BUSINESS CARRIED ON BY — PARTITION BETWEEN THEM—BUSINESS CARRIED ON AFTER.
CO-PARCENARYSHIP BETWEEN, AND SURVIVORSHIP FOLLOWING UPON IT.
DEBT JOINT DUE BY FAMILY — APPORTIONMENT OF —AGREEMENT AT PARTITION FOR.
INCREMENT FOLLOWING PRINCIPAL IN CASE OF — RULE AS TO.
JOINT FAMILY PROPERTY AND SELF-ACQUISITIONS—BLENDING OF.
MOCURRAREE LEASE IN FAVOUR OF SOME — PATNI LEASE SUBSEQUENT TO DIFFERENT MEMBERS — MERGER.
PARTITION BETWEEN — SHARES OBTAINED AT — LEGAL COURSE OF DESCENT OF—AGREEMENT ALTERING.
RIGHTS OF — FATHER AND SONS — BRETHREN — FAMILIES OF.
RIGHTS WHICH MIGHT OTHERWISE BE MERGED—TITLES TO, TAKEN IN NAMES OF DIFFERENT MEMBERS.

ADULT MEMBERS OF DAYABHAGA FAMILY CARRYING ON BUSINESS—INSOLVENCY OF.

———Minor members of family—Assets of firm in hands of—Recovery of—Suit by creditors of firm for — Maintainability—Parties—Official receiver if one. *See* PROVINCIAL INSOLVENCY ACT OF 1907—Ss. 18 (1) AND 16.

(1922) 49 I. A. 108 = 49 C. 560.

———Property vesting in receiver by reason of—Property of minor members if part of. *See* PROVINCIAL INSOLSOLVENCY ACT OF 1907 Ss. 18 (1) AND 16.

(1922) 49 I. A. 108 = 49 C. 560.

HINDU LAW—(*Contd.*)

Joint family—Members of—(*Contd.*)

ADULT MEMBERS OF DAYABHAGA FAMILY CARRYING ON BUSINESS—INSOLVENCY OF—(*Contd.*)

———Receiver in—Vesting of assets of firm in—Effect of, on assets of firm in hands of minor members — Recovery of such assets—Right of, if also vested in receiver. *See* PROVINCIAL INSOLVENCY ACT OF 1907, Ss. 18 (1) AND 16.

(1922) 49 I. A. 108 = 49 C. 560.

ADVERSE POSSESSION BETWEEN.

———(*See also* LIMITATION ACT OF 1908, ART. 127.)

———*Possession of joint property by one member.*

The general rule, that the possession of one member of a joint Hindu family is the possession of all, does not apply where the claimant has been clearly excluded. In the latter case the possession is adverse, and time will run (535). (*Sir Edward V. Williams.*) JOWALA BUKSH *v.* DHARUM SINGH.

(1866) 10 M. I. A. 511 = 2 Sar. 189.

———*Rents of different portions of joint family property —Receipts separate of, by different members—Excess receipts by some members—Effect.*

In India the receipt by one member of a joint Hindu family may be quite consistent with the title of the whole. One member of a family may be in receipt of one part of an estate, and another may be in receipt of another part of the estate, and they may have afterwards to account the one to the other in respect of the excess of the receipts over their respective rights. There can be no adverse possession as between the members by reason of such acts. CHAND HURREE MAITEE *v.* RAJAH NARENDRO NARAIN ROY.

(1873) 2 Suth. 805 = 19 W. R. 230 = 4 Sar. 800.

AGREEMENT BETWEEN.

———Ancestral property—Division of—Agreement by way of compromise for—Meaning of ancestral property in. *See* HINDU LAW—ANCESTRAL PROPERTY.

(1859) 8 M. I. A 91 (96-7).

———*Debt joint due by family—Apportionment of—Agreement at partition for—Member paying more than his share of debt—Contribution against other members—Right of—Construction of agreement.*

The appeal arose out of a suit commenced by the respondents to compel contribution towards the payment of certain debts which had been discharged by *M*, their father. The action was founded upon an agreement alleged to have been made by the appellants to pay their equal proportions of a joint debt effected on a common family property. That common family property was divided in 1799, and several agreements were then entered into. The question in the case turned upon the meaning of those agreements. If it was the meaning of them that the Bankers' claims were to be paid by all the five persons in equal proportions, according to the interest they respectively had in the family estate, and that that was to be done by the settlement of the accounts between the parties, the respondents were clearly right in bringing the action against the appellants for four-fifths of those Bankers' account, and that question depended upon the construction of those agreements which were entered into between the parties after the reference that took place in 1799.

It appeared that there had been disputes between the family with respect to the property acquired by the father, and that all those parties agreed to refer the matter to certain arbitrators, and while that arbitration was still pending, they entered into two agreements. One of those agreements was dated 11—6—1799, that is, the first of those agreements entered into between the parties, and in that agreement the five sons alleged that

HINDU LAW—(*Contd.*)

Joint family—Members of—(*Contd.*)

AGREEMENT BETWEEN—(*Contd.*)

they had made a division of the landed properties, and they agreed to pay the bankers in five equal shares, that is, that each should pay one-fifth of those demands. They further stated that in case any one of them should be under an inability to do so, and his lands should be sold in consequence, that from their own shares they would make that good, "and that they will certainly and without fail liquidate the Bankers' demands."

Then there came a separate agreement, in which, after alluding to the demands of the Bankers upon which suits were then pending, they went on to provide, that in case there should be other demands they would leave them to the decision of the arbitrators, and they agreed to abide by their decision with respect to their quota.

And then came the third agreement, and they having again provided that though they had divided the estates among themselves, the personal property, including cash, still remained in common, agreed that all the debts which were due to the estate should be equally divided among them, and they stipulated that the payment of the Bankers' demands should be carried into immediate effect, and should not be delayed by any division of the family property, or by the settlement of the debts which might be due to the family to be divided between them.

Held, on a construction of the agreements, that the Bankers' claims were to be paid by all the five persons in equal proportions, according to the interest they respectively had in the family estate, and that the respondents therefore had clearly a right to recover from the appellants four-fifths of all those Bankers' demands. (*Mr. Baron Parke.*) DOMUN SINGH *v.* KASEERAM. **(1837) 1 M. I. A. 366 = 5 W. R. 39 = 1 Suth. 61 = 1 Sar. 129.**

———*Joint living and joint enjoyment of property—Agreement for—Provision in, for management by eldest brother—Effect- Relation of eldest brother to others—Accountability of eldest brother to them.*

A panchayat was appointed to make partition between three brothers, who formed a joint Hindu family, and their nephew, who had succeeded to the Merangi estate. That body made an award, and a revised award which effected a final settlement as between the three brothers on one side and their nephew on the other. But the day before the revised award was completed, the three brothers entered into an agreement which ran as follows :—

"As one of us has not agreed to the award passed by the panchayat in the dispute in respect of dayam (partition) which took place between us three and our nephew, we have resolved to live jointly, and have arranged, among ourselves, the following conditions for living jointly :—

1. That the three shares belonging to us jointly under the panchayat award should be kept joint ;

2. that *R*, who is the eldest of us, should take charge of the said three shares and manage the same ; and

3. that we should live jointly for twelve years from this date, and effect division thereafter after settling the profit or loss accruing up to that date. Should in the meantime any of us desire to become divided, without remaining joint for twelve years as aforesaid, the member so desiring should give up his share in the profits which may accrue up to that date and should himself bear the loss which may have been occasioned thereby."

This arrangement was followed during the twelve years' term. About two years afterwards the youngest brother (for whom the respondents, his two minor sons, were substituted) filed a suit against his two brothers, the appellants, for a division and delivery of his third share of the property,

HINDU LAW—(*Contd.*)

Joint family—Members of—(*Contd.*)

AGREEMENT BETWEEN—(*Contd.*)

including the income during the twelve years' term. *R*, the eldest brother, contended that under the agreement the three brothers remained a joint Hindu family, and that he was the manager of that family, and was not accountable for the income of past years.

Held, over-ruling the defendant's view of the agreement, that *R* was an agent for the three, unpaid it is true, but accountable for his receipts and expenditure. The description of him as a trustee, and as liable for failure in frugality or skill, is open to criticism in point of expression.

The agreement is not a simple agreement to postpone the partition, and so to leave the family status of the brothers untouched. They are put upon a new footing. The defendant has the management secured to him for an absolute term of twelve years, and though during that term the others would not be precluded from demanding division, they could only do so on condition of giving up profits and bearing any loss occasioned by their premature withdrawal. Moreover, the division when it comes is to be effected after settling the profit and loss accruing to that date. That is hardly the language which would have been used if the parties had meant nothing except that they should divide the corpus of the estate as it stood at the end of the term, whether it had increased or decreased. The language is more appropriate to express an intention that an account should be taken of receipts and expenses, treating surpluses as profits and deficits as loss. (*Lord Hobhouse.*) RAJAH SETRUCHERLA RAMABHADRA *v.* RAJAH SETRUCHERLA VIRABHADRA.
(1899) 26 I. A. 167 (171) = 22 M. 470 (475-6) = 3 C. W. N. 533 = 1 Bom. L. R. 388 = 7 Sar. 510-

———*Member dying without male issue—Widow of—Enjoyment by, of her husband's undivided share as if she had been widow of sonless and separated Hindu — Agreement providing for—Validity.*

That a member of a Mithakshara joint family can, with the consent of his co-sharers, charge for his own purposes the share in the joint family property which would come to him on a partition cannot now be questioned as a principle of Hindu law. The same principle of the effect of the consent by the co-sharer applies to a case in which the members agree that, on the death of one of them, his wife should have and enjoy for her life his share of the joint family property just as the widow of a sonless and separated Hindu would enjoy her deceased husband's estate (132-3). (*Sir John Edge.*) LAKSHMI CHAND *v.* ANANDI.
(1926) 53 I. A. 123 = 48 A. 313 = 24 A. L. J. 609 = 28 Bom. L. R. 910 = 43 C.L.J. 513 = 3 O. W. N. 581 = 1926 M. W. N. 529 = 31 C.W.N. 101 = 95 I.C. 566 = A. I. R. 1926 P. C. 54 = 51 M. L. J. 52.

BEQUEST TO, OR BEQUEST TO PERSONS AS.

———*See* HINDU LAW—WILL—JOINT FAMILY.

BUSINESS CARRIED ON BY—PARTITION BETWEEN THEM—BUSINESS CARRIED ON AFTER.

———Relation *inter se* in regard to. *See* **HINDU LAW—JOINT FAMILY—BUSINESS OF—MEMBERS OF FAMILY.**
(1923) 50 I. A. 192 (195) = 4 Lah. 350.

CO-PARCENARYSHIP BETWEEN, AND SURVIVORSHIP FOLLOWING UPON IT.

———Separately acquired property of member in such family—Principle inapplicable to. *See* **HINDU LAW—JOINT FAMILY—CO-PARCENARY IN—MEMBERS OF FAMILY.** **(1863) 9 M. I. A. 539 (611).**

HINDU LAW—(*Contd.*)

Joint family—Members of—(*Contd.*)

DEBT JOINT DUE BY FAMILY—APPORTIONMENT OF—AGREEMENT AT PARTITION FOR.

———Member paying more than his share of debt—Contribution against other members—Right of—Construction of agreement. *See* HINDU LAW—JOINT FAMILY—MEMBERS OF—AGREEMENT BETWEEN—DEBT JOINT ETC.

(1837) 1 M.I.A. 366.

INCREMENT FOLLOWING PRINCIPAL IN CASE OF—RULE AS TO.

———Extent and limits of. *See* HINDU LAW—PRINCIPAL—INCREMENT FOLLOWING.

(1857) 6 M. I. A. 526 (554).

JOINT FAMILY PROPERTY AND SELF-ACQUISITIONS—BLENDING OF.

———*Effect of.*

The effect of members of a joint family, who have control over the joint estate, blending that estate with property in which they have separate interests is to cause the whole property to become joint. The effect is the same in cases where separate estate is brought into a joint family account and in cases where joint family property is brought into the separate accounts. (*Lord Buckmaster.*) RAJANI KANTA PAL *v.* JAGA MOHAN LAL.

(1913) 50 I.A. 173 (178) = 50 C. 439 (444) = 32 M. L. T. 149 = 25 Bom. L. R. 683 = 37 C.L. J. 515 = 27 C.W.N. 997 = (1923) M. W. N. 438 = 18 L. W. 387 = 9 O. & A.L.R. 805 = A.I.R. 1923 P.C. 57 = 73 I. C. 252 = 44 M. L. J. 561.

———*Evidence of.*

Where the real question for determination was what was the true conclusion to be drawn when people united by bonds of close relationship and living as a joint family, drew for the joint family expenses out of a fund enriched by other contributions, and the sub-judge stated the result in the following words:—"If the members of a joint Hindu family confuse the incomes of their joint properties with their separate properties, their intention presumably is that the properties acquired with such mixed up funds are for the benefit of the joint family. It should be noticed that not only these acquisitions and improvements made in this case with the amalgamated and confused funds, but the incomes arising from such acquisitions and improvements were again partly spent also for joint family expenses and purposes, and the balances were again mixed up and confused from year to year to acquire properties and make improvements" *held*, dissenting from the High Court, that the sub-judge was right in drawing the inference of blending from such facts and that the fact that the joint family expenses exceeded all the property which was properly joint told against the case of no blending instead of in favour of it. (*Lord Buckmaster.*) RAJANI KANTA PAL *v.* JAGA MOHAN PAL.

(1923) 50 I. A. 173 (178) = 50 C. 439 (444) = 32 M. L. T. 149 = 25 Bom. L. R. 683 = 37 C. L. J. 515 = (1923) M.W. N. 438 = 27 C. W. N. 997 = 18 L. W. 387 = 9 O. & A.L.R. 805 = A.I.R. 1923 P.C. 57 = 73 I.C. 252 = 44 M. L. J. 561.

MOCURRAREE LEASE IN FAVOUR OF SOME—PUTNI LEASE SUBSEQUENT TO DIFFERENT MEMBERS—MERGER.

———*Intention of parties—Evidence.*

A mokurruri lease of lands within a mouza was granted to two persons, who were members of a joint Hindu family. Ten years later, the owner of the mouza granted a patni lease of the whole mouza to *K*, the son of one of the lessees under the mokurruree lease and another, not a member of the joint family. Subsequently, this last-named person sold his share of the putni to *K*. The circumstances of the case showed with great clearness that instead of the mokurruri lease having been extinguished by merger, it was, on the contrary, kept up.

Held, that there was no merger, because, in addition to the fact that the two sets of title did not meet in identity of name, but were separately attached to separate members of the family, the documents and the accounts showed that the mokurruri lease and the rights consequent upon it were kept alive. (*Lord Shaw.*) DULHIN LACHHANBATI KUMRI *v.* BODHNATH TEWARI. **(1921) 48 I.A. 485 (493) = A.I.R. 1922 P.C. 94 = 4 U.P.L.R. (P.C.) 42 = (1922) M. W.N. 58 = 15 L.W. 343 = 30 M. L. T. 216 = 26 C. W. N. 565 = 66 I.C. 551 = 24 Bom. L. R. 383.**

PARTITION BETWEEN—SHARES OBTAINED AT—LEGAL COURSE OF DESCENT OF—AGREEMENT ALTERING.

———*Invalidity of—Decision as to, between widow of one member and surviving member—Effect of, as between latter and donee from former.*

A deed of partition between two brothers provided that the villages of the shares of both of them should thereafter descend only to the sons and grandsons and so on of both of them, and should not go to any others. Pursuant to the deed the two brothers divided their family estate, each taking a share of villages which each held separately. On the death of one of them leaving a widow and daughters, the widow obtained possession of the villages which formed her husband's share; and a suit brought against her by the other brother to recover those villages was dismissed on the ground that the divided shares descended according to law. The widow thereupon transferred the villages to her elder daughter. In a suit brought against that daughter by the said surviving brother, *held*, that the question of the widow's title to the villages so transferred was *res judicata* by reason of the decision in the prior suit. VENKATADRI APPA ROW *v.* PEDA VENKAYAMMA. **(1886) 10 M. 15.**

RIGHTS OF—FATHER AND SONS—BRETHREN—FAMILIES OF.

———*Distinction—Mithakshara Law.*

The rights of the co-parceners in an undivided Hindu family governed by the law of the Mithakshara, which consists of a father and his sons, do not differ from those of the co-parceners in a like family, which consists of undivided brethren, except so far as they are affected by the peculiar obligation of paying their father's debts which the Hindu law imposes upon sons, and the fact that the father is in all cases naturally, and, in the case of infant sons, necessarily, the manager of the joint family estate (100-1). (*Sir James W. Colvile.*) SURAJ BUNSI KOER *v.* SHEO PROSHAD SINGH. **(1879) 6 I. A. 88 = 5 C. 148 (165) = 4 C. L. R. 226 = 4 Sar. 1 = 3 Suth. 589.**

RIGHTS WHICH MIGHT OTHERWISE BE MERGED—TITLES TO, TAKEN IN NAMES OF DIFFERENT MEMBERS.

———Effect of. *See* HINDU LAW—JOINT FAMILY—MEMBERS OF—MOCURRAREE LEASE, ETC.

(1921) 48 I. A. 485 (493).

Joint family—Oudh—Joint family in—Law applicable to.

———*Bengal Mithakshara—Inapplicability of.*

It was conceded in argument that the rules of the Mithakshara law which prevail in the courts of Bengal are inapplicable in Oudh to the alienation of interests in a joint

HINDU LAW—(*Contd.*)

Joint family—Oudh—Joint family in—Law applicable to—(*Contd.*)

family estate (195). (*Lord Watson.*) MADHO PARSHAD *v.* MEHRBAN SINGH. (1890) 17 I. A. 194 = 18 C. 157 (160) = 5 Sar. 586 = R. & J's No. 121.

Joint family—Partition.

ADMISSION OF, BY PREDECESSOR IN INTEREST.
ADOPTED SON.
AGREEMENT NOT TO EFFECT.
ALLOTMENT OF SHARE AT—BENAMI NATURE OF.
ANCESTRAL PROPERTY—PARTITION OF.
AWARD EFFECTING.
BROTHERS—PARTITION BETWEEN.
BUSINESS CARRIED ON BY MEMBERS BEFORE AND AFTER.
CONVERSION OF MEMBER TO CHRISTIANITY.
CO-PARCENARYSHIP BETWEEN MEMBERS OF JOINT FAMILY AND SURVIVORSHIP FOLLOWING UPON IT.
DEBT JOINT DUE BY FAMILY—APPORTIONMENT OF.
DECEASED MEMBER—ELDEST SON OF—ALLOTMENT OF SHARE TO—EFFECT.
DECREE FOR.
DEED OF.
DEORH PARTITION.
DIVISION IN STATUS (OR SEPARATION IN INTEREST AND TITLE).
DIVISION *per stirpes*.
EFFECT OF—PARTNERSHIP WITH STRANGER.
EVIDENCE OF.
FAMILY ARRANGEMENT IN NATURE OF.
FATHER.
FAVOURED BY HINDU RELIGION AND LAW.
FINDING AS TO.
FRAUD—RE-OPENING ON GROUND OF—SUIT FOR.
FRAUDULENT TRANSACTION—PLEA OF.
GRANDFATHER AND GRANDSON — PARTITION BETWEEN.
IDOL WORSHIP OF—JOINT RIGHT OF PERFORMING.
INTENTION TO SEPARATE—DEFINITE AND UNAMBIGUOUS INDICATION BY ONE MEMBER OF.
JOINT FAMILY PROPERTY—ABSENCE TOTAL OF—PARTITION IN CASE OF.
MANAGER.
MARRIAGE EXPENSES OF CO-PARCENERS—PROVISION FOR.
MEANING TWOFOLD OF WORD.
MINOR MEMBERS.
MOTHER.
NATTUKOTTAI CHETTIES.
OUDH ESTATE.
PARTIAL PARTITION.
PARTIBLE PROPERTY.
PARTNERSHIP WITH STRANGER.
PARTY TO—RIGHTS UNDER PARTITION OF—SUIT FOR DECLARATION OF.
PATNIBHAGA MODE OF.
PRESUMPTION—ONUS OF PROOF.
PROOF OF.
PROOF OF—CONCURRENT FINDINGS AS TO—PRIVY COUNCIL'S INTERFERENCE WITH.
PROPERTY OBTAINED AT—ALIENATION OF—AGREEMENT PROHIBITING.
QUESTION AS TO—FACT OR LAW.
RELIGIOUS CEREMONIES — PERFORMANCE OF—ALLOTMENT OF PROPERTY TO ONE MEMBER FOR.
RE-OPENING OF.
RIGHT OF.
RIGHT TO

HINDU LAW—(*Contd.*)

Joint family—Partition—(*Contd.*)

SEPARATION OF ONE MEMBER—STATUS OF REMAINING MEMBERS ON—PRESUMPTION—ONUS OF PROOF.
SEVERANCE IN STATUS
SHARE ALLOTTED AT.
SHARE AT.
SON.
STRANGER—ALLOTMENT OF SHARE TO.
SUIT FOR.
TEST TRUE OF.
UNILATERAL DECLARATION.
WIDOW.
WIFE.
WILL.
WRITTEN INSTRUMENT.

Joint family—Partition—Admission of, by predecessor in interest.

———Binding nature of, on successor. *See* ADMISSION—PREDECESSOR IN INTEREST—ADMISSION BY—HINDU LAW—PARTITION. (1847) 4 M. I. A. 137 (175).

Joint family—Partition—Adopted son.

———Share of. *See* HINDU LAW—ADOPTION—ADOPTED SON—PARTITION.

Joint family—Partition—Agreement not to effect.

———Validity—Contracting parties—Heirs and successors of. *See* PARTITION—AGREEMENT NOT TO EFFECT (1901) 28 I. A. 111 (118) = 23 A. 383 (391-2)

Joint family—Partition—Allotment of share at—Benami nature of.

———*Proof of—Onus.*

The suit out of which the appeal arose was an ejectment brought by the appellant to recover possession of the suit property. The appellant was the grandson of a sister of *A*, who had predeceased *A*. At a partition made between the three brothers of *A*, on the death of *A*, the appellant was awarded a share of the property of *A*, which share was the suit property. The defendants pleaded that the transaction embodied in the said partition deed was on the part of one of the brothers of *A*, *viz.*, *P*, a benami transaction, that the grant of a share to the appellant at the said partition was made to him as benamidar for the said brother of *A*, and that the appellant never had possession of the property in dispute and that his claim was barred by limitation and adverse possession.

Held, reversing the High Court and affirming the court below, that the burden of proving that the grant of a share to the appellant at the partition was made to him as benamidar rested upon the defendants, that they had absolutely failed to discharge that burden, and that the appellant's claim was not barred by limitation or adverse possession. (*Lord Atkinson.*) ARAB ALIKHAN *v.* MAHMUD ALIKHAN (1922) 35 C. L. J. 554 = 31 M. L. T. (P. C.) 94 = 20 A. L. J. 545 = 24 Bom. L. R. 951 = 1922 P. C. 84 = 67 I. C. 444 = 43 M. L. J. 104.

Joint family—Partition—Ancestral property—Partition of.

———*Co-parcener's right to.*

Any one of several members of a joint family governed by the Mithakshara law is entitled to require partition of ancestral property, and his demand to that effect, if it be not complied with, can be enforced by legal process (196). (*Sir Barnes Peacock.*) MADHO PARSHAD *v.* MEHRBAN SINGH. (1890) 17 I.A. 194 = 18 C. 157 (161) = 5 Sar. 586 = R. & J.'s No. 121.

HINDU LAW—(*Contd.*)

Joint family—Partition—Ancestral property—Partition of—(*Contd.*)

———The right under the Mithakshara of co-parceners in Hindu ancestral property to have the joint property partitioned is now unquestionable unless the property is held under a grant, or is subject to a custom, which expressly or impliedly prohibited any partition of the property which would have the effect of defeating the object of the grant or the custom (286). (*Sir John Edge.*) EKRADESHWAR SINGH *v.* JANESHWARI BAHUASIN.

(1914) 41 I.A. 275 = 42 C. 582 (603) = (1914) M. W. N. 807 = 16 M.L.T. 382 = 1 L.W. 863 = 18 C.W.N. 1249 = 12 A.L.J. 1217 = 17 Bom. L.R. 18 = 21 C.L.J. 9 = 25 I.C. 417 = 27 M.L.J. 373.

———Father—Partition by. *See* HINDU LAW—JOINT FAMILY—FATHER— ANCESTRAL PROPERTY — PARTITION OF.

———*Right to—Right by birth in property—Connection between—Mithakshara law.*

The property in the paternal or ancestral estate acquired by birth under the Mithakshara law is so connected with the right to a partition that it does not exist where there is no right to it (64). (*Sir Richard Couch.*) RANI SARTAJ KUARI *v.* RANI DEVRAJ KUARI.

(1887) 15 I.A. 51 = 10 A. 272 (287) = 5 Sar. 139.

Joint family—Partition—Award effecting.

———Cash — Division of — Accounts—Adjustment of—Agreement of parties as to—Mortgage with possession—Receipts under—Agreement if includes. *See* ARBITRATION—AWARD—HINDU LAW—JOINT FAMILY.

(1914) 27 M.L.J. 128.

Joint family—Partition—Brothers—Partition between.

———*Effect of, as between each brother and his own descendants—Presumption.*

When brothers who are co-parceners separate their separation does not necessarily involve that the sons of one of those brothers separate from their father. (*Sir John Edge.*) JAG PRASAD RAI *v.* MUSSAMMAT SINGARI.

(1924) 29 C.W.N. 941 = 23 A. L. J. 97 = 2 O.W.N. 229 = 86 I. C. 122 = L. R. 6 P.C. 111 = 27 Bom. L.R. 760 = A.I.R. 1925 P.C. 93 (2) = 49 M.L.J. 162 (167).

———The question was whether, on a separation and partition between *J* and his brother in 1903, it was to be presumed, unless the contrary was proved, that *J* and his sons and grandsons then alive ceased to be amongst themselves members of a Hindu joint family consisting of *J* and his descendants then living. It was contended for the defendants that the effect of the separation and partition between *J* and his brother in 1903 was to cause, by implication of law, a separation between *J* and his descendants and to make them cease to constitute amongst themselves a joint family, unless it was proved that they had agreed to continue to be a joint Hindu family.

Held, that to uphold defendant's contention would be to introduce a novel principle into the law of joint Hindu families governed by the law of the Mithakshara. (*Sir John Edge.*) HARI BAKHSH *v.* BABU LAL.

(1924) 51 I.A 163 (170) = 5 Lah. 92 = 22 A.L.J. 254 = A. I. R. 1924 P.C. 126 = 34 M.L.T. 70 = 28 C.W.N. 953 = 20 L.W. 406 = (1914) M.W.N. 650 = 26 Bom. L.R. 1108 = 10 O. & A.L.R. 1471 = 83 I.C. 918 = 47 M.L.J. 938.

———Owing to a misconception of the effect of the judgment in L.R. 30 I.A. 130, it was generally, but erroneously, assumed that the Board had decided that when a

HINDU LAW—(*Contd.*)

Joint family — Partition — Brothers — Partition between—(*Contd.*)

Hindu governed by the law of the Mithakshara, who had sons living, separated from his brothers it was a presumption of law that he had separated from his sons and that he and his descendants ceased to constitute amongst themselves a joint family unless it was proved that they had agreed to continue to be a joint Hindu family. It was pointed out, however, by this Board in a subsequent case that that was an erroneous conception of the effect of that decision, and that there is no authority for introducing a novel principle into the law of joint Hindu families governed by the law of the Mithakshara. (*Sir John Edge.*) LALA JAI NARAIN *v.* LALA UJAGAR LAL.

(1924) 21 L.W. 162 = 29 C.W.N. 775 = (1925) M.W.N. 13 = A.I.R 1925 P.C. 11 = 27 Bom. L.R. 713 = 85 I.C. 2 = 48 M.L.J. 236 (239-40).

———*Suit for, after death of father—Maintainability—Suit prior by plaintiff against father and defendants—Dismissal of, for want of jurisdiction and of absence of right during father's lifetime—Effect.*

A suit brought by plaintiff in the Supreme Court of Bombay against his undivided father and brothers for a declaration of his rights in and an immediate partition of, the ancestral property of the joint family was dismissed on the ground that plaintiff had no right to compel his father in his lifetime to make a partition of moveable, though it might be ancestral, property, and that the court had no power to make a partition of the immoveable property as it was situate beyond the limits of its territorial jurisdiction. In a suit brought by plaintiff, after the death of his father, against his brothers for a partition of the joint family properties, *held*, that there was nothing in the prior decision which amounted to an adjudication between the brothers as to their rights in the joint ancestral estate on their father's death and that the suit was not therefore barred by S. 2 of C.P.C. of 1859 (190). (*Sir James W. Colvile.*) LAKSHMAN DADA NAICK *v.* RAMACHANDRA DADA NAICK.

(1880) 7 I.A. 181 = 5 B. 48 (57) = 7 C.L.R 320 = 4 Sar. 173 = 3 Suth. 778.

Joint family—Partition—Business carried on by members before and after.

———Relation in regard to—Partnership under Contract Act. *See* HINDU LAW—JOINT FAMILY—BUSINESS OF —MEMBERS OF FAMILY.

(1923) 50 I.A. 192 (195) = 4 Lah. 350.

Joint family—Partition—Conversion of member to Christianity.

———Effect of. *See* HINDU LAW—JOINT FAMILY—CO-PARCENARY IN—SEVERANCE OF—CONVERSION OF, ETC.

(1863) 9 M.I.A. 195 (237).

Joint family—Partition—Co-parcenaryship between members of joint family and survivorship following upon it.

———Effect on. *See* HINDU LAW—JOINT FAMILY—CO-PARCENARY IN.

Joint family—Partition—Debt joint due by family—Apportionment of.

———*Debt originally contracted by one of members—Liability of his sons in case of—Extent of.*

L (the father of the plaintiffs) and *S* and *H* were members of a joint Hindu family, and joint proprietors of an ancestral family estate subject to the Mithakshara law. During his lifetime *L* was indebted in the sum of about Rs. 10,623; but the debt was a joint family debt and all the members of the family were liable therefor. Subsequently the members of the family separated, and the debt was

HINDU LAW—(*Contd.*)

Joint family—Partition—Debt joint due by family Apportionment of—(*Contd.*)

apportioned amongst the several members of the family, who had separated, and several bonds were given for the several portions of the debt. The question arose whether, under those circumstances, the plaintiffs were liable for the whole amount of the debt, or only for a sixth thereof, their share in the family property being only one-sixth.

Held, affirming the High Court, that the plaintiffs were not bound to pay the whole of the debt for which the father was at one period jointly liable with the other members of the family, and that they were liable only for the father's portion of the debt (31-2). (*Sir Barnes Peacock.*) DOORGA PERSAD *v.* KESHO PERSAD SINGH. **(1882) 9 I.A. 27 = 8 C. 656 (663-4) = 11 C L.R. 210 = 4 Sar. 332.**

———Member paying more than his share of debt in case of—Contribution against other members—Right of. *See* HINDU LAW—JOINT FAMILY—MEMBERS OF—AGREEMENT BETWEEN—DEBT JOINT DUE BY FAMILY.
(1837) 1 M. I. A. 366.

Joint family—Partition—Deceased sharer—Eldest son of—Allotment of share to—Effect.

———Allotment to him individually or as representing his branch. *See* HINDU LAW—JOINT FAMILY—PARTITION—DEED OF—CONSTRUCTION—ELDEST SON OF DECEASED SHARER. **(1892) 20 C. 45.**

Joint family—Partition—Decree for.

———*See* HINDU LAW—JOINT FAMILY—PARTITION—SUIT FOR—DECREE IN.

Joint family—Partition—Deed of.

———Area and boundaries given in—Conflict between—Area found to be less than that stated in deed—Rights of parties in case of—Mode of division in case of. *See* BENGAL ACTS—LAND REGISTRATION ACT VII OF 1876, S. 7. **(1889) 17 C. 304.**

———*Construction of—Eldest son of deceased sharer—Allotment of share to—Allotment to him individually or to his branch.*

The dispute was between two brothers, the sons of one *J*, as to the right of the younger brother, the respondent, to a half share of three villages called Bairampur, Ichna, and Dubawan.

The case depended upon the effect of a family arrangement which was stated in a petition presented to the Court on 8th November, 1882, and in the proceedings thereon on the 9th November.

J was one of five brothers. One of them, *A*, was represented in the suit by *L*; another was *B*; the third was represented by *S*, who was adopted by him, but who was a son of *J*; the fourth was *C*.

The questions which were the subject of the compromise had arisen in the lifetime of *J*, who died a few months before the compromise was actually entered into, so that what the parties were agreeing about by the compromise was, not the right of Manick Chand (the appellant) as the eldest son of *J* as against the other members of the family, but the right of *J* and the claim he had upon the other members of the family on account of his services in managing the property, and in acquiring other property and so increasing the value of the family estate.

The petition stated that a dispute having arisen between *B*, *C*, and *L*, on the one side, and the appellant, the respondent, and *S*, on the other side, and a case about the matter being before the Court, the above-named parties had settled the matter amongst themselves, upon the terms that "out of the whole lot of Zemindari and mortgaged villages, in parganas Chandra and Aurangabad, two entire villages, *viz.*, Village Ichna....and Village Dubawan....shall be given with proprietary right to Manick Chand" (appellant), "the eldest son of *J*, to the exclusion of others and over and above his shares. As, to the rest of the villages in parganas Chandra and Aurangabad it has been determined that *jethansi* dues shall be levied in them at the rate of 5 bighas per Rs. 100, or at the cash rate of 5 per cent. on the revenue, the village of Bairampur....becoming included in Bai Kuian pargana Aurangabad. The revenues and profits of this village shall be at the disposal of Manick Chand, no other party shall have anything to do with it. Should the area of Bairampur be found wanting in payment of *jethansi* dues at the rate of 5 bighas per Rs. 100, the deficiency shall be made good from other villages in the manner to be proposed....mentioned above."

The question was what was meant by the statement that the villages, Ichna and Dubawan, were given "with proprietary right to Manick Chand, to the exclusion of others, and over and above his shares."

Held, on a construction of the arrangement come to by the compromise petition in question and of other petitions, that it was not intended thereby to deal with the rights of Manick Chand and Hira Lal (the respondent) as between each other, but with the rights of Manick Chand and Hira Lal as representing their father *J*, and the rights of the other brothers, and that the Court below was therefore right in holding that the respondent was entitled to a share in the two villages, Ichna and Dubawan. (*Sir Richard Couch.*) MANICK CHAND *v.* HIRA LAL.
(1892) 20 C. 45 = 6 Sar. 235 = R. & J's. No. 127 (Oudh).

HINDU LAW—(*Contd.*)

Joint family—Partition—Deed of—(*Contd.*)

———*Deed by itself effecting a—Deed merely creating right to obtain another deed which will effect a—Test—Registration—Necessity.*

Two brothers, who formed a joint Hindu family and owned immoveable properties in the Tinnevelly District and in the Travancore State, agreed to separate and make an amicable division of their properties. They executed a *yadast*, which, as its name implied, was a memorandum regarding the cesser of jointness, which amounted to a declaration that from that time forth the parties became entitled to the possession and enjoyment of their properties in separate shares, and which provided for the execution of a further deed effectuating the partition It said; "A partition deed in terms hereof shall be executed and registered in the office of the Sub-Registrar of this place, as also at Tinnevelly, as early as possible; until then this shall itself be in force."

Held, that the *yadast* did not require registration, because it was not a document by itself creating, assigning, limiting, or extinguishing any right or interest in immoveable property within the meaning of S. 17 (*b*) of the Registration Act, but was a document merely creating a right to obtain another document which would, when executed, create a right in the person claiming the relief, and therefore fell under the proviso to sub-S. 2 of S. 17 of the Act. (*Mr. Ameer Ali.*) RAJANGAM AYYAR *v.* RAJANGAM AYYAR. **(1922) 50 I. A. 134 (140) = 46 M. 373 (380-1) = 31 M. L.T. 136 = 16 L. W. 615 = 4 U.P.L.R. (P.C.) 85 = A I. R. 1922 P. C. 266 = 21 A. L. J. 460 = 37 C. L. J. 435 = 27 C. W. N. 561 = 69 I. C. 123 = 44 M. L. J. 745.**

Joint family—Partition—Deorh partition.

———*Meaning of.*

A "deorh partition" is, not merely a separation of interest, but an actual partition of the joint family proper-

HINDU LAW—(*Contd.*)

Joint family—Partition — Deorh partition—(*Contd.*)

ties (741). (*Sir Walter Phillimore.*) RADHAKANT LAL *v.* NAZMA BEGUM. **(1917) 45 C. 733 = 22 C. W. N. 649 = 27 C. L. J. 632 = 16 A. L. J. 537 = 5 P. L. W. 72 = 23 M. L T. 392 = (1918) M W N. 386 = 20 Bom. L. R. 724 = 45 I. C. 806 = 35 M. L. J. 99.**

Joint family—Partition—Division in status (or separation in interest and title)

AGREEMENT EFFECTING.
ALIENATION OF SHARES OF SOME MEMBERS IF AMOUNTS TO.
ARBITRATOR—REFERENCE TO, AND LISTS PREPARED BY, SHOWING PROPERTIES ALLOTTED TO SHARERS.
ASCERTAINMENT OF SHARES OF MEMBERS IF AND WHEN AMOUNTS TO.
COMPROMISE EFFECTING.
DECREE EFFECTING.
DEED EFFECTING.
DIVISION BY METES AND BOUNDS.
EFFECT OF, ON STATUS OF FAMILY.
ESSENCE OF—INTENTION OF PARTIES.
EVIDENCE AGAINST.
INTENTION TO SEPARATE—DEFINITE AND UNAMBIGUOUS INDICATION BY ONE MEMBER OF.
ONUS OF PROOF OF.
PROOF OF.

AGREEMENT EFFECTING.

———*Agreement effecting partition without actual division of property by metes and bounds—Intention to make final partition clearly appearing.*

A partition may be effected by agreement, although no actual division of the property may have been made by metes and bounds or otherwise. If it clearly appears that the parties intended to make a final partition of their joint property, that intention will be given effect to by this Board. (*Sir Robert P. Collier.*) RUNJEET SINGH *v.* KOOER GUJRAJ SINGH. **(1873) 1 I. A. 9 (20) = 3 Sar. 304 = R. & Js. No. 26 (Oudh).**

———*Agreement to hold property in definite shares.*

When the members of an und vided family agree among themselves with regard to particular property, that it shall thenceforth be the subject of ownership, in certain defined shares, then the character of undivided property and joint enjoyment is taken away from the subject-matter so agreed to be dealt with ; and in the estate each member has thenceforth a definite and certain share, which he may claim the right to receive and to enjoy in severalty although the property itself has not been actually severed and divided (90). (*Lord Westbury.*) APPOVIER *v.* RAMA SUBBA AIYAN. **(1866) 11 M. I. A. 75 = 8 W.R. (P.C.) 1 = 1 Suth. 657 = 2 Sar. 218**

———Actual partition is not in all cases essential to make the interest of a member of a joint family in joint family property definite. An agreement by the members of an undivided family to hold the joint property individually in definite shares is enough (196 7). (*Lord Watson.*) MADHO PARSHAD *v.* MEHRBAN SINGH. **(1890) 17 I. A. 194 = 18 C. 157 (161) = 5 Sar. 586 = R. & Js. No. 121.**

———*Conversion of joint tenancy into tenancy-in-common without* de facto *actual division of subject-matter.*

If there be a conversion of the joint tenancy of an undivided family into a tenancy-in-common of the members of that undivided family, the undivided family becomes a divided family with reference to the property that is the subject of that agreement, and that is a separation in interest and in right, although not immediately followed by

HINDU LAW—(*Contd.*)

Joint family—Partition--Division in status—(*Contd.*)

AGREEMENT EFFECTING--(*Contd.*)

a *de facto* actual division of the subject-matter. This may at any time be claimed by virtue of the separate right (92). (*Lord Westbury.*) APPOVIER *v.* RAMA SUBBA AIYAN. **(1866) 11 M. I. A. 75 = 8 W. R. (P. C.) 1 = 1 Suth. 657 = 2 Sar. 218.**

———There may be a division of right and there may be a division of property. If there be a conversion of the joint tenancy of an undivided family into a tenancy-in-common of the members of that undivided family, the undivided family becomes a divided family with reference to the property that is the subject of that agreement, and that is a separation in interest and in right, although not immediately followed by a *de facto* actual division of the subject-matter. This may at any time be claimed by virtue of the separate right. (*Lord Atkinson.*) PARBATI *v.* NAUNIHAL SINGH. **(1909) 36 I A. 71 (77) = 31 A. 412 (421-2) = 5 M. L. T. 427 = 10 C. L. J. 121 = 13 C. W. N. 983 = 11 Bom. L. R 878 = 6 A. L. J. 597 = 3 I. C. 195 = 19 M. L. J. 517.**

———*Division of proceeds of joint property in definite shares—Agreement for, with intention that each member should hold his allotted share in severalty.*

The cases which have been recently decided by this tribunal on questions touching the separation of the joint property of a Hindu family establish the principle that there may be a division of right and interest, which will operate to change the character of the ownership from joint to separate, although it may not be intended at once to perfect it by an actual partition by metes and bounds ; and, therefore, that the agreement of a family to divide the proceeds of the joint property among its members in definite shares, with the intention that each should hold his allotted share in severalty, severs the joint interest, and extinguishes the rights springing from united family ownership. The question of intention must arise in all such cases and be determined in each upon its own circumstances (153). (*Sir Montague E. Smith.*) MAHARAJA RAM KISSEN SINGH *v.* RAJAH SHEONUNDUN SINGH. **(1875) 3 Suth. 151 = 23 W. R. 412 = 3 Sar. 498.**

———*Effect of.*

Although an agreement for a partition has not been carried out by actual partition, by metes and bounds, of the property, it is nevertheless binding on the contracting parties, and operates as a division of the family (138).

A Samakha or agreement was entered into by two brothers, who constituted a joint Hindu family, for a division of the joint ancestral estate. No actual division took place, or separate seizin by the co-sharers of the estate, but the agreement was partly acted upon, by separate perception of the rents, and the parties also lived separately.

Held, that the agreement operated as a division of the joint estate (138). (*Sir James W. Colvile.*) RAJAH SURANENI VENKATA GOPALA NARASIMHA ROW *v.* RAJAH SURANENI LAKSHMA VENKAMA ROW. **(1869) 13 M. I. A. 113 = 12 W. R. (P. C.) 40 = 3 B. L. R. 41 = 2 Suth. 265 = 2 Sar. 496.**

———In 1871, *M*, who was a member of an undivided family, separated and received his share. For the purpose of this transaction and in settlement of all disputes "relating to the Zemindari, the household articles, and the money-lending business, etc.;" an agreement was executed on 19-12-1871 by *B*, *L* the adopted son of a deceased member of the undivided family, and *M*. On 10-10-1873 another agreement was executed between and by *B*, *L*, & *M*. After declaring that the executants along with *R* & *S* were

HINDU LAW—(*Contd.*)

Joint family—Partition—Division in status— (*Contd.*)

AGREEMENT EFFECTING—(*Contd.*)

sharers in the villages specified below, the agreement proceeded as follows :—

" Now we have already come to terms, and according to the shares given below we have been in possession and enjoyment of our respective shares. As regards it we have with our mutual consent entered into an agreement according to the terms given below.

The same share in the property which is in the possession of a particular person as given below shall be considered to be the property of that very person who is in possession thereof. If any of us brings any suit in Civil or Revenue Court to the effect that his share is less or he is a loser, it shall be considered to be false in every court. By virtue of this agreement no person shall be competent to bring any claim in any court in respect of any portion of the property other than the property detailed below."

Then, after some immaterial provisions, there followed a specification of the villages belonging to the family and the shares in which those villages were thereafter to be held. The agreement was registered on the same day. From that time the property had been entered in the register in accordance with the arrangement contained in the agreement. And on the death of *B*, in 1895 his share was entered in the name of his widow, the respondent.

On a question arising as to whether *B* was a member of a joint Hindu family in co-parcenership with the appellants at the time of his death (as contended by the appellants), or had become separated prior to his death (as contended by the respondent), *held*, affirming the High Court, that the agreement above set forth operated as a partition of shares, and that the family thenceforth ceased to be joint iu accordance with the principle laid down in Appovier's case and in the cases which followed it. (*Lord Macnaghten.*) RAGHUBIR SINGH *v.* MOTI KUNWAR. **(1912) 35 A. 41 = 13 M. L. T. 162 = (1913) M. W. N. 127 = 17 C. L. J. 306 = 11 A. L. J. 146 = 17 C. W. N. 453 = 15 Bom. L. R. 426 = 17 I. C. 766 = 25 M. L. J. 28.**

———*Writing—Necessity.*

An agreement to partition joint family property in interest and right need not be embodied in a deed or instrument in writing. It might be a parol agreement. (*Lord Atkinson.*) PARBATI *v.* NAUNIHAL SINGH.

(1909) 36 I. A. 71 (78) = 31 A. 412 (422-3) = 5 M. L. T. 427 = 10 C. L. J. 121 = 13 C. W. N. 983 = 11 Bom. L. R, 878 = 6 A. L. J. 597 = 3 I. C. 195 = 19 M. L. J. 517.

ALIENATION OF SHARES OF SOME MEMBERS IF AMOUNTS TO.

———It is true that the *status* of the family as a joint Hindu family was not continuing. The alienation of the shares of two members of that family to the Munduls determined that *status*, and substituted the *status* of co-sharers or joint owners, whose rights, as is shown by Lord Westbury in the case in 11 M. I. A. 175, are in many important respects distinguishable from those of a joint and undivided family. This joint-ownership *status* would, however, only be determined by an actual partition, or an agreement by mutual consent to divide (198-9). (*Sir James W. Colvile.*) RAM CHUNDER DUTT *v.* CHUNDER COOMAR MUNDUL. **(1869) 13 M. I. A. 181 = 2 Sar. 507.**

HINDU LAW—(*Contd.*)

Joint family—Partition—Division in status— (*Contd.*)

ARBITRATOR—REFERENCE TO, AND LISTS PREPARED BY, SHOWING PROPERTIES ALLOTTED TO SHARERS.

———*Division by.*

N, and his nephews formed at one time a joint Hindu family subject to the law of the Mithakshara. Before 29-9-1902, they had become separate in mess and residence, but not in estate.

On 29-9-1902, *N* executed a registered sale-deed to the appellant conveying his half share of the ancestral property of the family. No partition was then effected, but the purchaser was allowed to hold and cultivate certain parts of the property corresponding in value to a half share. On 4-12-1905 all the members of the family signed a kararnama appointing *G*, as arbitrator to partition the property and agreeing to accept whatever partition he might make.

The arbitrator divided the property into two lists, one (representing a moiety in value) containing the property to be allotted to *N*, and the other (representing the remaining moiety in value) containing the property to be allotted to the plaintiffs. The formal division was not at once carried out, as *N* died on 26-3-1906; but after his death the lists were acted upon by all the persons interested, as the purchaser was put into possession of the property allotted by the arbitrator to *N*, and the plaintiffs from time to time dealt with various parts of the lands contained in their lists.

In a suit brought in 1914 by the plaintiffs against *S*, claiming possession of the lands of which he had been so put into possession on the ground that the family had continued joint in estate down to the death of *N*, and that on the death of *N's* widow (which occurred in 1910) the property had passed to them, *held*, reversing the Court below, that the transactions which took place in 1905 effected a severance of the joint estate, and accordingly the plaintiffs had no right to sue.

In the present case it was proved that *N* claimed his half share of the ancestral property, and that after discussion all the joint holders signed the agreement of 4-12-1905, appointing *G* to partition the property and agreeing to accept whatever partition he might make; and this claim and agreement were quite sufficient to effect a severance in interest and to prevent the share of *N* from passing by survivorship. (*Viscount Cave.*) SYED KASAM *v.* JORAWAR SINGH. **(1922) 49 I. A. 358 (364-5) = 50 C. 84 (92) = 27 C. W. N. 179 = 25 Bom. L. R. 1 = 21 A. L. J. 57 = 37 C. L. J. 73 = 31 M. L. T. 46 = 16 L. W. 223 = A. I. R. 1922 P. C. 353 = 68 I. C. 573 = 43 M. L. J. 676.**

ASCERTAINMENT OF SHARES OF MEMBERS IF AND WHEN AMOUNTS TO.

———The co-parceners in a joint family can by agreement amongst themselves separate and cease to be a joint family, and on separation, are entitled to partition the joint family property among themselves. But the mere fact that the shares of the co-parceners have been ascertained does not necessarily lead to an inference that the family had separated (86). (*Sir John Edge*). PALANI AMMAL *v.* MUTHU VENKATACHALA MANIAGAR.

(1924) 52 I.A. 83 = 48 M. 254 = 6 P.L.T. 133 = 21 L. W. 439 = (1925) M.W.N. 330 = 27 Bom. L.R. 735 = 3 P.L.R. 126 = 23 A.L.J. 746 = 29 C.W.N. 846 = 6 L.R.P.C. 143 = A.I.R. 1925 P.C. 49 = 87 I.C. 333 = 48 M. L. J. 83.

COMPROMISE EFFECTING.

———Disputes having arisen respecting the validity of the marriage of *A*, a Hindu, the two sons of *A*, each claiming to be legitimate, the one against the other as illegitimate,

HINDU LAW—(*Contd.*)

Joint Family—Partition — Division in Status—(*Contd.*)

COMPROMISE EFFECTING—(*Contd.*)

to avoid litigation, they entered, with the surviving widow of *A*, into a family arrangement and compromise to the effect, that the sons were to be equally entitled in moieties of *A's* estate, provision being made for maintenance to the widow, but the division was not to take effect until the youngest son was of age. No actual partition took place, and the youngest son pre-deceased his brother, who died in possession. Both sons left widows, but no male issue.

Held that the effect of the agreement and compromise was to constitute the two brothers a divided family, and the succession to their divided estate was governed by the law of succession in respect to separate estate, and that the widows were entitled, on the death of their husbands, each to a moiety of the estate (517).

Their Lordships are on the whole of opinion that although the documents postpone indefinitely the actual division of the Talook by metes and bounds, and provide for its joint management, and, in certain events which have not happened, for its devolution otherwise than by the law which regulates the succession to separate property, they nevertheless contemplate its enjoyment in other respects by the two brothers as by members of a divided family and the actual division of other family property. Their Lordships accordingly think that the finding of the High Court that the brothers were not members of a joint and undivided Hindoo family must be taken to be correct (517). (*Lord Cairns*). SRI GAJAPATHI RADHIKA PATTA MAHA DEVI GARU *v.* SRI GAJAPATHI NILAMANI PATTA MAHA DEVI GARU. (1870) **13 M.I.A. 497 = 6 B.L.R. 202 = 14 W. R. (P.C.) 33 = 2 Suth. 365 = 2 Sar 601.**

DECREE EFFECTING.

———*S* brought an action against his cousin, the appellant, in which he alleged that the appellant had expelled him from the joint family and that he sued to recover possession of his eight annas share of all the joint properties, both real and personal, with mesne profits and interest from the date of dispossession. In that suit a decree was passed which was in effect to give *S* a separate share of the joint family property. It gave him in terms possession of the 8 annas which he claimed of the real estate; it gave him mesne profits from the day of the alleged separation,—that is, from the time when he left the house in which he had been living with his cousin,—and it gave him also a half of the personal property.

Held that, although the suit was not actually in terms for a partition, yet that the decree did effect a partition, at all events, of rights which was effectual to destroy the joint estate under the doctrine laid down in Appovier's case (232). (*Sir Robert P. Collier.*) JOY NARAIN GIRI *v.* GRISH CHUNDER MYTI. (1878) **5 I.A. 228 = 4 C. 434 (437) = 3 Sar. 871.**

———The suit was by the younger of two brothers against the elder and persons claiming portions of the suit property under alienations made by the elder brother or the father of the brothers for a partition of the suit property and for the recovery of the plaintiff's share freed from the interests claimed by the alienees except to the extent to which the alienations in their favour were binding on the plaintiff. On a plea raised by the elder brother that the suit property was impartible, an issue covering the plea was raised and tried separately. The trial Judge decided that issue in favour of the plaintiff, by his judgment dated 24—8—1871. The Judge then appointed a Commissioner and referred to him certain points, all of which had reference to the different mortgages or alienations relied upon by the alienees

HINDU LAW—(*Contd.*)

Joint Family—Partition — Division in Status—(*Contd.*)

DECREE EFFECTING—(*Contd.*)

and to the question of how far the mortgages had been discharged by the usufruct of the mortgaged property. No appeal was preferred against the judgment of 24—8—1871, or the finding of the first Court on the question of partibility of the suit estate.

The plaintiff died after the date of the judgment of 24—8—1871, but before the suit was disposed of on the other points as well, and the question arose whether his representatives could continue the suit and recover his moiety.

Held that the judgment of 24—8—1871 was equivalent to a declaratory decree determining that there was to be a partition of the estate into metes and bounds, and making the brothers separate in estate from that date, if they had not previously become so; and that accordingly though the actual division of the property was not complete, the case fell within the principle of Appovier *v.* Rama Subba Aiyan (11 M.I.A. 75), and there was no ground for the contention that upon the death of the plaintiff his interest passed to his elder brother, and not to his own representatives in the course of succession to separate estate as ascertained in the suit (181).

By the judgment of 24—8—1871 there was a clear adjudication that the property was partible, and that the rights of the two brothers were that each should have a moiety, and the only object of the subsequent proceedings in the suit was to ascertain how far the share of the second brother, which had thus been declared to be a moiety of each village, was affected by the incumbrances and alienations of his father and his elder brother (180). (*Sir James W. Colvile.*) CHIDAMBARAM CHETTIAR *v.* GOWRI NACHIAR. (1879) **6 I.A. 177 = 2 M. 83 = 5 C.L.R. 6 = 4 Sar. 55 = 3 Suth. 654.**

———The result of the partition litigation of 1868 was to ascertain the shares of all parties, and although there was, from the nature of the property, no partition by metes and bounds, there was undoubtedly a numerical division, by which the proportion of each partner was fixed (12). (*Sir Andrew Scoble.*) RAM PERSHAD SINGH *v.* LAKHPATI KOER. (1902) **30 I.A. 1 = 30 C. 231 (255) = 7 C.W.N. 162 = 5 Bom. L.R. 103 = 8 Sar. 380.**

DEED EFFECTING.

———A deed of partition made and executed by the members of an undivided family, after dealing with the villages that were intended at once to be the subject of an actual partition, proceeded thus :—"But inasmuch as it is not convenient to divide now our moiety of the villages" (then followed an enumeration of the villages), "we shall divide every year in six shares the produce of them, and enjoy it, after deducting the Cirkar Cist and charges on the villages." The words with which the deed closed were: "We have henceforward no interest in each other's effects and debts except friendship between us."

Held that the deed operated in law as a conversion of the character of the property and an alteration of the title of the family, converting it from a joint to separate ownership, and that it was sufficient to make a divided family, nnd to make a divided possession of what was previously undivided, without the necessity of its being carried out into an actual partition of the subject-matter (92-3). (*Lord Westbury.*) APPOVIER *v.* RAMA SUBBA AIYAN. (1866) **11 M.I.A. 75 = 8 W.R. (P.C.) 1 = 1 Suth. 657 = 2 Sar. 218.**

———An ikrarnamah executed by the members of a Hindu family, of whom *M* was one, began by stating : "We four

HINDU LAW- -(*Contd.*)

Joint Family--Partition — Division in Status— (*Contd.*)

DEED EFFECTING—(*Contd.*)

co-sharers being in possession of equal shares, *viz.*, of one-fourth each, without contention from any one, appropriate and enjoy the profits thereof in proportion to our respective shares. Now, with a view to avoid future complications, in consultation and agreement among ourselves, we have under our signatures executed four chittas with regard to the said kotee" (in which the members were jointly interested) "up to 24th of the month of Kowar of the year 1259 Fusli, and four schedules with regard to houses and shops, both ancestral and purchased, mangoe and mahawa orchards; and also four schedules regarding silver articles, tent, etc., articles for assemblies and conveyance, etc., and all the partners have retained one each. We have executed this deed to have matters entirely above board, and to have names enrolled in the Government record in respect of the estates. It is desirable and very necessary for the declarants. according to this deed, to have the names of all the parties enrolled for equal shares. Now also by amicable settlement the business of the kotee will continue to be carried on jointly and in partnership in the same manner as carried on heretofore. We will amicably transact all matters connected with the kotee in consultation and agreement among ourselves, and will keep appropriating and enjoying the profits thereof in proportion to the aforesaid shares, *viz.*, equal one-fourth share each." The ikrarnamah then provided for any estates which might be purchased out of the moneys of the kotee. It also provided that certain silver articles, tents, carpets for assemblies, and conveyances, should continue as before, in possession of all four sharers.

There was not much, if any, evidence as to what was done in order to procure a mutation of names, or to carry out stipulation of the deed "to have the names of all the parties enrolled for equal shares." It appeared, however, that in the butwara proceedings, the respondent, the childless widow of *M*, was named as the heir of her late husband, and represented his interest in the proceedings taken for a formal partition by metes and bounds of certain properties between the whole of the family on the one side and certain co-sharers in those properties on the other, An inspection of the accounts of the kotee kept after the date of the deed showed that they were kept as they would be kept between four ordinary partners, and not as they would be kept as between members of a joint and undivided Hindu family.

In a suit brought by the respondent for the recovery of her husband's share of the family property as his heiress, *held*, that the real intentlon of the parties to the ikrarnamah was to hold and enjoy the property, which was the subject of it, in severalty, and that the respondent was entitled to her husband's share as his heiress (71).

Their Lordships, after carefully considering the whole deed and the evidence in the cause, have come to the conclusion that this case is undistinguishable from that in 11 M. I. A. 75 (71). (*Sir James Colvile.*) BABOO DOORGA PERSHAD *v.* MUSSUMAT KUNDUN KOOWAR.

(1873) 1 I. A. 55 = 21 W.R.(P.C.) 214 = 13 B.L.R. 235 = 3 Sar. 341.

———*N* gave his son in adoption to the senior widow of his undivided cousin. Shortly after the adoption, *N* executed a deed of adoption in favour of the two widows of his deceased cousin. That deed, after reciting that *N* and his deceased cousin had formed a joint Hindu family and that by the adoption his son had become sole heir to half of the entire joint family property and the other half belonged to him (*N*), provided that his (*N's*) half share in the famliy property might be kept as joint if both the widows would approve, but that if they did not appreve of it they might separate it and give it at any time they liked. The deed then provided for the management of the half of the property belonging to the adopted son, for the maintenance of the widows, and such other matters,

Held, on a construction of the said deed of adoption, that by it *N* declared that he had separated from the adopted son.

It was not merely an expression of an intention to separate. Their Lordships find as a fact and hold in law that on the date of that deed, *N* had separated from the boy whom he had given in adoption and had ceased to be a member with the adopted son of the joint family, although no partition of the family property had been effected (521). (*Sir John Edge.*) YADAO *v.* NAMDEO, **(1921) 48 I. A. 513 = 49 C. 1 (10 1) = 26 C. W. N. 393 = 30 M. L. T. 53 = L. R. 3 P. C. 41 = 15 L. W, 565 = 20 A. L. J. 481 = 24 Bom. L. R. 609 = A. I. R. 1922 P. C. 216 = 64 I. C. 536 = 42 M. L. J. 219.**

———*Declaration of intention on face of - Desirability of.*

It is to be regretted, no doubt, that the parties who make such arrangements (divisions of a joint and undivided Hindoo family, and of the joint property without regular partitions by metes and bounds) should not declare on the face of the deeds embodying such arrangements what their intention is, and that, if they are an undivided family, it is their intention thenceforth to cease to be so (71). (*Sir James W. Colvile.*) BABOO DOORGA PERSHAD *v.* MUSSUMAT KUNDUN KOOWAR. **(1873) 1 I.A. 55 = 21 W.R. (P.C.) 214 = 13 B. L. R. 235 = 3 Sar. 341.**

———*Liberty to member to live as joint family as before or to separate his own business—Reservation of—Effect.*

By an ikrarnamah executed by the members of a joint Hindu family it was declared that an arrangement in respect of all the properties and estates, moveable and immoveable, as per list annexed, and those not included therein, had been come to in the manner stated therein. The ikrarnama then continued as follows :—

"Now all the parties are at liberty to have the respective names registered in the Collectorate jointly or separately and to hold possession of the properties according to their respective proportionate shares. Each party shall have in future no claim of any kind whatsoever, on the ground of the share being more or less, or in respect of the debts due to mahajans, or in respect of the debts due to themselves against the other party, and each party shall pay off his proportionate share of the debts due to the mahajan in any way he thinks proper. Whatever sums are due to us from other persons under bahi khatas, mortgage or simple bond, Zurpeshgi and sudbharna (deeds), as per private list separately drawn up and signed by us, the declarants, shall also be realized by us collectively, either privately or through the Court, and divided among us in proportion to our respective shares, or the sums due to us respectively shall be collected separately. Every one of us has, by virtue of this deed, the power either to continue to live together as a member of the joint family as before, or to separate his own business, none of us having any objection thereto."

Held, reversing the High Court, that the ikrarnama effected a separation in estate and interest between all the coparceners who were parties to it (148-9,)

There is no difficulty in the construction of the ikrarnama in which it is stated in unambiguous terms that de-

HINDU LAW—(*Contd.*)

Joint family — Partition — Division in Status—(*Contd.*)

DEED EFFECTING—(*Contd.*)

fined shares in the whole estate had been alloted to the several co-parceners. Reliance was placed on the passage which gave liberty to any of the parties either to live together as a member of the joint family as before or to separate his own business as being inconsistent with a separation in estate. But there is no inconsistency, and the clause conferred on the parties no larger liberty of choice than they would have had without it. They might elect either to have a partition of their shares by metes and bounds, or to continue to live together and enjoy their property in common as before. Whether they did one or the other would affect the mode of enjoyment, but not the tenure of the property or their interest in it. Consistently with the broad principle laid down in the Appovier Case, this was determined by the allotment to them of defined shares which, to use Lord Westbury's illustration, converted them from joint holders into tenants-in-common (149). (*Lord Davey.*) BALKISHEN DAS *v.* RAM NARAIN SAHU. **(1903) 30 I. A. 139 = 30 C. 738 (751-2) = 7 C.W.N. 578 = 5 Bom. L.R. 461 = 8 Sar. 489.**

DIVISION BY METES AND BOUNDS.

———Distinction between. *See* HINDU LAW—JOINT FAMILY—PARTITION—DIVISION IN STATUS — AGREEMENT EFFECTING—CONVERSION OF JOINT TENANCY ETC. **(1866) 11 M. I. A. 75 (92) & (1909) 36 I. A. 71 (77) = 31 A. 412 (421-2).**

———Separation from the joint family involving the severance of the joint status so far as the separating member is concerned, with all the legal consequences resulting therefrom is quite distinct from the *de facto* division into specific shares of the property held until then jointly. One is a matter of individual decision, the desire on the part of any one member to sever himself from the joint family and to enjoy his hitherto undefined or unspecified share separately from the others without being subject to the obligations which arise from the joint status ; whilst the other is the natural resultant from his decision, the division and separation of his share, which may be arrived at either by private agreement among the parties, or, on failure of that by the intervention of the Court. Once the decision has been unequivocally expressed and clearly intimated to his co-sharers, his right to obtain and possess the share to which he admittedly has a title is unimpeachable ; neither the co-sharers can question it, nor can the Court examine his conscience to find out whether his reasons for separation were well-founded or sufficient ; the Court has simply to give effect to his right to have his share allocated separately from the others (160-1). The severance of status is a matter of individual volition ; while the allotment of shares may be effected by different methods, by private agreement, by arbitrators appointed by the parties, or, in the last resort, by the Court (161). (*Mr. Ameer Ali.*) GIRJA BAI *v.* SADASHIV DHUNDIRAJ. **(1916) 43 I. A. 151 = 43 C. 1031 (1047-8) = 37 I. C. 321 = 20 C. W. N. 1085 = 14 A. L. J. 822 = 20 M. L. T. 78 = (1916) 2 M. W. N. 65 = 18 Bom. L. R. 621 = 24 C. L. J. 207 = 4 L. W. 114 = 12 N.L.R. 65 = 37 M. L. J. 455.**

———*Position of members between dates of.*

After a division of right and interest among the members of a joint Hindu family and before an actual partition by metes and bounds, their position is that of tenants-in-common in England (153). (*Sir Montague E. Smith*). MAHARAJAH RAM KISSEN SINGH *v.* RAJAH SHEONUNDUN SINGH. **(1875) 3 Suth. 151 = 23 W. R. 412 = 3 Sar. 498.**

HINDU LAW—(*Contd.*)

Joint family — Partition — Division in Status—(*Contd.*)

EFFECT OF, ON STATUS OF FAMILY.

———It has been contended that if there be a deed of division between the members of an undivided family, which speaks of a division having been agreed upon, to be thereafter made, of the property of that family, that deed is ineffectual to convert the undivided property into divided property until it has been completed by an actual partition by metes and bounds. Their Lordships do not find that any such doctrine has been established ; and the argument appears to them to proceed upon error in confounding the division of title with the division of the subject to which the title is applied (89). (*Lord Westbury.*) APPOVIER *v.* RAMA SUBBA AIYAN. **(1866) 11 M.I.A. 75 = 8 W R. (P.C.) 1 = 1 Suth. 657 = 2 Sar. 218.**

———There may be division of a joint and undivided Hindu family, and of the joint property without a regular partition by metes and bounds. There may be a division of that kind, *viz.*, a division which, though not carried out by a partition by metes and bounds, would nevertheless alter the status of the family. (*Sir James W. Colvile*). BABOO DURGA PERSHAD *v.* MUSST. KUNDUN KOOWAR. **(1873) 1 I.A. 55 (67-8) = 21 W.R. (P.C.) 214 = 13 B.L.R. 235 = 3 Sar. 341.**

———The cases which have been recently decided by this tribunal on questions touching the separation of the joint property of a Hindu family establish the principle that there may be a division of right and interest, which will operate to change the character of the ownership from joint to separate, although it may not be intended at once to perfect it by an actual partition by metes and bounds (153). (*Sir Montague E. Smith.*) MAHARAJAH RAM KISSEN SINGH *v.* RAJAH SHEONUNDUN SINGH. **(1875) 3 Suth. 151 = 23 W.R. 412 = 3 Sar. 498.**

———In deciding whether a deed executed by the members of a joint Hindu family effected a partition between them or not, the question to be considered is not whether there was a separation by metes and bounds, but a separation in estate and interest; for that would have the same legal effect, so far as altering the status of the family is concerned, as a partition by metes and bounds (148). (*Lord Davey.*) BALKISHEN DAS *v.* RAM NARAIN SAHU. **(1903) 30 I.A. 139 = 30 C. 738 (751-2) = 7 C.W.N. 578 = 5 Bom. L.R. 461 = 8 Sar. 489.**

ESSENCE OF—INTENTION OF PARTIES.

———*Ascertainment of—Mode of.*

There may be division of a joint and undivided Hindu family, and of the joint property without a regular partition by metes and bounds. Inasmuch as there may be a division of that kind, *viz.*, a division which, though not carried out by a partition by metes and bounds, would nevertheless alter the status of the family, the question in every particular case must be one of intention, whether the intention of the parties to be inferred from the instruments which they have executed, and the acts they have done was to effect such a division (67-8). (*Sir James W. Colvile*). BABOO DOORGA PERSHAD *v.* MUSSUMUT KUNDUN KOOWAR. **(1873) 1 I.A. 55 = 21 W.R. (P.C.) 214 = 13 B.L.R. 235 = 3 Sar. 341.**

EVIDENCE AGAINST.

———*Joint leases by members if.*

The fact that members of a Hindu family join in granting leases is in no way inconsistent with their being owners of separate shares. After a division of right and interest and until an actual partition of the lands by metes and bounds, they would be in the position of tenants-

HINDU LAW—(*Contd.*)

Joint family — Partition — Division in Status—(*Contd.*)

EVIDENCE AGAINST—(*Contd.*)

in-common in England, and would for convenience join in granting leases (153). (*Sir Montague E. Smith.*) MAHARAJAH RAM KISSEN SINGH *v.* RAJAH SHEONUNDAU SINGH. **(1875) 3 Suth 151 = 23 W. R. 412 = 3 Sar. 498.**

INTENTION TO SEPARATE—DEFINITE AND UNAMBIGUOUS INDICATION BY ONE MEMBER OF.

———Effect of *See* HINDU LAW—JOINT FAMILY—PARTITION — INTENTION TO SEPARATE — DEFINITE AND ETC.

ONUS OF PROOF OF.

———*See* HINDU LAW—JOINT FAMILY—PARTITION—DIVISION IN STATUS—PROOF OF.

PROOF OF.

———*Onus.*

It lies upon a party claiming a share of joint estate to prove a severance of interest (198-9). (*Sir James W. Colvile.*) RAM CHUNDER DUTT *v.* CHUNDER COOMAR MUNDAL. **(1869) 13 M. I. A. 181 = 2 Sar. 507.**

———*Onus—Quantum.*

In a joint Hindu family a disruption of the status of jointness may take place by agreement, without division of the estate by metes and bounds. Even an unambiguous expression of an intention by one member of the joint family to separate and hold his share separately will suffice. But the question is one of fact, and the onus is on the party alleging separation of interest or the intention to separate to affirmatively establish it.

In a case in which there had been no actual partition between two brothers, it was not even alleged that they enjoyed separately the rents and profits of their respective shares, and there was no suggestion that they were separate in mess and worship, and what was contended for was that by their acts they had agreed to a "division of interest" which amounted in law to a separation, a number of documents being relied upon for that purpose. *Held* that the plaintiff, who rested his claim on the alleged separation, utterly failed to establish it. (*Mr Ameer Ali.*) GIRDHAR DAS *v.* SRI KRISHNA DUTT DUBE.

(1919) 12 L. W. 759 = 22 Bom. L. R. 1348 = 56 I. C. 293 = 29 M. L. T. 71 = 39 M L. J. 18 (24)

———*Quantum.*

The question was whether the 1st appellant had separated completely and effectually from his family in or about the year 1870, with the result that the property subsequently acquired by him by his own exertions was his own, or whether, as contended for the respondents, the said property was property of the joint family, on the ground that the 1st appellant had never completely and effectually separated from his family, and that the wealth which he subsequently acquired was merely an accretion of the portion of the family property, whether his full share of it, or not, of which he obtained the possession and enjoyment at the time of the alleged separation. It was admitted that no regular deed of partition had been executed at the time of the alleged partition.

Held on the facts, reversing the Court below and affirming the trial Judge, that the 1st appellant had, as alleged by the appellants, separated in interest and title and that the property in suit was his self-acquisition. (*Lord Atkinson.*) AMRIT RAO *v.* MUKUNDRAO. **(1919) 13 L.W. 112 = 15 N.L.R 165 = 53 I.C 866.**

———*Quantum.*

The suit was brought by the appellant to recover shares of numerous villages which he claimed as maternal grand-

HINDU LAW—(*Contd.*)

Joint family — Partition — Division in Status—(*Contd.*)

PROOF OF—(*Contd.*)

son and heir of one *R*, who died in December, 1850. The defendants were grandsons of *D*, the elder brother of *R*. The plaintiff alleged that the properties sought to be recovered by him constituted the separate estate of *R*. The defendants, on the other hand, maintained that the family was joint, and the property undivided, and that, consequently on *R*'s death, it devolved on them by survivorship.

The origin of the separation of the estate appeared to have been an award of the then Rajah of Benares, made in April 1819, by which a large part of the possessions of the family of the parties was divided into shares, some being allotted to *D*, and the others to *R*. The terms of the submission to the Rajah of Benares, and of his award of 1819, as also the subsequent conduct of the parties showed that their intention was that the shares specified by the Rajah should be the subjects of separate ownership.

Held, reversing the High Court and restoring the trial Judge, that a separation in interest of the properties dealt with by the award had been established (154). (*Sir Montague E. Smith.*) MAHARAJAH RAM KISSEN SINGH *v.* RAJAH SHEONUNDUN SINGH. **(1875) 3 Suth 151 = 23 W.R. 412 = 3 Sar. 498.**

Joint Family—Partition—Division per stirpes.

———*Mithakshara rule as to.*

According to the Mithakshara law, joint family property is divisible *per stirpes* (289). (*Sir Barnes Peacock.*) HURPURSHAD *v.* SHEO DYAL. **(1876) 3 I. A. 259 = 26 W. R. 55 = 3 Sar. 611 = 3 Suth. 304 = Bald. 25 = R. & J's. No. 41 (Oudh).**

Joint Family—Partition—Effect of—Partnership with stranger.

———Effect on. *See* PARTNERSHIP—DISSOLUTION—HINDU LAW. **(1913) 36 M. 185 (192).**

Joint Family—Partition—Evidence of.

———(*See also* HINDU LAW—JOINT FAMILY—PARTITION—PROOF OF).

———*Assertion of partition in prior proceedings by one party and admission thereof by opponent.*

A, the plaintiff's husband, and *P*, the defendant's husband, were two brothers governed by the Mithakshara law. *A* died first, and then *P*. The question was whether, prior to the death of *A*, separation in estate had taken place between the two brothers, and consequently, the plaintiff, as the widow of *A*, at his death, became entitled to half of the property which had come to *A* & *P* from their father.

In support of her case the plaintiff mainly relied upon proceedings in the Court of the Collector of dates subsequent to the death of *A* and prior to the death of *P*, in which it appeared that, in a suit for partition, there were entries and statements, from which, if they were admissible in evidence against the respondent, it might be inferred that some partition had previously been made; because there were entries which showed that the plaintiff, the widow of *A*, was recognised as being entitled to and having a share, which would not be consistent with the brothers having continued joint until *A's* death, in which case the whole of it would have descended to *P*.

Held, that if, at the dates of the said proceedings, *P* had been of sound mind and capable of managing his own affairs, and had been himself a party to those proceedings, and had made or adopted those admissions, they would have been evidence of considerable value upon the question whether a separation had been made at some previous period (379). MUSSAMAT SURUJ MOOKHI KONWAR

HINDU LAW—(*Contd.*)

Joint Family—Partition—Evidence of—(*Contd.*)

v. MUSSAMAT BHAGWATI KONWAR.
(1881) 10 C. L. R. 377 = Bald. 393.

———*Banking account joint.*

The fact that two or more Hindus had a banking account does not by itself prove that the moneys received by the Bank were moneys of a joint Hindu family or of Hindus who were partners in farming or other business. (*Sir John Edge.*) JAG PRASAD RAI *v.* MUSSAMMAT SINGARI.
(1924) 29 C. W. N. 941 = 23 A. L. J. 97 = 2 O. W. N 229 = 86 I. C. 122 = L. R. 6 P. C 111 = 27 Bom. L. R. 760 = A. I. R. 1925 P. C. 93 (2) = 49 M. L. J. 162 ((169-70).

———*Cesser of commensality.*

According to the Hindoo law, a separation from commensality does not, as a necessary consequence, effect a division of property, or, at least, of the whole undivided property (168). (*Dr. Lushington.*) REWUN PERSAD *v.* MUSSUMAT RADHA BEEBY. **(1847) 4 M. I. A. 137 = 7 W. R. 35 P. C. = 1 Suth. 172 = 1 Sar. 327.**

———The cesser of commensality is only material in so far as it removes or qualifies the presumptions which the Hindoo law might otherwise raise, that an acquisition made in the name of an individual son of the family was made by the head of the family and as part of the family estate (422). (*Sir James W. Colvile.*) MUSSUMAT ANUNDEE KOONWAR *v.* KHEDOO LAL. **(1872) 14 M. I. A. 412 = 18 W. R. 69 = 2 Suth. 591 = 3 Sar. 50.**

———Both Courts in India concur in finding that *B*, in Fusli 1290, built a house for himself and went to live in it with his family. He thus became separate from his brothers in food and residence. This fact lends probability to the evidence that at the same time a partition took place of household furniture and other moveable property of a similar character.

Cesser of commensality is an element which may properly be considered in determining the question whether there has been a partition of joint family property, but it is not conclusive. It is therefore necessary to consider whether the evidence in other respects supports or negatives the theory that the cesser in this case was adopted with a view to partition in the legal sense of the word. (*Sir Andrew Scoble.*) CHOWDHRY GANESH DUTT THAKOOR *v.* MUSST. JEWACH THAKOORAIN. **(1903) 31 I. A. 10 (13) = 31 C. 262 (269) = 6 Bom. L. R. 1 = 8 C. W. N. 146 = 8 Sar. 575 = 14 M. L. J. 8.**

———Separation from commensality does not, as a necessary consequence, effect a division of the joint undivided property. A separation in mess and worship may be due to various causes and yet the family may continue joint in estate. (*Mr. Ameer Ali.*) SURAJ NARAIN *v.* IKBAL NARAIN. **(1912) 40 I. A. 40 (46) = 35 A 80 (88) = 13 M. L. T. 194 = 17 C. W. N. 333 = (1913) M. W. N. 183 = 11 A. L. J 172 = 17 C. L. J. 288 = 15 Bom. L. R 456 = 18 I. C. 30 = 16 O. C. 129 = 24 M. L. J. 345.**

———*Documentary evidence— Consideration of—Mode proper of—Each document—Effect of, taken by itself—Cumulative effect of all.*

In deciding npon an issue whether or no there was a partition, it is not enough to consider whether each of the documents tendered in evidence taken by itself is sufficient to rebut the *prima facie* presumption that a Hindu family continued to be joint, but it is necessary to take into account the cumulative effect of all the documents. (*Lord Atkinson.*) PARBATI *v.* NAUNIHAL SINGH.
(1909) 36 I A. 71 (84) = 31 A 412 (428-9) = 5 M. L. T. 427 = 10 C. L. J. 121 = 13 C. W. N. 983 = 11 Bom. L. R. 878 = 6 A. L. J. 597 = 3 I. C. 195 = 19 M. L. J. 517.

HINDU LAW—(*Contd.*)

Joint Family—Partition—Evidence of—(*Contd.*)

———*Income of joint property—Division of.*

The mere division of income, for the convenience probably of the different members of the family, did not amount to the division of the family (86). (*Lord Justice Turner.*) SONATUN BYSACK *v.* SREEMUTTY JUGGUT. SOONDREE DOSSEE. **(1859) 8 M. I. A. 66 = 2 Suth. 37 = 1 Sar. 721.**

———*Junior member—Treatment of, as owner of his share of entire property—Account with him for income of property on that basis.*

If there be one thing more than any other inconsistent with the existence of a joint Hindu family, it is that the eldest male, and manager for the family, should treat one member as the owner of his share of the entire property and account with that member for the income of the property on that basis. (*Lord Atkinson.*) PARBATI *v*, NAUNIHAL SINGH. **(1909) 36 I. A. 71 (81) = 31 A. 412 (426) = 5 M. L. T. 427 = 10 C. L. J. 121 = 13 C. W. N. 983 = 11 Bom. L. R. 878 = 6 A. L. J. 597 = 3 I. C. 195 = 19 M. L. J. 517.**

———*Khewats and other village papers—Entries in, showing specification of shares of co-owners.*

Entries in khewats and other similar village papers showing that the shares of co-owners have been specified afford by themselves no proof that the owners were members of a joint Mithakshara family or had separated (*Sir John Edge*). JAG PRASAD RAI *v.* MUSSAMMAT SINGARI. **(1924) 29 C. W. N. 941 = 23 A. L. J. 97 = 2 O. W. N. 229 = 86 I. C. 122 = L. R. 6 P. C. 111 = 27 Bom. L. R. 760 = A. I. R. 1925 P. C. 93 (2) = 49 M. L. J. 162 (169).**

———*Lendings and purchases joint.*

The fact that money had been lent jointly on mortgages, or had been applied jointly in the purchase of property, does not by itself indicate that the money was or was not the separate money of Hindu co-parceners. The books of account of a joint family would, if produced, show whether the moneys or payments had been advanced or paid from a joint Hindu family fund or from a partnership fund (*Sir John Edge.*) JAG PRASAD RAI *v.* MUSSAMMAT SINGARI. **(1924) 29 C. W. N. 941 = 23 A. L. J. 97 = 2 O. W. N. 229 = 86 I. C. 122 = L. R. 6 P. C. 111 = 27 Bom. L. R. 760 = A. I. R. 1925 P. C. 93 (2) = 49 M. L. J. 162 (169).**

———*Management of property—Association of uncle and cousin in—Remuneration of those persons for their services.*

The question was whether one *C*, the husband of the respondent, was, at the time of his death, a member of an undivided Hindu family, or whether the property of which he died possessed was his separate property. The appellants claimed to be his reversionary heirs; the respondents were his widow and mortgagees claiming under her.

The High Court held that *C* died a divided member, and they did not consider that the fact that *C* availed himself of the services of his uncle and cousin in the administration of his property at the same time that he gave them maintenance, and paid the expenses of their marriage and other ceremonies, was not inconsistent with their conclusion. Their Lordships affirmed the High Court. (*Sir Arthur Wilson.*) DEOKI SINGH *v.* MUSSAMAT ANUPA.
(1905) 1 M L. T. 96 = 10 C. W. N. 338 = 16 M. L. J. 109 (114.)

———*Members of family—Receipt of sums by some of, on account of joint family property.*

The fact that some of the members of a joint Hindu family had received certain sums on account of the joint family property would not of itself, amount to a separation

HINDU LAW—(*Contd.*)

Joint Family—Partition—Evidence of—(*Contd.*)

(17). (*Mr. Pemberton Leigh*). SREEMUTTY RABUTTY DOSSEE *v.* SIBCHUNDER MULLICK.

(1854) 6 M. I. A. 1=1 Sar. 484.

———*Mortgages separate by members of specified portions of alleged joint family property.*

Where the plaintiffs alleged that they and one *C*, deceased, were members of a joint family, but it appeared that, during the alleged period of jointness, separate mortgages were executed by them in respect of specified areas held by each separately in a village, which, according to the plaintiffs, would be joint family property, *held* that the circumstances connected with those mortgages being within the knowledge of the plaintiffs, it lay upon them to show that the transactions, although separate, were consistent with jointness. (*Mr. Ameer Ali*). NET RAM SINGH *v.* MUSSAMMAT TURSA KUNWAR.

(1913) 17 C. W. N. 1085 =(1913) M. W. N. 658= 14 M. L. T. 173=18 C. L. J. 234=15 Bom. L. R. 863= 11 A. L. J. 861=20 I. C. 967=25 M. L. J. 489 (491.)

———*Movables and immoveables—Division of—Nature of evidence as to, required.*

The appeal arose out of a suit brought by the plaintiff—appellant, as the widow of *A*, to recover a share in a property which formerly belonged to one *B*. *B* had two sons, *A*, plaintiff's husband, and *P*, the husband of the respondent. Plaintiff's case was that, prior to *A's* death, a separation in estate took place between the two brothers, and that, consequently, the plaintiff, as the widow of *A*, at his death, became entitled to half of the property which had come to them from *B*, it being admitted that the parties were governed by the Mithakshara law. The respondent's case was, that there was no separation, and that, on the death of *A*, the whole property devolved on *P*; that at *P's* death, she became entitled to it; and that the plaintiff, *A's* widow, was only entitled to maintenance.

Held, that the *onus* of proving the separation was upon the plaintiff, and that she had failed to discharge that onus (378).

The plaintiff's witnesses only speak of a division of moveable property; and, with regard to that, they are not consistent in their evidence. They do not agree as to what articles of moveable property were actually divided; they do not agree as to the persons who were appointed arbitrators; the person who is said to have made out the list was not called as a witness, nor were any of the persons who were said to have been arbitrators. As evidence of a partition or division of moveable property, this kind of proof is very unsatisfactory, and open to great observation. As evidence of a partition of the immoveable property, it amounts to nothing. Their Lordships think that, if the parties thought it right, according to the evidence, to make a formal partition of moveable property, and if, at or about that time, which is when it is alleged the partition took place, they were going also to divide the immoveable property, it might be expected that there would be some evidence of a formal division of it, and some trace of what was done at that time to divide immoveable property; whereas there is nothing in the evidence which indicates that the parties did anything towards dividing it, and apparently the immoveable property remained just as it was (378). MUSSAMAT SURUJ MOOKHI KONWAR *v.* MUSSAMAT BHAGWATI KONWAR.

(1881) 10 C. L. R. 377=Bald 393=5 I. J. 326.

———*Revenue, taxes, income-tax, etc.—Joint payment of.*

Payments jointly of Government revenue, taxes, income-tax and such like payments do not by themselves indicate that the parties making such payments were joint or separate; the parties may have been carrying on business as partners and not as Hindu co-parceners (*Sir John Edge.*) JAG PRASAD RAI *v.* MUSSAMAT SINGARI.

(1924)=29 C. W. N. 941—23 A. L. J. 97=2 O W. N. 229=86 I. C. 122= L. R. 6 P. C. 111=27 Bom. L. R. 760= A. I. R. 1925 P. C. 93 (2)=49 M. L. J. 162 (169.)

———*Revenue and village papers—Definition of shares in.*

A definition of shares in revenue and villages papers affords, by itself, but a very slight indication of an actual separation in a Hindu family, and such a definition of shares standing alone cannot be regarded as sufficient evidence upon which to find, contrary to the presumption in law as to jointure, that the family to which such definition refers has separated (70). (*Lord Shaw.*) NAGESHAR BAKSH SINGH *v.* GANESHA. **(1919) 47 I. A. 57= 42 A. 368 (381)=18 A. L. J. 532=23 O. C. 1= 22 Bom. L. R. 596=28 M. L. T. 5=56 I. C. 306= 38 M. L. J 521.**

———A mere definition of shares in revenue and village papers, unless it was proved that such definition of shares was with a view to a then partition, would not by itself be conclusive evidence even that an actual partition was then intended among the members of a Hindu family (*Sir John Edge.*) MUSAMAT BHAGWANI KUNWAR *v.* MOHAN SINGH. **(1925) 22 L. W. 211= 29 C. W. N. 1037=23 A. L. J. 589=41 C. L. J. 591= (1925) M. W. N. 421=88 I. C. 385= A. I. R. 1925 P. C. 132=49 M. L. J. 55 (66-7).**

———*Revenue records—Separate entries of names of members in, in regard to specified portions of family property—Mortgages separate by them of specified portions — Partition of one item — Separate possession of respective* Seer *lands.*

Separate entries in the revenue records of the names of members of a Hindu family in regard to specified portions of the family property are, by themselves inconclusive on the question whether the members are or are not divided (491).

Where, in addition to the fact of such separate entries in regard to a particular item of family property, it appeared that, at the time when the family was alleged to be joint, the different members executed separate mortgages in respect of specified portions of that item of family property, the portion mortgaged by each being described as owned and possessed by him alone, that another item of family property was partitioned, and that the members were in separate possession of their respective *Seer* lands, *held* that the High Court was right in coming to the conclusion that the members were separate (491-2). (*Mr. Ameer Ali.*) NET RAM SINGH *v.* MUSSAMMAT TURSA KUNWAR. **(1913) 25 M. L. J. 489=17 C. W. N. 1085= (1913) M.W.N. 658=14 M.L.T. 173=18 C. L. J. 234= 15 Bom. L. R. 863=11 A. L. J. 861=20 I. C. 967.**

———*Seer land—Acceptance by junior member of certain amount of—Custom of family showing that such acceptance is not inconsistent with right to partition.*

In a suit for partition brought by the junior members of a Hindu family against the head of the family, it appeared that the plaintiffs had prior to suit, obtained, *seer* possession of certain portions of the estate of their ancestor by way of *seer*, as it was called. The question was whether the plaintiff's acceptance of those *seer* lands was in lieu of the share to which they would have been entitled on partition, and they had in consequence lost their right to insist on a partition of the joint family property.

HINDU LAW—(*Contd.*)

Joint Family—Partition—Evidence of—(*Contd.*)

It appeared that, according to the custom of the family, the holding of a certain amount of *seer* land was not inconsistent with the right to partition. And the courts below found that, notwithstanding those assignments of *seer* land, the plaintiffs continued to be joint and undivided with the defendant.

Held, that there was no partition in the case, and that the plaintiffs were entitled to insist on a partition. (*Sir Robert P. Collier.*) RUNJEET SINGH *v.* KOER GUJRAJ SINGH. **(1873) 1 I. A. 9 (20-1) = 3 Sar. 304 = R. & J's. No. 26 (Oudh).**

———*Separate record of proprietary rights in joint family villages in names of individual members and their heirs in shares in which they would be entitled on partition — Central Provinces.*

In this case the Court below stated that in that part of the country (Central Provinces) it was very common for members of an undivided family to record proprietary rights in villages in the shares to which each member of the family would be entitled if he separated, and at the death of each member to continue to enter his share in the name of that member's heirs, although they still continued joint. Their Lordships observed that that view of the matter did not require modification even where the right recorded was one of Zemindari, while the original interest was stated to be a patti right (41-2). (*Lord Robertson.*) REWA PRASAD SUKAL *v.* DEO DUTT RAM SUKAL. **(1899) 27 I.A. 39 = 27 C. 515 (519) = 4 C.W.N. 532 = 2 Bom. L R 558 = 7 Sar. 653.**

———*Settlement khewat—Definition of shares of co-sharers in—N. W. P. Land Revenue Act* XIX *of* 1873—*Effect of.*

The definition of the shares of co-sharers in a settlement khewat is not conclusive of a separation in joint Hindu family. Act XIX of 1873 (of N.-W.-P.) cannot be read as making such definition of shares conclusive of a separation (*Sir John Edge.*) MUSAMMAT BHAGWANI KUNWAR *v.* MOHAN SINGH. **(1925) 22 L.W. 211 = 29 C.W.N. 1037 = 23 A. L. J. 589 = 41 C.L.J. 591 = (1925) M.W. N. 421 = 88 I. C. 385 = A.I.R. 1925 P. C 132 = 49 M. L. J 5£ (66-7.)**

———*Settlement Officer's decree for "Superior proprietary rights" in favour of widows of deceased brothers "subject to rights of other shareholders."*

The respondent, claiming to be the daughter and heir of one Sheo Dayal, sued for the recovery from the appellant of a village which had been sold to appellant's predecessor in title by the two widows of Sheo Dayal, and by *B*, the widow of *G*, a brother of Sheo Dayal. The appellant pleaded, *inter alia*, that there had been a partition or separation in interest between Sheo Dayal and *G*, his brother, that, on the death of *G*, *B* became entitled to a moiety of the suit village, and that as the plaintiff was not a reversioner of *G*, her suit must fail as to *G's* moiety.

As proof of the fact that there had been such a separation, the appellant founded upon a settlement decree obtained by the three widows after the death of Sheo Dayal, whereby the Settlement Assistant Commissioner ordered that "a decree for superior proprietary rights in favour of the three widows be passed."

That decree, though in name for superior proprietary rights in favour of the widows, expressly declared that it should "be passed subject to the rights of the other shareholde.s".

It appeared that in the proceedings in which the Settlement decree was passed the property was treated as a *unum quid*, as ancestral, and as property to which, as an ancestral undivided property, the three widows vindicated their right.

HINDU LAW—(*Contd.*)

Joint Family—Partition—Evidence of—(*Contd.*)

Held, that not only was the settlement decree not equivalent to an affirmation of a partition or separation having taken place, but was entirely consistent with the existence of the property as joint and undivided, and therefore with no prejudice being effected to the right of the reversioner therein, and was even sound evidence in favour of the continuance as and from that date of the property as joint and undivided (65-6).

If it be correct, as alleged by the appellant, that the property had at that time been *de facto* separated, and that the settlement was a *de jure* recognition of that fact, then the entirety of the property was disposed of, and language of reservation, or the mention of other shareholders, was hardly appropriate, but might be contended to be repugnant to the transaction which was pleaded. In the opinion of their Lordships, the terms of this decree must be looked upon as a whole. When, on the one hand, it declares for superior proprietary rights in favour of the widows, and, on the other, that these are to be given subject to the rights of the other shareholders, it completely conserves such reversionary and other ownership rights as are inherent in the succession to a joint family property, and it negatives the idea that partition or separation had been effectuated by law in such a manner as to extinguish other proprietary rights (64-5). (*Lord Shaw.*) NAGESHAR BAKHSH SINGH *v.* GANESHA. **(1919) 47 I. A. 57 = 42 A. 368 (376-7) = 18 A. L. J. 532 = 23 O. C. 1 = 22 Bom. L. R. 596 = 28 M.L.T. 5 = 56 I. C. 306 = 38 M.L.J. 521.**

———*Small separate transactions by members.*

The mere fact that the different members of a Hindu family had small transactions of their own does not prove that they were necessarily separate. (*Lord Sinha.*) DEO NARAIN PANDE *v.* AGYAN RAM PANDE.

(1926) 53 M. L. J. 658 = (1927) M. W. N. 96 = 31 C. W. N. 533 = 101 I.C. 249 = A. I. R. 1927 P. C. 52.

———Village papers—Definition of shares in. *See* HINDU LAW—JOINT FAMILY—PARTITION — EVIDENCE OF—KHEWATS AND OTHER VILLAGE PAPERS & HINDU LAW—JOINT FAMILY—PARTITION — EVIDENCE OF — REVENUE AND VILLAGE PAPERS.

———*Widow of deceased member—Assertion by, in mutation proceedings that she succeeded to her husband's property as his heiress.*

The question was whether a deceased Hindu was separate in estate at the time of his death. The question arose, after the death of the deceased and his widow, between the agnatic relations of the deceased, and the respondents, who claimed the suit property of the deceased as against the agnatic relations, under a gift by the widow.

Held, that an assertion by the widow in mutation proceedings that she succeeded as heiress to all the property left by her deceased husband would be evidence against her that the deceased was separate in estate, and it was also evidence against the respondents, who came into possession by virtue of her gift (149). (*Sir Richard Couch.*) BEJAI BAHADUR SINGH *v.* BHUPINDAR BAHADUR SINGH.

(1895) 22 I. A. 139 = 17 A. 456 (471) = 6 Sar. 593.

———*Widow of deceased member—Claim by, as heiress of her husband.*

A Hindu widow can only be the heiress of her husband if he was separate in estate from the other branch of the family. Her claim to be the heiress may reasonably be taken to mean that he was separate in estate (149). (*Sir Richard Couch.*) BEJAI BAHADUR SINGH *v.* BHUPINDAR BAHADUR SINGH. **(1895) 22 I. A. 139 = 6 Sar. 593 = 17 A. 456 (471).**

HINDU LAW—(*Contd.*)

Joint Family—Partition—Evidence of—(*Contd.*)

———*Widow of deceased member—Possession by, for upwards of thirty years, of greater portion of husband's properties as his heiress.*

In a case in which the question was whether the plaintiffs and the last male owner of the suit properties were or were not members of an undivided family, *held*, that the indisputable fact that the deceased widow of the last male owner was in possession of the greater part of his properties, as heiress of her husband, for upwards of thirty years, was very strong evidence of the fact that the last male owner died a divided member (170). (*Sir James W. Colvile.*) MUSSUMAT THAKOOR DEYHEE *v.* RAI BALUK RAM. **(1866) 11 M. I. A. 139 = 10 W. R. (P. C.) 3 = 21 I. J. N. S. 106 = 2 Suth. 49 = 2 Sar. 231.**

Joint Family—Partition—Family arrangement in nature of.

———*See* HINDU LAW—JOINT FAMILY—(1) FATHER—FAMILY ARRANGEMENT ETC. & (2) MANAGER—FAMILY ARRANGEMENT ETC.

Joint Family—Partition—Father.

———Admission of partition by—Admissibility and value as against son of. *See* ADMISSION—PREDECESSOR IN INTEREST ETC (4). **(1847) 4 M. I. A. 137 (175).**

———Ancestral Property—Partition of. *See* HINDU LAW—JOINT FAMILY—FATHER—ANCESTRAL PROPERTY—PARTITION OF.

———Partition by. *See* HINDU LAW—JOINT FAMILY—FATHER—PARTITION BY.

———Partition with brothers—Property obtained at—Property acquired after—Nature of, on question with sons. *See* HINDU LAW—JOINT FAMILY—FATHER—PARTITION WITH BROTHER.

———*Son—Decree for partition in favour of, against father without actual partition pursuant to it—Decree declaring father's alienation void in case of—Son's right under.*

Where the estate of a joint Hindu family, consisting of a father and his son, had not been partitioned, though a decree for partition had been made in favour of the son against the father, *held* that a decree declaring an alienation by the father void could not be reasonably intended as a decree to put the plaintiff into physical possession of that which still remained one undivided half of the whole (731).

It only means that the plaintiff has been excluded from his proper share of the property jointly held and that he is entitled to possession for the purpose of securing his position. (*Lord Buckmaster.*) NARAIN DAS *v.* ABINASH CHANDER. **(1922) 27 C. W. N. 299 = 21 A. L. J. 201 = 37 C. L. J. 457 = L. R. 3 P.C. 129 = 31 M. L. T. 217 (P. C.) = 16 L. W. 780 = (1922) P. C. 347 = (1922) M. W. N. 791 = 4 U. P. L. R. (P. C.) 111 = 69 I. C. 273 = 44 M. L. J. 728 (731).**

Joint Family—Partition—Favoured by Hindu religion and law.

———A partition is favourably viewed by the Hindoo religion and law. It wants no extrinsic support (303). (*Sir Robert Phillimore.*) JUGGUT MOHINI DOSSEE *v.* MUSSUMAT SOOKHEEMONEY DOSSEE.
(1871) 14 M. I. A. 289 = 10 B. L. R. 19 P. C. = 17 W. R. (P. C.) 41 = 2 Suth. 512 = 3 Sar. 23.

Joint Family—Partition—Finding as to.

———Fact or Law. *See* HINDU LAW—JOINT FAMILY—PARTITION—QUESTION AS TO.

HINDU LAW—(*Contd.*)

Joint Family—Partition—Fraud—Re-opening on ground of—Suit for.

———*Onus on plaintiff in—Points to be considered in.*

Plaintiff sued to re-open a partition made by his grandfather and his four sons, one of whom, *K*, was the plaintiff's father, at a time when the plaintiff, who was *K's* son by his first wife, was about 4 years old. At that time *K* had separated from the plaintiff's mother and had married a second wife, and the plaintiff's case was that that partition was effected by all the adult members of the family with the deliberate object of defrauding him of his share in the properties which ought to have fallen to his father and himself at the partition.

Held, that the case set up by the plaintiff was in itself highly improbable and required to be established by very clear and satisfactory evidence, that the question at the root of such a case was whether the share allotted to the plaintiff's father was really inferior in value to that which was allotted to his brothers, because, if it was not, the basis of the plaintiffs' whole case failed; and that mere acreage was not a satisfactory test of value, as so much depended upon the productivity of the lands allotted to each share.

Held further, that the plaintiff had altogether failed to make out the alleged fraud. (*Sir John Wallis.*) SENNIMALAI GOUNDAN *v.* SELLAPPA GOUNDAN.
(1928) 33 C. W. N. 407 = 29 L. W. 439 = 114 I. C. 568 = A. I. R. 1929 P. C. 81 = 56 M. L. J. 511.

Joint Family—Partition—Fraudulent transaction—Plea of.

———*Onus of proof of—Registered deed of partition.*

Where the plaintiffs sued to establish a religious trust upon certain lands in the occupation of defendants, the plaintiffs and defendants being members of a joint Hindu family, and stated that the trust was created by a deed of a date subsequent to another deed, by which the property had been partitioned by the joint family, but which latter deed, they alleged, had never been acted upon, having been a mere device to protect the property from the creditors of one of its members who had become an insolvent, *Held* that it lay upon the plaintiff to make out a sufficient case to set aside the prior deed of partition, which was found to be a registered document, and which was *prma facie* a good and operative deed. SRIMATY SUKHIMANI DASEE *v.* MAHENDRA NATH DUTT. **(1869) 4 B. L. R. 16 (27) = 13 W. R. (P. C.) 14 = 2 Sar. 530 = 2 Suth. 297.**

———The onus of proving that deeds of partition executed and duly registered did not evidence a real and *bona fide* transaction between the parties thereto lies on the party who asserts that they were a mere pretence, or that they were intended to be operative only in a particuiar event. (*Lord Macnaghten.*) SHAM CHAND PAL *v.* PROTAP CHANDRA PAL. **(1897) 24 I. A. 186 = 25 C. 78 = 1 C. W. N. 594 = 7 Sar. 217.**

———*Presumption—Indebtedness of one of members—Partition on ground of.*

The alleged presumption against the first deed of partition, that it may have been a mere device because one member of the family was indebted, may more reasonably be removed than maintained by due attention to that fact. Such a state of things often leads to partitions, but to fair and honest ones. It would be a prudent course in the members of a joint family to prevent, by a partition, the interference of strangers in their family arrangements, and an inquiry into the state, condition, extent, and uses of their joint property; and no suggestion has been made that the partition under the first deed was unequal (303). (*Sir Robert Phillimore.*) JUGGUT MOHINI DOSSEE *v.* MUSSUMAT SOOKHEEMONEY DOSSEE.
(1871) 14 M. I. A. 289 = 10 B. L. R. 19 (P. C.) = 17 W. R. (P.C.) 41 = 2 Suth. 512 = 3 Sar. 23.

HINDU LAW—(*Contd.*)

Joint Family—Partition—Grandfather and grandson— Partition between.

———*Permissibility of, under Mithakshara law—Son (father of that grandson) alive.*

According to the Mithakshara, there can be no partition directly between grandfather and grandson while the father is alive (179). (*Sir Arthur Hobhouse*). RAI BISHEN CHAND *v.* ASMAIDA KOER. **(1884) 11 I. A. 164 = 6 A. 560 (574) = 4 Sar. 512.**

Joint Family—Partition—Idol—Worship of—Joint right of performing.

———Partition of—Mode of, *See* HINDU LAW—RELIGIOUS ENDOWMENT—IDOL—WORSHIP OF.
(1925) 52 I. A. 245 (260) = 52 C. 809.

Joint Family—Partition—Intention to separate—Definite and unambiguous indication by one member of.

EFFECT OF.

What may amount to a separation or what conduct on the part of some of the members may lead to disruption of the joint undivided family, and convert a joint tenancy into a tenancy-in-common, must depend on the facts of each case. A definite and unambiguous indication by one member of intention to separate himself and to enjoy his share in severalty may amount to separation. But to have that effect the intention must be unequivocal and clearly expressed. (1) (*Mr. Ameer Ali*) SURAJ NARAIN *v.* IKBAL NARAIN. **(1912) 40 I. A. 40 (45) = 35 A. 80 (87) = 13 M. L. T. 194 = 17 C. W. N. 333 = (1913) M. W. N. 183 = 11 A.L.J. 172 = 17 C. L. J. 288 = 15 Bom. L. R. 456 = 18 I. C. 30 = 16 O. C. 129 = 24 M. L. J. 345.**

and (2) (*Mr. Ameer Ali.*) GIRJA BAI *v.* SADASHIV DHUNDIRAJ. **(1916) 43 I. A. 151 (158) = 43 C. 1031 = 37 I.C. 321 = 20 C. W. N. 1085 = 14 A. L. J. 822 = 20 M. L. T. 78 = (1916) 2 M. W. N. 65 = 18 Bom. L. R. 621 = 24 C. L. J. 207 = 4 L. W. 114 = 12 N. L. R. 65 = 31 M. L. J. 455.**

Even an unambiguous expression of an intention by one member of the joint family to separate and hold his share separately will suffice to lead to a disruption of the status of jointness. (*Mr. Ameer Ali.*) GIRDHAR DAS *v.* SRI KRISHNA DUTT DUBE. **(1919) 22 Bom. L. R. 1348 = 12 L. W. 759 = 56 I. C. 293 = 29 M. L. T. 71 = 39 M. L. J. 18 (24).**

———It is well established that the unequivocal and unmistakable manifestation by a member of a joint Hindu family by his words or conduct of a fixed and determined intention to become separate is sufficient to effect the separation of his title and the severance of his interest, although division of possession, or partition by metes and bounds, does not take place or though there be no separation in food and dwelling (114). (*Lord Atkinson.*) AMRITRAO *v.* MUKUNDRAO. **(1919) 13 L.W. 112 = 15 N. L. R. 165 = 53 I. C. 866 (867-8).**

———An unequivocal intimation of an intention to separate by a member of a joint Hindu family governed by the Mithakshara law operates as a severance of the joint status (521). (*Sir John Edge.*) YADAO *v.* NAMDEO.
(1921) 48 I. A. 513 = 49 C. 1 (10-1) = 26 C. W. N. 393 = 30 M. L. T. 53 = L. R. 3 P. C. 41 = 15 L. W. 565 = 20 A. L. J. 481 = 24 Bom. L. R. 609 = A. I. R. 1922 P. C. 216 = 64 I.C. 536 = 42 M. L. J. 219.

———Under the law of the Mithakshara, an unambiguous and definite intimation of intention on the part of one member of the family to separate himself and to enjoy his share

HINDU LAW—(*Contd.*)

Joint Family—Partition—Intention to separate—Definite and unambiguous indication by one member of—(*Contd.*)

EFFECT OF—(*Contd.*)

in severalty has the effect of creating a division of the interest which, until them, he had held in jointness (173). (*Mr. Ameer Ali.*) RAMALINGA ANNAVI *v.* NARAYANA ANNAVI. **(1922) 49 I. A. 168 = 45 M. 489 (495) = 37 C. L. J. 15 = 30 M. L. T. 255 = (1922) M. W. N. 399 = 26 C. W. N. 929 = 16 L. W. 639 = 20 A L. J. 839 = 24 Bom. L. R. 1209 = A. I. R. 1922 (P. C.) 201 = 68 I. C. 451 = 43 M. L. J. 428.**

———In the case of a joint Hindu family subject to the law of the Mithakshara, a severance of estate is effected by an unequivocal declaration on the part of one of the joint holders of his intention to hold his share separately, even though no actual division takes place (364). (*Viscount Cave.*) SYED KASAM *v.* JORAWAR SINGH.
(1922) 49 I. A. 358 = 50 C. 84 (92) = 27 C. W. N. 179 = 25 Bom. L. R. 1 = 21 A. L. J 57 = 37 C. L. J. 73 = 31 M. L. T. 46 = 16 L W. 223 = A. I. R. 1922 P.C. 353 = 68 I. C. 573 = 43 M. L. J. 676.

MANIFESTATION OR INTIMATION OF INTENTION—MODES OF.

———*Conduct—Manifestation by—Case of—Whose conduct to be considered—Conduct of member in question or of another party.*

In cases in which the intention to separate is an inference derivable from conduct, the conclusion whether it was unequivocal and explicit must be based on the inference of intention derivable from the acts and declarations of the member who it is alleged to have separated himself, and not from the conduct or attitude of another party (162-3.) (*Mr. Ameer Ali.*) GIRJA BAI *v.* SADASHIV DHUNDIRAJ.
(1916) 43 I. A. 151 = 43 C. 1031 = 37 I. C. 321 = 20 C. W. N. 1085 = 14 A. L. J. 822 = 20 M. L. T. 78 = (1916) 2 M. W. N. 65 = 18 Bom. L. R. 621 = 24 C. L. J. 207 = 4 L.W. 114 = 12 N. L. R. 65 = 31 M. L. J. 455.

———*Declaration explicit—Conduct.*

The intention to separate may be evinced in different ways, either by explicit declaration or by conduct. If it is an inference derivable from conduct, it will be for the Court to determine whether it was unequivocal and explicit (162-3). (*Mr. Ameer Ali.*) GIRJA BAI *v.* SADASHIV DHUNDIRAJ. **(1916) 43 I. A. 151 = 43 C. 1031 = 37 I. C. 321 = 20 C. W. N. 1085 = 14 A. L. J. 822 = 20 M. L. T. 78 = (1916) 2 M.W. N. 65 = 18 Bom. L. R. 621 = 24 C. L. J. 207 = 4 L. W. 114 = 12 N. L R. 65 = 31 M. L. J. 455.**

———*Leaving joint residence—Separate living and borrowing—Execution of will disposing of property.*

Their Lordships regard the conduct of *S*, when he left the house in which both he and his cousin, the appellant, jointly resided, and withdrew himself from commensality with his cousin, as indicating a fixed determination hence forward to live separately from his cousin, and they treat the fact of his borrowing money for his separate maintenance—as well as his making a will—as indicating, at all events, that he himself considered that a separation had taken place (232). (*Sir Robert P. Collier.*) JOY NARAIN GIRI *v.* GRISH CHUNDER MYTI. **(1878) 5 I. A. 228 = 4 C. 434 (437) = 3 Sar. 871.**

———*Notice to that effect served upon co-parceners.*

The intention on the part of one member of the family to separate himself and to enjoy his share in severalty is clearly

HINDU LAW--(*Contd.*)

Joint Family—Partition--Intention to separate Definite and unambiguous indication by one member of—(*Contd.*)

MANIFESTATION OR INTIMATION OF INTENTION —MODES OF—(*Contd.*)

intimated to the co-parceners when a notice to that effect is served upon them by that member. That notice effects a separation so far as his branch of the family is concerned (173). (*Mr. Ameer Ali.*) RAMALINGA ANNAVI *v.* NARAYANA ANNAVI. (1922) **49 I. A. 168 = 45 M. 489 (495) = 37 C L. J. 15 = 30 M. L. T. 255 = 1922 M. W. N. 399 = 26 C. W. N. 929 = 16 L. W. 639 = 20 A. L. J. 839 = 24 Bom.L. R. 1209 = A.I.R. (1922) P.C 201 = 68 I. C. 451 = 43 M. L. J. 428**

———*Notice to that effect to manager followed by filing of partition suit.*

A member of a Mithakshara joint family died pending a suit for partition which he had instituted on 21st October, 1908. On his death, his widow applied for substitution as the heir and legal representative of her deceased husband. It appeared that, prior to suit, that is, on 1st October, 1908, the deceased had served a registered notice on the 1st defendant in the suit, the manager of the joint family, and that all the deceased's subsequent acts, including the filing of the suit, evinced a fixed determination to sever himself from the joint family.

Held, reversing the Court below, that the deceased had unequivocally and unmistakably manifested his intention to separate himself from the defendants, the other members of the family, and to hold, possess, and enjoy his unquestioned interest separately from them, that that was sufficient, under the Hindu law, to constitute a separation and to divide him in estate from his co-parceners, and that his widow was therefore entitled to continue the suit. (*Mr. Ameer Ali.*) GIRJA BAI *v.* SADASHIV DHUNDIRAJ.

(1916) 43 I. A. 151 (163) = 43 C. 1031 (1051) = 20 C. W. N. 1085 = 14 A. L. J. 822 = 20 M. L. T. 78 = (1916) 2 M. W. N. 65 = 18 Bom. L. R 621 = 24 C. L. J. 207 = 4 L. W. 114 = 12 N. L. R. 65 = 37 I. C. 321 = 31 M. L. J. 455.

———*Partition suit—Filing of.*

The plaintiff instituted a suit for partition of family property against his father and three half-brothers. During the pendency of the suit, a fourth half-brother was born, and all these were defendants.

Quaere, whether, assuming the mode of division was putrabhaga, division by sons, the plaintiff should not have one-fifth share, his youngest born step-brother not being counted for a share, as having been born since the unequivocal statement by the plaintiff of his desire to have partition. (*Lord Phillimore.*) PALANIAPPA CHETTIAR *v.* ALAYAN CHETTI.

(1921) 48 I. A. 539 (542-3) = 44 M. 740 (743) = (1921) M. W. N. 687 = 30 M. L. T. 208 = 26 C. W. N. 417 = 15 L. W. 521 = 4 U. P. L. R. (P. C.) 21 = A. I. R. 1922 P. C. 228 = 64 I. C. 439.

———The commencement of a suit for partition has been held to be sufficient to effect a severance in interest even before decree. (*Viscount Cave.*) SYED KASAM *v.* JORAWAR SINGH. (1922) **49 I. A. 358 (364) = 50 C. 84 (92) = 27 C. W. N. 179 = 25 Bom. L. R. 1 = 21 A. L. J. 57 = 37 C. L. J. 73 = 31 M. L. T 46 = 16 L. W. 223 = A. I. R. 1922 P. C. 353 = 68 I. C. 573 = 43 M. L. J. 676.**

———*Partition suit—Filing of—Dismissal of suit on ground that, though plaintiff had legal right to partition, he had no proper motive for exercising that right.*

A member of a joint Hindu family instituted a suit for partition. The suit was dismissed on the ground that, though he had a legal right to partition, he had no proper motive for exercising that right. Thereafter, he mortgaged his share. In a suit brought by the mortgagor, *held*, that the institution of the suit for partition amounted to an intimation by the member to his co-sharers of his unequivocal desire for separation from the joint family, that he became divided as from the date of that suit and that the mortgage by him was valid. (*Viscount Haldane.*) KAWAL NAIN *v.* PRABHU LAL. (1917) **44 I. A. 159 = 39 A. 496 = (1917) M. W. N. 514 = 19 Bom. L. R. 642 = 2 Pat. L. W. 57 = 15 A. L. J. 581 = 21 C. W. N. 986 = 26 C.L.J. 101 = 6 L.W. 330 = 40 I.C. 286 = 33 M.L.J. 42.**

———*Partition suit—Filing of—Suit proceeding to a decree—Date of severance in case of.*

The fact that any member of a joint Hindu family has separated himself from his co-parceners may be proved by his suing for a partition of the joint family property, and if the suit is decreed, the date of his severance from the joint family will, if nothing else is proved, be treated as the date when the suit was instituted (86-7). (*Sir John Edge.*) PALANI AMMAL *v.* MUTHUVENKATACHALA MONIAGAR. (1924) **52 I. A. 83 = 48 M. 254 = 6 Pat. L. T. 133 = 21 L. W. 439 = (1925) M. W. N. 330 = 27 Bom. L. R. 735 = 3 Pat. L. R. 126 = 23 A. L. J. 746 = 29 C. W. N. 846 = 6 L. R. P. C. 143 = A. I. R. 1925 P. C. 49 = 87 I. C. 333 = 48 M. L. J. 83.**

———*Partition suit—Filing of—Withdrawal of suit subsequently—Effect of.*

Where a member of a joint Hindu family files a plaint claiming a partition but afterwards withdraws it, no severance of the joint status results. But such a plaint, even if withdrawn, would, unless explained, afford evidence that an intention to separate had been entertained (87). (*Sir John Edge.*) PALANI AMMAL *v.* MUTHUVENKATACHALA MONIAGAR. (1924) **52 I. A. 83 = 48 M. 254 = 6 P. L. T. 133 = 21 L. W. 439 = (1925) M. W. N. 330 = 27 Bom. L. R. 735 = 3 P. L. R. 126 = 23 A. L. J. 746 = 29 C. W. N. 846 = 6 L. R. P. C. 143 = 87 I.C. 333 = A I. R. (1925) P.C 49 = 48 M. L. J. 83.**

ONUS OF PROOF OF INTENTION.

———The onus is on the party alleging the intention to separate to affirmatively establish it. (*Mr. Ameer Ali.*) GIRDHAR DAS *v.* SRI KRISHNA DUTT DUBE.

(1919) 22 Bom. L. R. 1348 = 12 L. W. 759 = 56 I. C. 293 = 29 M. L. T. 71 = 39 M. L. J. 18 (24).

QUESTIONING OF PROPRIETY OF, BY CO-SHARERS OR COURT.

———*Permissibility.*

Once the decision (the desire on the part of any one member to sever himself from the joint family and to enjoy his hitherto undefined or unspecified share separately from the others) has been unequivocally expressed and clearly intimated to his co-sharers, his right to obtain and possess the share to which he admittedly has a title is unimpeachable; neither the co-sharers can question it, nor can the Court examine his conscience to find out whether his reasons for separation were well-founded or sufficient; the Court has simply to give effect to his right to have his share allotted separately from the others (160-1). (*Mr. Ameer Ali.*) GIRJA BAI *v.* SADASHIV DHUNDIRAJ. (1916) **43 I. A. 151 = 43 C. 1031 (1047-8) = 37 I. C 321 = 20 C. W. N. 1085 = 14 A.L.J. 822 = 20 M. L. T. 78 = (1916) 2 M.W.N. 65 = 18 Bom. L. R. 621 = 24 C. L. J. 207 = 4 L W. 114 = 12 N. L. R. 65 = 31 M. L. J. 455.**

HINDU LAW—(*Contd.*)

Joint Family—Partition—Intention to separate—Definite and unambiguous indication by one member of—(*Contd.*)

RULE AS TO—IMPARTIBLE ESTATE—APPLICABILITY TO.

———*See* HINDU LAW—IMPARTIBLE ESTATE—JOINT FAMILY PROPERTY—ESTATE FORMING—SEPARATION AS REGARDS.

Joint family—Partition—Joint family property—Absence total of—Partition in case of.

———*Mode of effecting.*

Nilakantha, the author of the Vyavahara Mayukha, expressly lays down that "even when there is a total absence of common property a partition is effected by the mere declaration 'I am separate from thee,' for partition is a particular condition of the mind, and the declaration is indicative of the same" (160). (*Mr. Ameer Ali.*) GIRJA BAI *v.* SADASHIV DHUNDIRAJ. **(1916) 43 I. A. 151 = 43 C. 1031 (1046) = 37 I. C. 321 = 20 C. W. N. 1085 = 14 A. L. J. 822 = 20 M. L. T. 78 = (1916) 2 M. W. N. 65 = 18 Bom. L. R. 621 = 24 C. L. J. 207 = 4 L. W. 114 = 12 N. L. R. 65 = 31 M. L. J. 455,**

Joint family—Partition—Manager.

———Partition by. *See* HINDU LAW—JOINT FAMILY—MANAGER—PARTITION BY.

Joint family—Partition—Marriage expenses of co-parceners—Provision for.

———*Right to—Division in status between their branch and the other branches—Marriage after.*

In a suit brought by the 1st respondent and his two minor sons for partition of the property of a joint Mithakshara family consisting of themselves and of the appellants, the question was whether the marriage expenses of the 1st respondent's sons should be provided for. At the date of the suit neither of the sons was married, but the elder (Plaintiff 2) married before the decree was made. The High Court held that the marriage expenses of plaintiff No. 2 should be provided for, as in their view the severance of the joint status took place only when the decree was made. They rejected the claim of plaintiff No. 3 (the younger son) who was unmarried at the date of the decree. The suit was instituted in January 1910 but it appeared that, as early as July, 30, 1909, the 1st respondent had served a notice upon his co-parceners unambiguously and definitely intimating his intention to separate himself and to enjoy his share in severalty.

Held, that that notice effected a separation so far as 1st respondent's branch of the family was concerned, and that no obligation rested on the joint family in respect of either of his son's marriages (173 4). (*Mr. Ameer Ali.*) RAMALINGA ANNAVI *v.* NARAYANA ANNAVI.

(1922) 49 I. A. 168 = 45 M. 489 (495) = 37 C. L. J. 15 = 30 M.L.T. 255 = (1922) M. W.N. 399 = 26 C. W. N. 929 = 16 L. W. 639 = 20 A. L. J. 839 = 24 Bom. L. R. 1209 = A. I R. 1922 P. C. 201 = 68 I. C. 451 = 43 M. L. J. 428.

Joint family—Partition—Meaning twofold of word.

———The word "division" has a twofold application. There may be a division of right, and there may be a division of property (91). (*Lord Westbury.*) APPOVIER *v.* RAMA SUBBA AIYAN. **(1866) 11 M. I. A. 75 = 8 W. R (P. C.) 1 = 1 Suth. 657 = 2 Sar. 218.**

———In Hindu law, "partition" does not mean simply division of property into specific shares; it covers both

HINDU LAW—(*Contd.*)

Joint Family—Partition—Meaning twofold of word—(*Contd.*)

"division of title and division of property." In the Mithakshara, Vijnaneswara defines the word "Vibhaga," which is usually rendered into English by the word "partition," as the "adjustment of divers rights regarding the whole by distributing them in particular portions of the aggregate." Mitra Misra explains in the Viramitrodaya the meaning of this passage: he shows that the definition of Vijnaneswara does not mean exclusively the division of property into specific shares as alone giving right to property, but includes the ascertainment of the respective rights of the individuals, who claim the heritage jointly. He says: "For partition is made of that in which proprietary right has already arisen, consequently partition cannot properly be set forth as a means of proprietary right. Indeed, what is effected by partition is only the adjustment of the proprietary right into specific shares." Nowhere in the Mithakshara is it stated that agreement between all the co-parceners is essential to the disruption of the joint status or that the severance of rights can only be brought about by the actual division and distribution of the property held jointly. If this were so and there were minors in a joint undivided family, partition would be impossible until they had all attained majority, a position which is expressly combated and negatived in the Viramitrodaya. In fact later writers leave no room for doubt that "separation," which means the severance of the status of jointness, is a matter of individual volition. For example, Nilakantha, the author of the Vyavahara Mayukha expressly lays down that "even when there is a total absence of common property a partition is effected by the mere declaration 'I am separate from thee,' for partition is a particular condition of the mind, and the declaration is indicative of the same." The Saraswati-Vilasa gives expression to the same view. It says: "from this it is known that without any formality partition can be effected by mere intention." The following gloss in the Viramitrodaya appears to be conclusive on the rule of law under the Mithakshara "Here again," it says, "partition at the desire of the sons," which expression includes grandsons and great-grandsons, "whether in the lifetime of the father or after his demise, may take place by the choice of a single co-parcener, since there is no distinction" (159-60). (*Mr. Ameer Ali.*) GIRJA BAI *v.* SADASHIV DHUNDIRAJ. **(1916) 43 I. A. 151 = 43 C. 1031 (1045-7) = 20 C. W. N. 1085 = 14 A. L. J. 822 = 20 M.L.T. 78 = (1916) 2 M.W.N. 65 = 18 Bom. L. R. 621 = 24 C. L. J. 207 = 4 L. W. 114 = 12 N. L. R. 65 = 37 I. C. 321 = 31 M. L. J. 455.**

———There is a twofold application of the word "division" in connection with a partition. In the first place, there is separation, which means the severance of the status of jointness. That is a matter of individual volition; and it must be shown that an intention to become divided has been clearly and unequivocally expressed, it may be by explicit declaration or by conduct. Secondly, there is the partition or division of the joint estate, comprising the allotment of shares which may be effected by different methods (419-20). (*Sir Lancelot Sanderson.*) MUKUND DHARMAN BHOIR *v.* BALKRISHNA PADMANJI.

(1927) 54 I. A. 413 = 29 Bom. L. R. 1496 = 46 C. L. J. 413 = 39 M. L. T. 521 = 105 I. C. 703 = 4 O. W. N. 845 = A. I. R. (1927) P. C .224 = 53 M. L. J. 463.

Joint family—Partition—Minor members.

———*Existence of some—No bar to partition.*

A valid agreement for partition may be made during the minority of one or more of the co-parceners. That seems

HINDU LAW—(*Contd.*)

Joint Family—Partition—Minor members—(*Contd.*)

to follow from the admitted right of a co-parcener to claim a partition, and (as has been said) if an agreement for partition could not be made binding on minors a partition could hardly ever take place (150). (*Lord Davey.*) BALKISHEN DAS *v.* RAM NARAIN SAHU.
(1903) 30 I. A. 139 = 30 C. 738 (752) = 7 C W.N. 578 = 5 Bom. L. R. 461 = 8 Sar. 489.

———A valid agreement for partition can be made during the minority of one or more of the co-parceners (78). (*Lord Atkinson.*) PARBATI *v.* NAUNIHAL SINGH.
(1909) 36 I. A. 71 = 31 A. 412 (422) = 5 M. L. T. 427 = 10 C. L. J. 121 = 13 C.W.N. 983 = 11 Bom. L. R. 878 = 6 A. L. J. 597 = 3 I C. 195 = 19 M. L. J. 517.

See also **(1916) 43 I. A. 151 = 43 C. 1031 in Col. 1814.**

———*Partition between—Decree for—Discretion of court.*

Held :— That the courts in India were right in refusing to order a partition in a suit by a minor, the principal defendant also being a minor, on the ground that it would not be beneficial to the parties concerned or to either of them. (*Sir Arthur Wilson.*) BACHOO HURKISONDAS *v.* MANKOSE BAI. **(1907) 34 I. A. 107 (113) = 31 B. 373 (379) = 2 M. L. T. 295 = 6 C. L. J. 1 = 11 C. W. N. 769 = 9 Bom. L. R. 646 = 17 M. L. J. 343.**

———*Partition prejudicial to—Their rights in case of.*

No doubt, if a partition effected during the minority of a co-parcener were unfair or prejudicial to the minor's interests, he might, on attaining his majority, by proper proceedings set it aside so far as regards himself (150). (*Lord Davey.*) BALKISHEN DAS *v.* RAM NARAIN SAHU.
(1903) 30 I. A. 139 = 30 C. 738 (752) = 7 C. W. N. 578 = 5 Bom. L. R. 461 = 8 Sar. 489.

Joint family—Partition—Mother.

———*Partition between sons—Share taken by mother at—Share in lieu of maintenance.*

On the death of a Hindu his heirs take the whole estate, and if a mother on a partition among her sons takes a share, it is taken in lieu of maintenance (124). (*Sir Richard Couch.*) SRIMATI HEMANGINI DASI *v.* KEDAR NATH KUDU CHOWDHRY. **(1889) 16 I. A. 115 = 16 C. 758 (766) = 5 Sar. 374.**

———*Partition between sons and step-sons—Her right to share from her own sons only or from step-sons also.*

According to Jimutavahana it is a settled rule that a widow shall receive from sons who were born of her an equal share with them, and she cannot receive a share from the children of another wife ; therefore she can only receive her share from her own sons (123). (*Sir Richard Couch*). SRIMATI HEMANGINI DASI *v.* KEDAR NATH KUDU CHOWDHRY. **(1889) 16 I. A. 115 = 16 C. 758 (765) = 5 Sar. 374.**

———*Rights of—Partition ignoring—Validity—Bengal Mithakshara.*

The mother, who is, under the Bengal Mithakshara law, entitled in certain cases to a share at a partition between her sons, is not bound by a partition made without reserving a share for her, unless it is shown that she assented to the same. (*Sir Andrew Scoble.*) CHOWDHRY GANESH DUTT THAKOORAIN *v.* MUSSMT. JEWACH THAKOORAIN. **(1903) 31 I.A. 10 (15-6) = 31 C. 262 (271-2) = 6 Bom. L. R. 1 = 8 C. W. N. 146 = 8 Sar. 575 = 14 M. L. J. 8.**

———*Right of, under Bengal Mithakshara.*

According to the Mithakshara law in force in Bengal, a mother, though not entitled to require a partition so long as her sons remain united, is entitled, if a partition takes place between her sons, to receive the share of a son in property which is ancestral, or acquired by the employment of ancestral wealth. She may, of course, acquiesce in the division

HINDU LAW—(*Contd.*)

Joint Family—Partition—Mother—(*Contd.*)

of the property between her sons without claiming any share for herself. (*Sir Andrew Scoble.*) CHOWDHRY GANESH DUTT THAKOORAIN *v.* MUSSUMMAT JEWACH THAKOORAIN. **(1903) 31 I. A. 10 (15-6) = 31 C. 262 (271) = 6 Bom. L. R. 1 = 8 C. W. N. 146 = 8 Sar. 575 = 14 M. L. J. 8.**

Joint family—Partition—Nattukottai Chetties.

———*Patnibhaga division*—Moopu—*Custom of—Proof of—Quantum.*

The parties to the suit were Nattukottai Chetties. The plaintiff was the son by the first wife. The defendants were the father and his sons by his second wife. The suit was for partition. The plaintiff alleged a custom of division by the patnibhaga mode. He also claimed that, before the property was divided, he was entitled to a sum of Rs. 600 as a first charge in his favour on the whole property as representing the *moopu* provided according to the caste custom for a first wife when her husband married a second time, and descending from her to son or sons.

Held, reversing the High Court and restoring the trial Judge, that the plaintiff had proved the custom of patnibhaga, and that he was entitled first to the *moopu*, and to his share of the residue. (*Lord Phillimore.*) PALANIAPPA CHETTIAR *v.* ALAYAN CHETTI. **(1921) 48 I. A. 539 = 44 M. 740 = (1921) M. W.N. 687 = 30 M. L. T. 208 = 26 C. W. N 417 = 15 L.W. 521 = 4 U.P.L.R. (P.C.) 21 = 64 I. C. 439 = A I. R. (1922) P. C. 228.**

Joint family—Partition—Oudh estate.

———Joint family estate—Partition of—Suit for—Decree in, making junior member sub-proprietor of talukdar in respect of his share—Validity. *See* OUDH ESTATE—JOINT FAMILY ESTATE—PARTITION OF.
(1887) 14 I. A. 37 (61) = 14 C. 493 (511).

Joint family—Partition—Partial partition.

———*Award effecting—Validity—Agreement to refer agreeing to division by steps and to accept each division as final—Effect.*

By an agreement, two brothers agreed to refer the partition of all their ancestral and other properties to arbitrators. The award, however, divided only parts of the property referred for division, the division of the remainder being rendered impossible by reason ofthe persistent obstructiveness of plaintiff, one of the brothers. In a suit for partition brought by him in respect of all the properties of the family, as well those which had been divided by the award as those not so divided by it, *held* that the award so far as it made a division of the property was valid and binding on the parties (54).

If the arbitrators had effected a division of parts of the property only by their own authority only, the award might have been bad as being uncertain in its terms and incomplete, but it was competent to the parties to agree to the division being made by the arbitrators by steps and that each should be final. They might waive the condition that a complete partition must be made of the whole of the property. The ground upon which an award which does not dispose of all the matters referred has been held to be invalid appears to be that there is an implied condition that it shall do so (54) (*Sir Richard Couch.*) MAKUND RAM SUKAL *v.* SALIQ RAM SUKAL. **(1894) 21 I. A. 47 = 21 C. 590 (599-600) = 6 Sar. 423.**

———Members—Separation of one of—Effect of. *See* HINDU LAW—JOINT FAMILY— PARTITION—SEPARATION OF ONE MEMBER.

———*Objection to suit on ground of—Maintainability—Plaint admitting certain properties to be partible and*

HINDU LAW—(*Contd.*)

Joint Family —Partition —Partial Partition—(*Contd.*)

claiming certain other properties to be impartible and seeking complete partition of former—Subsequent throwing of latter by plaintiff into hotchpot.

In a suit for partition, the plaintiff sought a complete partition of the whole of the family property.

In his plaint, the plaintiff enumerated certain jewels in its schedules and admitted that they were in his possession; but, for some inadequate reason,he at first appeared to have considered them not liable to partition. At an early stage of the case, however, he expressed his willingness to being those jewels into hotchpot. The decree of the District Court accordingly directed a valuation and a scheme of division into two equal shares of those jewels as well as of the rest of the family property.

On objection raised in the appeal to the Privy Council that the plaintiff's failure to disclose at the outset his possession of the jewels converted the suit into one for partial partition only, and that the suit ought therefore to have been dismissed, *held* that there was no question of partial partition (81). (*Sir Andrew Scoble.*) RAJA BOMMADEVARA VENKATA NARASIMHA NAIDU *v.* RAJA BOMMADEVEVKA BHASHYAKARLU NAIDU.

(1902) 29 I. A. 76 = 25 M. 367 (379) = 6 C. W. N. 641 = 4 Bom. L R. 543 = 8 Sar. 258.

———*Permissibility.*

According to the Hindu Law, a division may be either total or partial (168). (*Dr. Lushington.*) KEWUN PERSAD *v.* MUSSUMAT RADHA BEEBY. **(1847) 4 M. I. A. 137 = 7 W. R. 35 P. C. = 1 Suth. 172 = 1 Sar. 327.**

———The ordinary rule undoubtedly is that there cannot be a partial partition.

Quaere whether this rule is elastic, and can be departed from, if there is no inconvenience in a partial partition, apart from a final partition of the whole of the joint properties. (*Lord Parmoor.*) GURAN DITTA *v.* RAM DITTA.

(1928) 55 I. A. 235 = 55 C. 944 = 32 C. W. N. 817 = 29 Punj. L. R. 429 = 28 L. W. 66 = 109 I. C. 723 (2) = 48 C. L. J. 119 = 5 O. W. N. 668 = 1 L.T. 40 Lah. 144 = 30 Bom. L. R. 1384 = 26 A. L. J. 1215 = (1928) M. W. N. 917 = A. I. R. 1928 P. C. 172 = 55 M. L. J. 651.

———*Property—Partition of portion of—Effect of.*

An attempt was made to show that the joint property was divided long ago, and that *K* was not acting as manager of family property in which the defendant had an interest. But this attempt failed, for although some money was divided, the rest of the joint property was not decreed to be partitioned until long after (228-9.) (*Lord Lindley.*) ANNAMALAI CHETTY *v.* MUKUGESA CHETTY.

(1903) 30 I. A. 220 = 26 M. 544 (553) = 7 C.W. N. 754 = 4 Bom. L. R. 494 = 8 Sar. 523 = 13 M. L. J. 287.

Joint family—Partition—Partible property.

———[*See also* HINDU LAW—IMPARTIBLE ESTATE. (1) PARTIBLE OR, (2) IMPARTIBILITY OF ESTATE AND HINDU LAW—INHERITANCE—PRIMOGENITURE]

———*Babuana and sohag grants in Darbhanga Raj—Property subject of.*

Babuana and sohag lands descend in the family of Darbhanga, not to one male heir only, but to all the existing male heirs in the male line of the grantee as co-parceners. Babuana and sohag property are, like other ancestral joint family property, subjects to be partitioned (286-7). (*Sir John Edge.*) EKRADESHWAR SINGH *v.* JANESHWARI BAHUASIN. **(1914) 41 I. A. 275 = 42 C. 582 (603-4) = (1914) M. W. N. 807 = 16 M. L. T. 382 = 1 L. W. 863 = 18 C. W. N. 1249 = 12 A.L.J. 1217 = 17 Bom. L.R. 18 = 21 C. L. J. 9 = 25 I. C. 417 = 27 M. L. J. 373.**

HINDU LAW—(*Contd.*)

Joint Family —Partition —Partible property—(*Contd.*)

———*Clothes of party incapacitated from procreating children.*

The clothes of a party incapacitated by nature or by accident from procreating children appear by the Hindu law to be excepted from the general rule of partition. (*The Lord Chancellor.*) LUXIMON ROW SADASEW *v.* MULLOR ROW BAJEE. **(1831) 5 W. R. 67 = 1 Suth. 1 = 2 Knapp 60 = 1 Norton's L. C. 169 = 1 Sar. 19.**

———*Mutt—Headship of.*

The headship of a mutt is not a matter of partition (9) (*Sir Robert Phillimore.*) SETHURAMASWAMIAR *v.* MERUSWAMIAR. **(1917) 45 I. A. 1 = 41 M. 296 (305) = 20 Bom. L. R. 414 = 7 L. W. 22 = 23 M. L. T. 94 = 4 Pat. L. W. 91 = 16 A. L. J. 113 = 27 C. L. J. 231 = 22 C. W. N. 457 = 43 I. C. 806 = 34 M. L. J. 130.**

———Religious Endowment — Debutter property. *See* HINDU LAW—RELIGIOUS ENDOWMENT — DEBUTTER PROPERTY—PARTITION OF.

(1875) 3 Suth. 127 (132) = 23 W. R. 369.

———Spiritual preceptor—Non-religious lands granted by native ruler to—Partibility of, amongst his heirs. *See* GRANT—NATIVE RULER—SPIRITUAL PRECEPTOR.

(1917) 45 I. A. 1 (6) = 41 M. 296 (302-3).

Joint family—Partition—Partnership with Stranger.

———*Effect on.*

See PARTNERSHIP—DISSOLUTION—HINDU LAW.

(1913) 36 M. 185 (192).

JOINT FAMILY—PARTITION—PARTY TO—RIGHTS UNDER PARTITION OF—SUIT FOR DECLARATION OF.

———*Person not party to partition—Declaration of rights of, in such suit.*

The respondent, the widow of one of 4 brothers governed by the Bengal Mithakshara law, brought a suit against, *inter alia*, the three surviving brothers of her husband, and their mother, to determine the plaintiff's rights under a partition of family property which she alleged had taken place in her husband's lifetime, and for consequential reliefs. It appeared that at the alleged partition no share was reserved for the mother and that she did not acquiesce in the partition so made. On the strength of this circumstance the partition was urged to be invalid and the plaintiff's suit as framed to be unsustainable.

Held, that the suit being one for a declaration of rights under the partition, in which all the parties interested were represented, and in which the mother claimed her share, there was no difficulty in giving effect to her claim. Their Lordships made a declaration of her right to her share. (*Sir Andrew Scoble.*) CHOWDHRY GANESH DUTT THAKOOR *v.* JEWACH THAKOORAIN.

(1903) 31 I.A. 10 (15-6) = 31 C. 262 (271-2) = 6 Bom. L. R. 1 = 8 C.W.N. 146 = 8 Sar. 575 = 14 M. L. J. 8.

Joint family—Partition —Patnibhaga mode of.

———*Custom of—Origin of.*

It is possible that the matriarchal theories of the earlier inhabitants of Southern India may have led to the prevalence of the custom of patnibhaga. If this theory were sound it would naturally lead us to expect the prevalence of the custom in the lower castes. (*Lord Phillimore*). PALANIAPPA CHETTIAR *v.* ALAYAN CHETTI.

(1921) 48 I.A. 539 (548) = 44 M. 740 (748) = (1921) M.W.N. 687 = 30 M.L.T. 208 = 26 C. W. N. 417 = 15 L.W. 521 = 64 I.C. 439 = 4 U.P.L.R. (P.C.) 21 = A. I. R. (1922) P. C. 228.

HINDU LAW—(*Contd.*)

Joint Family—Partition—Patnibhaga mode of —(*Contd.*)

———Nattukottai Chetties—Custom among—Proof of. *See* HINDU LAW—JOINT FAMILY—PARTITION—NATTUKOTTAI CHETTIES.

———Putrabhaga — Modes of—Rule—Exception. *See* HINDU LAW — JOINT FAMILY — PARTITION—SON—MOTHERS DIFFERENT.

(1921) 48 I.A. 539 (545-6, 547-8) = 44 M. 740 (746-7).

Joint family—Partition—Presumption —Onus of proof.

———It may be admitted that the *prima facie* presumption, where there are no circumstances to affect it, is that every Hindu family of this class was an undivided family, and, consequently, this presumption must prevail, unless the circumstances of this case lead us to a contrary conclusion (168). (*Dr. Lushington*). REWUN PERSHAD *v.* MUSSUMUT RADHA BEEBY. (1847) 4 M.I.A. 137 = 7 W.R. 35 P.C. = 1 Suth. 172 = 1 Sar. 327.

——— The presumption is that a Hindu family remains undivided: the onus is upon a party, claiming as upon a partition, to prove division of the joint estate (92). (*Lord Kingsdown*). NARAGUNTY LUTCHMEEDAVAMAH *v.* VENGAMA NAIDOO. (1861) 9 M.I.A. 66 = 1 W.R. 30 P.C. = 1 Suth. 460 = 1 Sar. 826.

———The normal state of every Hindu family is joint. Presumably every such family is joint in food, worship, and estate. In the absence of proof of division, such is the legal presumption; but the members of the family may sever in all or any of these three things (540). (*Lord Chelmsford*). NEELKISTO DEB BURMONO *v.* BEERCHUNDER THAKOOR. (1869) 12 M.I.A. 523 = 12 W.R. P.C. 21 = 2 B.L.R. P.C. 13 = 2 Suth. 243 = 2 Sar. 523.

———The ordinary presumption in Hindu law is that family property is joint (514). (*Lord Cairns*) SRI GAJAPATHI RADHIKA PATTA MAHA DEVI GARU *v.* SRI GAJAPATHI NILAMANI PATTA MAHA DEVI GARU. (1870) 13 M.I.A. 497 = 14 W.R. P.C. 33 = 6 B.L.R. 202 = 2 Suth. 365 = 2 Sar. 601.

———The property is admitted to be ancestral ; and the family, if not admitted, must be presumed to be joint. MUSST. SHEO SOONDOOREE *v.* PIRTHEE SINGH. (1873) 2 Suth. 922 (923) = 21 W.R. 89.

———Where in a suit by the widow of one of two brothers against the widow of the other brother who had survived plaintiff's husband, for the recovery of a moiety of the properties in the possession of the defendant on the ground that there had been a separation between the brothers, *held* that the onus of proving the separation lay on the plaintiff. (*Sir Richard Couch*). MUSSAMAT SOORUJMUKHI KONWAR *v.* MUSSAMAT BHUGWATI KONWAR. (1880) Bald. 393 (394).

———A Mithakshara family is presumed in law to be a joint family until it is proved that the members have separated (86). (*Sir John Edge*). PALANI AMMAL *v.* MUTHUVENKATACHALA MONIAGAR. (1924) 52 I.A. 83 = 48 M. 254 = 6 P.L.T. 133 = 21 L.W. 439 = (1925) M.W.N. 330 = 27 Bom. L.R. 735 = 3 P.L.R. 126 = 23 A.L.J. 746 = 29 C.W.N. 846 = 87 I.C. 333 = 6 L.R. P.C. 143 = A.I.R. (1925) P.C. 49 = 48 M. L. J. 83.

———It is not proved that *B* and his sons had ever separated, and as such a separation has not been proved the presumption in law is that they continued joint. (*Sir John Edge*). LALA JAI NARAIN *v.* LALA UJAGAR LAL. (1924) 21 L.W. 162 = 29 C.W.N. 775 = A.I.R. (1925) P.C. 11 = 27 Bom. L.R. 713 = (1925) M.W.N. 13 = 85 I.C. 2 = 48 M.L.J. 236 (239).

HINDU LAW—(*Contd.*)

Joint Family—Partition—Presumption—Onus of proof—(*Contd.*)

———Those who allege that the members of a joint Hindu family had separated must prove, unless it is admitted, that there was a separation at some material time. (*Sir John Edge*). MUSAMMAT BHAGWANI KUNMAR *v.* MOHAN SINGH. (1925) 22 L.W. 211 = 29 C.W.N. 1037 = 23 A.L.J. 589 = 41 C.L.J. 591 = (1925) M.W.N. 421 = 88 I.C. 385 = A.I.R. (1925) P.C. 132 = 49 M.L.J. 55 (57).

JOINTNESS AT ONE TIME ADMITTED OR PROVED.

———A person, admitttng that brothers had been joint in estate at one time, and alleging partition between them at a particular time and place, must take upon himself the burden of proving that partition (605-6). (*Lord Justice Turner*). KATAMA NATCHIAR *v.* THE RAJAH OF SHIVAGUNGA. (1863) 9 M.I.A. 539 = 2 W.R. C.R. P.C. 31 = 1 Suth. 520 = 2 Sar. 25.

———The well-established presumption of the Hindu law is, that a family once joint retains that *status*, unless it is shown to have become divided; and that the ancestral property of such a family remains joint, unless it is shown, by partition or otherwise, to have become separate (380). (*Sir James W. Colvile*). MUSSUMAT CHEETHA *v.* BABOO MIHEEN LALL. (1867) 11 M. I. A. 369 = 2 Sar. 303.

———Widow of predeceased brother—Suit by, against widow of surviving brother, to recover her (plaintiff's) share in property which had devolved on the brothers from their father—Onus on plaintiff in. *See* HINDU LAW—JOINT FAMILY—PARTITION — EVIDENCE OF—MOVABLES AND IMMOVABLES. (1881) 10 C.L.R. 377.

———In a suit by the daughter of a deceased Hindu to recover from his nephews property alleged by her to be the separate property of the deceased, it appeared that the deceased and his brother, the father of the defendants, were at one time joint, and that the family was governed by the Mithakshara law.

Held that the onus was on the plaintiff to prove that there had been a separation (135).

The deceased and his brother having been admittedly joint, the presumption is that on the death of the latter, the defendants, his sons, became and continued joint in estate with the deceased. It lay on the plaintiff to rebut that presumption, and to prove a separation (138). (*Sir Richard Couch*). PRIT KOER *v.* MAHADEO PERSHAD SINGH. (1894) 21 I. A. 134 = 22 C. 85 (89, 92) = 6 Sar. 485

———Given a joint Hindu family—the presumption is, until the contrary is proved, that the family continues joint. That presumption is peculiarly strong in the case of the sons. of one father (70). (*Lord Shaw*). NAGESHAR BAKHSH SINGH *v.* GANESHA. (1919) 47 I.A. 57 = 42 A. 368 (381) = 18 A.L.J. 532 = 23 O.C. 1 = 22 Bom. L.R. 596 = 28 M.L.T. 5 = 56 I.C. 306 = 38 M.L.J. 521.

———Where it is admitted or proved that members of a Hindu family were joint up to a particular date, the onus of proving a separation between them subsequent to that date is on the party alleging such ssparation. (*Lord Sinha.*) DEO NARAIN PANDE *v.* AGYAN RAM PANDE. (1926) 31 C.W N. 533 = 101 I.C. 249 = (1927) M.W.N. 96 = A.I.R. (1927) P.C. 52 = 53 M.L.J. 658,

HINDU LAW—(*Contd.*)

Joint Family—Partition—Presumption—Onus of proof—(*Contd.*)

JOINTNESS AT ONE TIME ADMITTED OR PROVED (*Contd.*)

——*Impartible estate once shown to be joint.*

It being established that the suit impartible estate was at one time the joint property of a family consisting of the descendants of the common ancestor of the defendant and the last holder, it is incumbent on the plaintiff to adduce satisfactory grounds for holding that the joint ownership of the defendant's branch in the estate was determined so that it became the separate property of the last-holder's branch. (*Sir John Wallis.*) KONNAMMAL *v.* ANNADANA JADAYA GOUNDAR. **(1927) 55 I. A. 114 = 51 M. 189 = 27 L.W. 497 = 5 O.W.N. 411 = 108 I.C. 354 = 30 Bom. L.R. 802 = 47 C.L.J. 488 = 9 Pat. L. T. 347 = 26 A.L.J. 642 = 32 C.W.N. 983 = A.I.R. 1928 P.C. 68—54 M.L.J. 504.**

——*Strength of presumption in case of—Circumstances counteracting—Families removed by several generations from each other—Applicability of presumption to case of.*

There is no doubt a presumption that a Hindu family continues joint; but the strength of the presumption necessarily varies in every case. The presumption of union is stronger in the case of brothers than in the case of cousins, and the further you go from the founder of the family the presumption becomes weaker and weaker.

Where it appears from facts that through generations a property has been possessed in a certain single line, it can never be said that it lies upon that line to establish that it was dissociated generations ago from another line which appears on the scene as a claimant and proposes no facts of jointness, such as living in the same home, sharing in food or worship, or *quoad* estate participating in the enjoyment or fruits thereof. To put, in consequence of a stretch of the doctrine of onus, an unnatural and forced construction upon the actual facts of family life and development is not warranted either by the reason of the case or the law of India. (*Lord Shaw.*) YELLAPPA RAMAPPA NAIK *v.* TIPPANNA. **(1928) 56 I. A. 13 = 53 B. 213 = 29 L. W. 231 = 49 C. L. J. 104 = I. D. 1929 P. C. 53 = 31 Bom. L. R. 249 = 114 I C. 13 = 27 A. L. J. 4 = 33 C. W. N. 238 = A. I. R. 1929 P. C. 8 = 56 M. L. J. 287.**

Joint family—Partition—Proof of.

——*Held*, on the evidence in the case, that a complete division and separation had taken place between two brothers *K* and *M* (172). (*Dr. Lushington.*) REWAN PERSAD *v.* MUSSUMAT RADHA BEEBY. **(1847) 4 M. I. A. 137 = 7 W. R. 35 P. C. = 1 Suth. 172 = 1 Sar. 327.**

——In a suit by the son of one of the sons of *C* for the recovery of one-fifth of the whole property in suit by excluding altogether *R*, the sole descendant of *G*. *C*'s brother, it was contended that *R* had separated before the commencement of the suit, and had received 27 villages and other property as his share. It was, however, considered by the lower Courts that that fact had not been proved.

Held that there was no sufficient evidence of the fact, and that the decision was correct (267). (*Sir Barnes Peacock.*) HURPURSHAD *v.* SHEO DYAL. **(1876) 3 I. A. 259 = 26 W. R. P. C. 55 = 3 Sar. 611 = 3 Suth. 304 = Bald. 25 = R & J.'s No. 41 (Oudh).**

——*Held*, on the evidence, that defendant's husband died separated from, and was not joint with, plaintiff (46). (*Sir Robert Collier.*) RUN BAHADUR SINGH *v.* LACHOO KOER. **(1884) 12 I. A. 23 = 11 C. 301 (317-8) = 4 Sar 602.**

——*Held*, on the evidence, that the deceased, the succession to whose property was in question, was separate in estate at the time of his death from the other branch of the family to which the appellant belonged (150-1). (*Sir Richard Couch.*) BEJAI BAHADUR SINGH *v.* BHUPHINDAR BAHADUR SINCH. **(1895) 22 I. A. 139 = 17 A. 456 (472-3) = 6 Sar. 593.**

——The question for decision was whether *T* was at the time of his death separate in estate from the rest of his family. The contest was between his nearest agnates and his widows.

Held, on the evidence, affirming the High Court, that *T* at the time of his death was not a member of an undivided Hindu family (13). (*Sir Andrew Scoble.*) RAM PERSHAD SINGH *v.* LAKHPATI KOER. **(1902) 30 I. A. 1 = 30 C. 231 (256) = 7 C. W. N. 162 = 5 Bom. L R. 103 = 8 Sar. 380.**

——*Held*, agreeing with the High Court, that a partition had, as alleged by the plaintiff, taken place between the plaintiff's deceased husband and the defendants, his surviving brothers, which partition had, however, not been completed by actual division at the time of the death of the plaintiff's husband.

The important points in the evidence on which their Lordships relied in support of their conclusion are set out in 31 C. at pp. (270-1). (*Sir Andrew Scoble.*) CHOWDHRY GANESH DUTT THAKOOR *v.* MUSSAMMAT JEWACH THAKOORAIN. **(1903) 31 I.A. 10 = 31 I.C 262 (270-1) = 6 Bom. L. R. 1 = 8 C. W. N. 146 = 8 Sar. 575 = 14 M. L. J. 8.**

——Where an application was presented by the members then constituting a joint Hindu family, one of whom was a minor, defining the share to be enjoyed by each. and action was taken in accordance with the said application and the whole course of their subsequent conduct as exhibited by their respective dealings with the property, was inconsistent with the continuance of the joint family, *held* that the agreement contained in the petition was binding on the minor member, who had since become major, and that a partition had been effected. (*Lord Atkinson.*) PARBATI *v.* NAUNIHAL. **(1909) 36 I. A. 71 (78-9) = 31 A. 412 (421-3) = 5 M. L. T. 427 = 10 C. L. J. 121 = 13 C. W. N. 983 = 11 Bom. L. R. 878 = 6 A. L. J. 597 = 3 I. C. 195 = 19 M. L. J. 517.**

——The question was whether the plaintiffs and one *C*, deceased, the sons by different mothers of one *N*, deceased, were, at the time of the death of *C*, members of a joint Hindu family, or whether, as alleged by the defendant, the widow of *C*, *C* was at the time of his death separate from the plaintiffs, his brothers.

The High Court held, reversing the Sub-Judge, that *C* died a divided member.

Their Lordships affirmed the High Court. (*Mr. Ameer Ali.*) NET RAM SINGH *v.* MUSSAMMAT TURSA KUNWAR. **(1913) 17 C. W N. 1085 = (1913) M. W. N. 658 = 14 M. L. T. 173 = 18 C. L. J. 234 = 15 Bom. L. R. 863 = 11 A. L. J. 861 = 20 I. C. 967 = 25 M. L J. 489.**

——The case for the appellants was that the 1st appellant had separated completely and effectually from his family in or about the year 1870, 27 or 28 years before his father's death in 1892, and that after his separation he acquired by his own exertions the property described in the schedule to the plaint. The case for the respondents was that the 1st appellant never completely and effectually separated from his family, and that the wealth which he subsequently acquired was merely an accretion of the family property. The question for decision was whether the 1st appellant effectually separated himself from his family or not in 1870.

HINDU LAW—(*Contd.*)

Joint Family—Partition—Proof of—(*Contd*)

Held, on the evidence, reversing the Court below and affirming the 1st Court, that the 1st appellant had effectualy separated himself from his family in 1870 as alleged by him. (*Lord Atkinson.*) AMRITRAO *v.* MUKUNDRAO. **(1919) 53 I. C. 866 = 15 N. L. R. 165.**

Held, affirming the High Court, that the joint family descended from the propositus had never separated (89). (*Sir John Edge*) PALANI AMMAL *v.* MUTHUVENKATACHELA MONIACAR. **(1924) 52 I. A. 83 = 48 M. 254 = 6 P. L. T. 133 = 21 L. W. 439 = (1925) M. W. N. 330 = 27 Bom. L. R. 735 = 3 P. L. R. 126 = 23 A. L. J. 746 = 29 C. W. N. 846 = 6 L. R. P. C. 143 = A. I. R. (1925) P. C. 49 = 87 I. C. 333 = 48 M. L. J. 83.**

———In a case in which it was undisputed that more than 40 years before, when a joint Hindu family of brothers separated in food and residence, some arrangement was come to between the brothers, whereby possession of by far the larger portion of the lands was distributed between them, it being arranged, with regard to some lands, that the rents should be collected separately according to the respective shares of the brothers, and with regard to others, that they should be in the exclusive possession of each co-proprietor, the question was whether the arrangement for exclusive collection of rent was for convenience of management only or was in pursuance of a formal partition.

The High Court held, differing from the Sub-Judge, that the arrangement was for convenience of management only and was not in pursuance of a formal partitition, relying *inter alia*, upon (1) the absence of any deed, document or writing in connection with such partition and (2) the fact that the plots of land, which were in the exclusive possession of the proprietors, were described in rent receipts and Zemindari papers as Kamat, which tended to show that they might have been taken without any formal division.

There was, however, some oral evidence of a formal partition, and the Sub-Judge accepted that evidence as correct and held, as stated above, that there had been a formal partition. Their Lordships restored his decision, observing that the following facts confirmed the correctness of his conclusion :—

(1) The rents for definite and specific plots of land were paid exclusively to the several proprietors for a long period up to the date of suit without dispute, and without any subsequent adjustment or distribution ;

(2) There had been not only that appropriation of rents for separate plots ; but, when some of those were compulsorily acquired for a railway in 1900, under the Land Acquisition Act, the compensation moneys were separately paid and appropriated by the separate proprietors who had been previously collecting the rents in respect of those lands ;

(3) When a record of rights was prepared of the villages which formed the property of the joint family under the Bengal Tenancy Act, and finally published in 1903, some of the suit plots were recorded as being the separate property of their respective landlords, without any dispute or controversy on the part of the others ; and

(4) The very appearance of the separate holdings, *i.e.*, the plots from which rents were collected exclusively, on the map for the purposes of the suit, which lay, not in three compact blocks, but in many cases isolated and scattered, seemed to negative the theory that the arrangement for exclusive collection of rent was for convenience of management. (*Lord Sinha.*) ABDUL WAHAB KHAN *v.* TILAKDHARI LAL. **(1927) 46 C.L.J. 237 = 104 I.C. 92 = 32 C.W.N. 170 = (1927) M. W. N. 706 = A.I.R. 1927 P.C. 208 = 53 M. L. J. 325.**

HINDU LAW—(*Contd.*)

Joint family—Partition—Proof of—Concurrent findings as to—P. C.'s interference with.

———(*See also* HINDU LAW—JOINT FAMILY — PARTITION—QUESTION AS TO.)

———(*Sir Richard Couch.*) RAM CHARAN *v*, DEBI DIN. **(1890) 13 A. 165 (170) = 5 Sar. 616.**

———*See* HINDU LAW—JOINT FAMILY—PARTITION—PROOF OF—QUESTION AS TO—FACT OR LAW. **(1909) 36 I. A. 71 (76) = 31 A. 412 (421).**

———(*Viscount Cave.*) BHAGWAT KOER *v.* DHANUKDHARI PRASHAD SINGH. **(1919) 46 I.A. 259 = 47 C. 466 (481) = 17 A.L.J. 1036 = (1919) M. W. N. 360 = 24 C. W. N. 274 = 12 L.W. 105 = 1 Pat. L. T. 1 = 22 Bom. L. R. 477 = 53 I. C. 347 = 37 M. L. J. 513.**

Joint family—Partition—Property obtained at—Alienation of—Agreement prohibiting.

———*What amounts to.*

An *ikrarnamah*, or deed of agreement and partition, of an ancestral estate, among several brothers, provided : "We declare and give in writing that, in case of necessity, we four brothers are competent in order to liquidate expenses, debts, etc., in case of our having no means at hand, to make alienations in the best way we think proper of shares of our villages."

Held, on a construction of the deed, that the clause quoted above did not prevent any of the brothers from alienating his separate share in any mode he thought fit. (*Lord Justice Turner.*) RANEE COWULBAS KOONWAR *v.* BABOO LALL BAHADUR SINGH. **(1861) 9 M. I. A. 39 = 1 Sar. 831.**

Joint family—Partition—Question as to—Fact or Law.

———(*See also* HINDU LAW — JOINT FAMILY —PARTITION—PROOF OF—CONCURRENT FINDINGS AS TO — P. C.'S INTERFERENCE WITH.)

———*Documents exhibited in the case—Construction of—Question depending upon.*

Where the question whether the members of a joint Hindu family did or did not separate depends upon the construction of a number of documents exhibited in the case, the court must construe the documents according to their legal effect, but is entitled to draw all legitimate inferences as to the intentions of the parties to them, and the inferences so drawn are findings of facts (87-8.) (*Sir John Edge*) PALANI AMMAL *v.* MUTHUVENKATACHALA MONIGAR. **(1924) 52 I. A. 83 = 48 M. 254 = 6 P.L.T. 133 = 21 L.W. 439 = (1925) M.W.N. 330 = 27 Bom.L.R. 735 = 3 P.L.R. 126 = 23 A. L. J. 746 = 29 C.W. N. 846 = 6 L.R. (P.C.) 143 = A. I. R. 1925 P.C, 49 = 87 I.C. 333 = 48 M. L. J. 83.**

———*Facts proved—Application of legal principles to—Conclusion to be drawn from those facts in the light of those legal principles—Question depending upon.*

Although the question whether or not there had been a division in the family to which the parties to the suit belonged is a question of fact, yet if its proper determination turns upon the application of certain legal principles to the facts proved, and the true conclusion to be drawn from those facts viewed in the light of those principles, the Privy Council will allow the finding of the Court below to be questioned before it and will set it aside if it is found to be not warranted by the evidence in the case. (*Lord Atkinson.*) PARBATI *v.* NAUNIHAL SINGH **(1909) 36 I.A. 71 (76) = 31 A. 412 (421) = 5 M.L. T. 427 = 10 C. L. J. 121 = 13 C W. N. 983 = 11 Bom. L. R. 878 = 6 A. L. J. 597 = 3 I. C. 195 = 19 M. L. J. 517.**

HINDU LAW—(*Contd.*)

Joint Family—Partition—Religious Ceremonies—Performance of—Allotment of property to one member for.

———*Non-performance thereof by him and performance of same by another—Suit by latter to recover amount spent from former—Right of—Default on his part in retaining share of rents of property allotted to former—Effect.*

A suit was instituted by appellant against his elder brother, *S*, and the son and heir of another brother for possession of his share of the ancestral property, and the mesne profits during the period of his minority was compromised by a solenamah, the fourth article of which provided that *S* should perform at his own expense the Deb Sheba (the worship of the idols,) and other religious ceremonies for the three, the cost of which was fixed at Rs. 2,000 a year, and that, in consideration of his so doing, he should hold possession for his life of a specified part of the joint property estimated to produce that amount. This compromise received the sanction of the Court, and it was ordered that both parties should carry out the terms of the compromise.

In a suit by the appellant in which he alleged, that by reason of the non-performance by *S* of the duty which he had undertaken under the fourth article of the compromise, he, the plaintiff, had been compelled to perform certain religious ceremonies at his own cost, and that he had a right of action over against *S* for the moneys expended in the performance of those ceremonies, it was found that the appellant did not perform his part of the agreement, that he retained his share of the rents of the land; and that *S* was put to take out execution under the decree founded on the compromise in order to get the funds which that compromise gave him.

Held, that the appellant had no cause of action at all (394).

Mere proof on the part of the appellant of the performance of the religious ceremonies, and of the cost to which he had been put in the performance of them would not have made out that he had any right of action. The compromise on which appellant's claim was founded, gave certain lands, and the rent of those lands, to *S*, coupled, we may admit, with the performance of a trust, but a trust of that nature which is constantly vested in the managing or elder brother of a Hindu family, a trust which implies some considerable beneficial interest. If the non-performance of that trust, or the non-performance of those ceremonies, could, by any possibility, give such right of action to the appellant as that asserted in his suit, it surely was necessary for him to show that it was not by reason of any default on his part that the non-performance of the trust took place (393-4). (*Sir James W. Colvile,*) RADHA JEEBUN MOOSTUFFY *v.* TARAMONEE DOSSEE. **(1869) 12 M. I. A. 380 = 11 W. R. P. C. 31 = 2 B. L. R. P. C. 79 = 2 Suth. 204 = 2 Sar. 457.**

———*Right of that member to recover property allotted—Condition precedent to—Proof of performance of ceremonies not a*

A suit instituted by the appellant against his elder brother, *S*, and the son of another brother for possession of his share of the ancestral property was compromised by a solenamah, the fourth article of which provided that *S* should perform at his own expense the Deb Sheba (the worship of the idols) and other religious ceremonies for the three, the cost of which was fixed at Rs. 2,000 a year, and that, in consideration of his so doing, he should hold possession for his life of a specified part of the joint property estimated to produce that amount. This compromise received the sanction of the Court, and it was ordered that both parties should carry out the terms of the compromise.

Held, on a construction of the compromise, that the proof of the performance of the religious ceremonies was not

HINDU LAW—(*Contd.*)

Joint Family—Partition—Religious Ceremonies—Performance of—Allotment of property to one member for—(*Contd.*)

a condition precedent to the enforcement of the claim for rents which the fourth article of the compromise gave to *S*. (392).

Held further, that, on the death of *S* without executing the decree in his favour, his widow was entitled to stand in his shoes and to take out execution without proving that *S* had actually expended his own moneys in performance of the ceremonies (395). (*Sir James W. Colvile.*) RADHA JEEBUN MOOSTUFFY *v.* TARAMONEE DOSSEE.

(1869) 12 M. I. A. 380 = 11 W. R. P. C. 31 = 2 B. L. R. P. C. 79 = 2 Suth. 204 = 2 Sar. 457

Joint Family—Partition—Re-opening of.

———Fraud—Re-opening of partition on ground of—Suit for—Onus on plaintiff in—Points for consideration in. *See* HINDU LAW—JOINT FAMILY—PARTITION—FRAUD—RE-OPENING, ETC. **(1928) 56 M. L. J. 511.**

———*Properties in British India and in Native State Agreement to divide—Specific Performance of, in regard to properties in British India—Suit for—Re-opening in, of completed partition in regard to properties in Native State—Permissibiltty.*

A joint Hindu family, which possessed immoveable properties in the Travancore State and in the Tinnevelly District, within the Brltish territories, agreed by a yadast to divide their properties in both places according to certain specified shares. That agreement was later given effect to in respect of the properties in Travancore. The document was registered in Travancore, and effect was given to it in respect of the properties there. No division was, however, made of the Tinnevelly properties. One of the members thereupon instituted a suit to enforce the agreement and to obtain a partition of the properties in Tinnevelly, the plaint stating that a suit would be brought in the Travancore Court to set aside the division there.

Held that, Court could not in such a suit upset the division of the Travancore properties, and that the only decree to which the plaintiff was entitled was a decree for partition of the properties in the Tinnevelly District. (*Mr. Ameer Ali.*) RAJANGAM AYYAR *v.* RAJANGAM AYYAR.

(1922) 50 I. A. 134 (139-40) = 46 M. 373 (379-80) = 31 M. L. T. 136 = 16 L. W. 615 = 4 U. P. L. R. (P. C.) 85 = A. I. R. 1922 P. C. 266 = 21 A. L. J. 460 = 37 C.L. J. 435 = 27 C. W. N. 561 = 69 I. C. 123 = 44 M, L. J. 745.

Joint Family—Partition—Right of.

———Persons having. *See* PARTITION—RIGHT OF.

———Right by birth—Connection between. *See* HINDU LAW—JOINT FAMILY—PARTITION—ANCESTRAL PROPERTY—PARTITION OF—RIGHT TO.

(1887) 15 I. A. 51 (64) = 10 A. 272 (287).

Joint Family—Partition—Right to.

———Joint Property—Possession of—Persons having—Right of—Title to property in others—Effect. *See* HINDU LAW—WIDOW — CO-WIDOWS — PARTITION BY ONE OF, AGAINST THE OTHER. **(1889) 16 I. A. 186 = 12 A. 51.**

———Permanent but not identical titles—Persons in possession of land under—Right of, against one another—Forfeiture of interest of one in certain events—Liability to—Effect. *See* PARTITION—RIGHT TO—PERMANENT BUT NOT IDENTICAL TITLES. **(1910) 37 I. A. 198 = 37 C. 918.**

———Share in an estate—Person entitled beneficially to—Right of—Rule. *See* PARTITION—RIGHT TO—PERSONS ENTITLED BENEFICIALLY TO SHARES IN AN ESTATE.

(1888) 16 I. A. 71 (75) = 16 C. 397 (405).

HINDU LAW—(*Contd.*)

Joint Family—Partition—Separation of one member—Status of remaining members inter se on—Presumption—Onus of proof.

Prior to and in the year 1869; three brothers, *G*, *K*, and *L*, lived together as an undivided family and owned a shop which had been founded by their father *A*, at Ellichpur. At some time in 1869 or 1870, *K* separated from his brothers, took out his share, and started a shop of his own. There was no direct evidence of any agreement between *G* and *L*. There was also no evidence that *L*, drew out his share of the family property, or any part of it, and the fair inference seemed to be that *L* left it in the family shop, which continued to be carried on by *G*, under the firm name of A. G. Lall. About the time of rhe partition *L* sent his wife and infant son, the appellant, to reside in a place referred to as Bhorteda, and a few months afterwards he joined them there, and they then went together on a pilgrimage to Prayag where he died in 1873. Thereupon *G* brought the appellant's mother, and the appellant, then a lad thirteen or fourteen years of age, to his residence in Ellichpur, and they lived with him there until his death in 1882. He left one daughter, but no male issue.

The appellant thereupon brought the sait out of which the appeal arose claiming, as the survivor of a joint family, consisting of his uncle *G* and himself, to be sole owner of the family shop and business. The question was as to the effect of the transaction in 1869 or 1870, by which *K* separated from his brothers.

Held, that the onus was on the appellant of showing that on the separation of *K*, *G* and *L* agreed to remain united or to re-unite, that he failed to discharge that onus, and that the inference of the Court below of a partnership between *G* and *L* and afterwards the appellant, either by express agreement or by operation of law, was the hypothesis which best reconciled all the proved facts in the case (137.) (*Lord Davey.*) BALABUX LADHURAM *v.* RUKHMABAI.
(1903) 30 I. A. 130 = 30 C. 725 (736-7) = 7 C. W. N. 642 = 5 Bom. L. R. 469 = 8 Sar. 470.

———There is no presumption, when one co parcener separates from the others, that the latter remain united. In many cases it may be necessary, in order to ascertain the share of the outgoing member, to fix the shares which the other co-parceners are or would be entitled to, and in this sense the separation of one is said to be a virtual separation of all. And their Lordships think that an agreement amongst the remaining members of a joint family to remain united or to reunite must be proved like any other fact (137). (*Lord Davey.*) BALABUX LADHURAM *v.* RUKHMABAI.
(1903) 30 I. A. 130 = 30 C. 725 (736) = 7 C. W. N. 642 = 5 Bom. L. R. 469 = 8 Sar. 470.

———There is no presumption, when one co-parcener separates from the others, that the latter remain united. An agreement amongst the remaining members of a joint family to remain united or to re-unite must be proved like any other fact.

Four brothers, who lived as a joint Hindu family and carried on a family business, executed a deed in 1876 by which the assets of the family were described and divided, and *I*, one of the brothers, was finally paid out. In 1905, *R*, another of the brothers died leaving a widow. There was absolutely no evidence that, on the separation of *I*, the other three brothers continued united or reunited as co-parcenary members of a joint Hindu family. In a suit by the widow of *K* against the surviving brother and the sons of the predeceased brother. *held*, reversing the Chief Court, and restoring the sub-Court, that on the separation of *I*, the family of the parties ceased to be a joint Hindu family, in other words, its members ceased to be co-parceners, and

HINDU LAW—(*Contd.*)

Joint Family—Partition—Separation of one member—Status of remaining members inter se on—Presumption—Onus of proof—(*Contd.*)

that the plaintiff was entitled to her husband's share. (*Lord Duncdin.*) JATTI *v.* BANWARI LAL.
(1923) 50 I. A. 192 (194-5) = 4 Lah. 350 = 21 A. L. J. 582 = A. I. R. 1923 P. C. 136 = 18 L. W. 273 = (1923) M. W. N. 687 = 28 C.W. N. 785 = 25 Bom. L. R. 1256 = 33 M. L. T. 283 = 74 I. C. 462 = 45 M. L. J. 355.

———*Evidence of remaining members continuing to be joint.*

A member of a joint Hindu family can separate himself from the other members of the joint family and is on separation entitled to have his share in the property of the joint family ascertained and partitioned off for him, and the remaining co-parceners, without any special agreement amongst themselves, may continue to be co-parceners and to enjoy as members of a joint family what remainded after such a partition of the family property. That the remaining members continued to be joint may, if disputed, be inferred from the way in which their family business was carried on after their previous co-parcener had separated from them (86). (*Sir John Edge.*) PALANI AMMAL *v.* MUTHU VENKATACHALA MONIAGAR.
(1924) 52 I. A. 83 = 48 M. 254 = 6 P. L. T. 133 = 21 L. W. 439 = (1925) M. W. N. 330 = 27 Bom. L. R. 735 = 3 P. L. R. 126 = 23 A. L. J. 746 = 29 C. W. N. 846 = 6 L. R. P. C. 143 = A. I. R. 1925 P. C. 49 = 87 I. C. 333 = 48 M. L. J. 83.

Joint Family—Partition—Severance in Status.

———*See* HINDU LAW—JOINT FAMILY—PARTITION—DIVISION IN STATUS.

Joint Family—Partition—Share allotted at.

———Legal course of descent of—Agreement altering—Invalidity of—Decision as to, between surviving member and widow of deceased member—Effect of, as between former and donee from latter. *See* HINDU LAW—JOINT FAMILY—MEMBERS OF — PARTITION BETWEEN—SHARES OBTAINED AT. **(1886) 10 M. 15.**

———*Value of—Test of—Acreage by itself not a satisfactory one.*

As regards the shares allotted at a partition, mere acreage is not a satisfactory test of value, as so much depends upon the productivity of the lands allotted to each share. (*Sir John Wallis.*) SENNIMALAI GOUNDAN *v.* SELLAPPA GOUNDAN. **(1928) 33 C. W. N. 407 = 29 L.W. 439 = 114 I. C. 568 = A. I. R. 1928 P. C. 81 = 56 M. L. J. 511 (512-3).**

Joint Family—Partition—Share at.

———*Mithakshara law—Share allowed by—Custom or agreement varying—Proof of—Quantum.*

Held, that there was no custom in the family nor any agreement proved, which disentitled the several members of the family to receive, on partition of the joint family property, the shares to which they were entitled under the Mithakshara (289). (*Sir Barnes Peacock.*) HURPURSHAD *v.* SHEO DYAL. **(1876) 3 I A. 259 = 26 W. R. 55 = 3 Sar. 611 = 3 Suth. 304 = Bald. 25 = R. & Js. No. 41 (Oudh).**

———*Smaller share than that allowed by law—Acceptance by member of, and renunication of balance—Validity.*

A separating member of a joint Hindu family may of his own free will accept as his share as small a portion of the joint property as seems good to him, and renounce all claim to the rest. (*Lord Atkinson.*) AMRITRAO *v.* MUKUNDRAO. **(1919) 53 I. C. 866 (868) = 15 N. L. R. 165 = 13 L. W. 112 (114).**

HINDU LAW—(*Contd.*)

Joint Family—Partition—Sons.

———*Mothers different—Sons of—Partition among—Modes of—Putrabhaga—Patnibhaga—Rule—Exception.*

Two modes of division between sons are known in Hindu Law. When the division is by number of sons, it is called putrabhaga; when the division is according to wives it is known as patnibhaga. Putrabhaga is now the recognised rule of Hindu law; but there are traces of the other view. There are in certain cases a customary law of patnibhaga. The custom is fairly prevalent in Southern India, especially among the lower castes (*Lord Phillimore.*) PALANIAPPA CHETTIAR *v.* ALAYAN CHETTI.

(1921) 48 I.A. 539 (545-6, 547—8) = 44 M. 740 (746-7) = (1921) M. W. N. 687 = 30 M. L. T. 208 = 26 C. W.N. 417 = 15 L.W. 521 = 4 U.P.L.R. (P.C.) 21 = 64 I. C. 439 = A. I. R. 1922 P. C. 228.

———Right of—Mithakshara rule as to—Ghatwally tenure—Inapplicability to. *See* GHATWALLY TENURE—RIGHT BY BIRTH IN. **(1887) 15 I. A. 18 (26-7) = 15 C. 471 (480).**

———Right of, as against father. *See* HINDU LAW—JOINT FAMILY—PARTITION. (1) ANCESTRAL PROPERTY AND (2) FATHER.

———*Share of—No greater than his father.*

The well-established rule of Hindu law is that a son takes no greater share than his father if a qualified person would have been entitled to (65). (*Sir John Edge.*) NAGINDAS BHUGWANDAS *v.* BACHOO HURKHISONDAS.

(1915) 43 I. A. 56 = 40 B. 270 (284) = 14 A. L. J. 185 = 3 L. W. 259 = 19 M. L. T. 193 = 20 C. W. N. 702 = (1916) 1 M. W. N. 258 = 18 Bom. L R. 172 = 32 I. C. 403 = 23 C. L. J. 395 = 30 M. L. J. 193.

Joint family—Partition—Stranger—Allotment of share to.

———*Family arrangement—Allotment under.*

The plaintiff's right was put in the argument on the ground of some family arrangement, some contract between its members, either in the life or after the death of the ancestor, by which one or more nf the other members of the family having the right to the property communicated to *T*, or some one under whom the plaintiff claims, a title which he did not before possess. Such an arrangement may have been made, and, if proved, would have been supported; and a case from India in which a compromise was made by a deed, and an estate divided between persons having right and others having colour of right, has already been before their Lordships in which the decree of the Court below was in favour ot the deed, though it appeared probable that the party taking a benefit really had no title. (*Mr. Baron Parke.*) YACHEREDDY CHINNA BASSAVAPPA *v.* YACHEREDDY GOWDAPPA. **(1835) 5 W. R. 114 P. C. = 1 Suth. 41 (44) = 1 Sar. 84.**

———Father—Allotment by. *See* HINDU LAW—JOINT FAMILY—FATHER—JOINT FAMILY PROPERTY.

Joint Family—Partition—Suit for.

WHAT AMOUNTS TO A.
ACCOUNTS OF BANKING FIRM IN PLAINTIFF'S MANAGEMENT.
ADMITTED SHARERS—SHARES OF.
BIRTH OF MEMBER PENDING.
DECREE IN.
DEMAND FOR PARTITION PRIOR TO, AND WHAT HAPPENED THEN AND PURSUANT TO SUCH DEMAND—EVIDENCE OF.
EXCLUSION OF PLAINTIFF FROM JOINT ESTATE PRIOR TO.
INCOME OF ESTATE—PLAINTIFF'S RIGHT TO SHARE OF—DECLARATION OF.

HINDU LAW—(*Contd.*)

Joint Family—Partition—Suit for—(*Contd.*)

LACHES IN INSTITUTION OF.
MARRIAGE EXPENSES OF MEMBERS.
MEMBER'S RICHT OF.
MESNE PROFITS IN—PLAINTIFF'S RIGHT TO.
PARTIAL PARTITION.
PARTIBILITY OF PROPERTY SUBJECT-MATTER OF—PRESUMPTION—ONUS OF PROOF.
PARTIES TO.
PARTNER—JOINT FAMILY MEMBER—SUIT ON BASIS OF.
PRIVATE PROPERTY—SUIT ON FOOT OF—DEBUTTER PROPERTY—RELIEF ON FOOT OF.

WHAT AMOUNTS TO A.

———The plaint in a suit brought by *S* against his cousin, the appellant, alleged that the appellant had expelled him from the joint family, and that he sued to recover possession of his eight annas of all the joint properties, both real and personal, with mesne profits and interest from the date of dispossession. The suit was not actually in terms for a partition.

Held that the plaint indicated a direct intention of obtaining a separation of estate, and as regards both the real and personal property (232-3). (*Sir Robert Collier.*) JOY NARAIN GIRI *v.* GRISH CHUNDER MYTI.

(1878) 5 I. A. 228 = 4 C. 434 (437-8) = 3 Sar. 871.

ACCOUNTS OF BANKING FIRM IN PLAINTIFF'S MANAGEMENT.

———*Failure to render, and withholding of accounts by plaintiff—Interest at 12 per cent. on profits in case of—Award against ptaintiff of.*

Where the plaintiff, in a suit for partition of the property of certain Banking Firms, which constituted the joint family property, failed to render accounts of a firm under his management, and there was evidence of spoliation of the Banking books, the Court charged him with the principal sum for which he was accountable, with interest at 12 per cent. in lieu of the profits he failed to account for the defendants consenting to accept such interest in lieu of the profits (507-8). (*Sir James Colvile.*) RAMPERSHAD TEWARY *v.* SHEOCHURN DOSS. **(1866) 10 M. I. A. 490 = 2 Sar. 177.**

ADMITTED SHARERS—SHARES OF.

———Challenge of, by person not entitled to a share—Right of. *See* PARTITION—SUIT FOR—ADMITTED SHARERS—SHARES OF. **(1924) 88 I. C. 149.**

BIRTH OF MEMBER PENDING.

———Effect of, on share of plaintiff. *See* HINDU LAW—JOINT FAMILY—PARTITION—INTENTION TO SEPARATE—DECLARATION UNAMBIGUOUS AS TO—PARTITION.

(1921) 48 I. A. 539 (542-3) = 44 M. 740 (743).

DECREE IN.

———*Defendant co-sharer—Effect against.*

The decree made in a partition suit is a decree against a defendant co-sharer in a suit to which he is a party. It becomes thereby *res judicata* so far as he is concerned (*Lord Moulton.*) NALINI KANTA LAHIRI *v.* SARNAMOYI DEBYA. **(1914) 41 I. A. 247 = 1 L. W. 607 = 16 M. L. T. 544 = (1914) M. W. N. 948 = 24 I. C. 294 = 17 Bom. L. R. 1 = 21 C. L. J. 23 = 19 C. W.N. 531 = 27 M. L. J. 76 (79.)**

———Division in status—Decree effecting. *See* HINDU LAW—JOINT FAMILY—PARTITION—DIVISION IN STATUS—DECREE EFFECTING.

———*Effect of—Division between plaintiffs and defendants only or also between plaintiffs* inter se—*Evidence—Conduct of parties—Value of.*

HINDU LAW—(*Contd.*)

Joint Family—Partition—Suit for—(*Contd.*)

DECREE IN—(*Contd.*)

It was contended that, although the decree in the partition suit of 1868 may have effected a separation quoad Tundan and Tukan (the defendants therein), it left the plaintiffs united *inter se* ; and that this might have been the legal effect of the decree is undeniable. But, here, again, the conduct of the parties must be looked at in order to arrive at what constitutes the true test of partition of property according to Hindu Law, namely, the intention of the members of the family to become separate owners (9-10). (*Sir Andrew Scoble*). RAM PERSHAD SINGH *v.* LAKHPATI KOER. **(1902) 30 I.A. 1 = 30 C. 231 (253) = 7 C.W.N. 162 = 5 Bom. L.R. 103 = 8 Sar. 380.**

———*Effect of—Severance of plaintiff alone or severance of all* inter se—*Evidence—Decree alone.*

In a suit for partition which proceeds to a decree which is made, the decree for partition is the evidence to show whether the separation was only a separation of the plaintiff from his coparceners or was a separation of all the members of the joint family from each other. It is the decree alone which can be evidence of what was decreed (87). (*Sir John Edge*). PALANI AMMAL *v.* MUTHUVENKATACHALA MONIAGAR. **(1924) 52 I.A. 83 = 48 M. 254 = 6 P.L.T. 133 = 21 L. W. 439 = (1925) M.W.N. 330 = 27 Bom. L.R. 735 = 3 P.L R. 126 = 23 A.L J. 746 = 29 C.W.N. 846 = 6 L.R. P.C. 143 = A. I. R. 1925 P.C. 49 = 87 I.C. 333 = 48 M.L.J. 83.**

———*Error in—Remedy of aggrieved party in case of—Fresh partition suit by him—Maintainability.*

A co-sharer. who sues for a partition of the joint property must make the other co-sharers defendants in the suit and if a decree is passed therein giving him a portion of the property, it will be a decree in his favour and against the defendants co-sharers. Supposing any error is made in partitioning out, the remedy of the defendants co-sharers lies in proceedings in that suit suitable to correct that error; and the Code of Civil Procedure provides adequate means for the correction of such errors. And if they fail to have that error corrected by such suitable proceedings they will be estopped from subsequently questioning the validity of the decree so made.

Where, therefore, in a series of suits to which all the co-sharers were parties decrees were passed partitioning to the plaintiffs therein their respective shares of the joint property by metes and bounds, *held* that the decrees therein became *res judicata* so far as a co-sharer who was a defendant in each of those suits was concerned and that he could not thereafter allege that the property left with him after allotment to the plaintiffs in the prior suits of the properties decreed to them was insufficient to represent his share of the joint property. (*Lord Moulton.*) NALINI KANTA LAHIRI *v.* SARNAMOYI DEBYA. **(1914) 41 I.A. 247 = 24 I.C. 294 = 1 L.W. 607 = 16 M.L.T. 544 = 17 Bom. L.R. 1 = (1914) M.W.N. 948 = 21 C.L.J. 23 = 19 C.W.N. 531 = 27 M.L.J. 76.**

———Separation of joint family — Decree effecting—What amounts to—Ambiguity owing to imperfect form of decree—Reference to pleadings, etc., in case of. *See* DECREE—CONSTRUCTION—AMBIGUITY.

(1902) 30 I.A. 1 (9) = 30 C. 231.

———*Severance in case of—Date of.*

The fact that any member of a Joint Hindu family has saparated himself from his coparceners may be proved by his suing for a partition of the joint family property, and if the suit is decreed, the date of the severance from the joint family will, if nothing else is proved, be treated as the date

HINDU LAW—(*Contd.*)

Joint Family—Partition—Suit for—(*Contd.*)

DECREE IN—(*Contd.*)

when the suit was instituted (86-7). (*Sir John Edge.*) PALANI AMMAL *v.* MUTHUVENKATACHALA MONIAGAR. **(1924) 52 I.A. 83 = 48 M. 254 = 6 P.L.T. 133 = 21 L.W. 439 = (1925) M.W.N. 330 = 27 Bom. L.R. 735 = 3 P.L.R. 126 = 23 A.L.J. 746 = 29 C.W.N. 846 = 6 L.R. P.C. 143 = A. I. R. 1925 P.C.49 = 87 I.C. 333 = 48 M.L.J. 83.**

———*Widow of deceased coparcener - Maintenance of—Fund set apart to provide for—Rights of surviving members in, on death of widow—Reservation in decree of—Necessity—Mode of.*

In a suit for partition, one of the defendants being the issueless widow of a deceased coparcener, the Sudder Court deducted from the gross amount of divisible assets the sum of Rs. 15,000 the proceeds of which were, under the decree, to be devoted to the widow's maintenance. The judgment, however, added that in respect of that sum the plaintiff was to have no right. Against the decree of the Sudder Court, the plaintiff appealed to the Privy Council complaining that he was by the decree deprived of his right to claim a share of the principal sum deducted to meet the claim of maintenance on the death of the widow. Their Lordships observed :—A court of equity, in this country, if administering the whole estate, would no doubt have carried over the sum set apart for this purpose (maintenance of the widow) to a separate account ; would have directed that the annual income should be paid to the widow during her life; and that the parties who had a reversionary interest in the principal should be at liberty to apply concerning it on her death. The country courts in India have, however no machinery which enables them to take any such course. Nor was the suit one for the general administration of the estate. It was, in form, a suit to obtain present payment of the balance which the piaintiff alleged to be due to him on the proper division of the property and adjustment of the accounts. If the court below had simply deducted the Rs. 15 000 as so much undivided residue, without saying anything about the plaintiff's future rights, their Lordships considering the form of the suit would have doubted whether he had any grounds for impeaching the decree on this point. The addition of the words in the judgment to the effect that plaintiff was to have no right in respect of the said sum of Rs. 15,000 are certainly calculated to embarrass the plaintiff, or his representatives, in asserting the right to claim a share of this sum when the purpose for which it has been deducted from the divisible assets, the maintenance of the widow, has been satisfied. Their Lordships therefore propose to add to the decree of the court below a declaration that it is to be without prejudice to the right of the plaintiff, or his representatives, to claim on the death of the widow, such share as he or they may be entitled to in the sum of Rs. 15,000, retained to provide for her maintenance (509-10). (*Sir James Colvile*) RAMPERSHAD TEWARY *v.* SHEOCHURN DOSS. **(1866) 10 M.I.A. 490 = 2 Sar. 177.**

DEMAND FOR PARTITION PRIOR TO, AND WHAT HAPPENED THEN AND PURSUANT TO SUCH DEMAND—EVIDENCE OF.

———*Sale deed about a year after alleged demand by member -Recital in, as to demand—Admissibility in evidence of deed and of recital in it—Purpose of—Evidence Act—S. 157—Admissibility under.*

In a suit for partition instituted by *N* in 1920, his case and evidence were to the effect that in 1909, he (then living in his maternal uncle's village) went to his father's village, saw *B*, his paternal uncle and the karta of the joint family,

HINDU LAW—(*Contd.*)

Joint Family—Partition—Suit for—(*Contd.*)

DEMAND FOR PARTITION PRIOR TO AND WHAT HAPPENED THEN AND PURSUANT TO SUCH DEMAND—EVIDENCE OF—(*Contd.*)

and demanded a partition and the allotment to him of his share of the joint family property, that *B* advised him to continue joint and not to demand a separate share, that *B* promised to arrange an advance of money for *N*, and took him to *S*, and that he obtained a sum of Rs. 1,500 from *S*. In July 1910, *N* executed a sale-deed conveying his share in the joint family property to *S* for the sum of Rs. 1,500. The sale-deed recited, *inter alia*, "About a year ago I came to Poona and asked my uncles and my step-brothers to effect a partition and to allot to me my one-ninth share of our ancestral property. But they refused to give (my) share."

On a question arising as to whether the recitals in the said sale-deed were or were not admissible against the defendants (the other members of the family) on the issue whether *N* demanded a share of the property in 1909, *held* that the sale-deed was some evidence of the act alleged to have been done in pursuance of *N*'s interview with *B*, and that it was material on the question whether the evidence of *N* and his witnesses on that part of the the case could be relied upon.

Semble this particular statement (the recital in the sale deed set out above) does not come within S. 157 of the Evidence Act on the ground that it was made at or about the time of *N*'s alleged interview with *B* in 1909.

Held further that apart from the particular recital in the deed as to the interview with *N*'s uncles about a year before the deed itself was material corroboration of the plaintiff's case and was admissible in evidence. (*Sir Lancelot Sanderson.*) RADHOBA BALOBA VAGH *v.* ABURAO BHAGWANTRAO SHIROLE. **(1929) 57 M. L.J. 287 = 33 C. W. N. 1006 = 31 Bom. L.R. 1030—50 C.L.J. 135 = 27 A. L. J. 1031 = 30 L. W. 514 = 6 O. W. N.786 = 118 I. C. 1 = A. I. R. 1929 P. C. 231.**

EXCLUSION OF PLAINTIFF FROM JOINT ESTATE PRIOR TO.

------Plea by defendant of— Onus of proof of. *See* LIMITATION ACT OF 1908—ART. 127.
(1917) 21 C. W. N. 1142.

——Relief appropriate to plaintiff in case of—Mesne Profits—Compensation. *See* CO-SHARERS—PARTITION.
(1924) 51 I. A. 293 (303-4) = 51 C. 631.

INCOME OF ESTATE—PLAINTIFF'S RIGHT TO SHARE OF—DECLARATION OF.

——Liberty to apply in suit for ascertainment of each year's income—Grant of—Propriety—Right to partition found against. *See* PARTITION—SUIT FOR—DECLARATION IN, ETC. **(1925) 52 I.A. 294 (304) = 52 C. 971.**

LACHES IN INSTITUTION OF.

——Effect of—Presumption from. *See* HINDU LAW—JOINT FAMILY—PARTITION—SUIT FOR—PARTIBILITY OF PROPERTY SUBJECT-MATTER OF—PRESUMPTION—ONUS OF PROOF—LACHES, ETC. **(1928) 56 M. L. J. 435.**

MARRIAGE EXPENSES OF MEMBERS.

——Provision for. *See* HINDU LAW—JOINT FAMILY—PARTITION—MARRIAGE EXPENSES OF, ETC

MEMBER'S RIGHT OF.

——Any member of a joint Hindu family may sue for a partition of the family estate, unless there is a family usage or a special law which makes it impartible (55). (*Sir Richard Couch.*) PIRTHI PAL SINGH *v.* THAKUR JEWAHIR SINGH. **(1887) 14 I. A. 37 = 14 C. 493 (505) = 4 Sar. 758.**

HINDU LAW—(*Contd.*)

Joint Family—Partition—Suit for—(*Contd.*)

MESNE PROFITS IN—PLAINTIFF'S RIGHT TO.

——*Accounts of—Mode of taking.*

In the case of a partible Zemindary, where plaintiffs sue for the recovery of their share in it together with mesne profits, they are entitled to recover their share together with mesne profits thereon from the date of dispossession provided that such mesne profits are not allowed for more than three years next preceding the suit and that an allowance is made to the defendants for all, or any portion, of such mesne profits, as the latter might prove to have been duly applied for the benefit of the joint family. (*Sir Barnes Peacock*) RAJAH VENKATA KANNAKAMMA RAO *v.* RAJAH RAJAGOPALA APPA RAO BAHADUR. **(1882) 9 I. A. 125 = 5 M. 236 = 4 Sar. 345.**

——Civil Procedure Code provisions as to mesne profits—Inapplicability of. *See* HINDU LAW—JOINT FAMILY—MEMBER OF—CONFIRMATION OF RIGHT, ETC.
(1887) 14 I.A. 37 (59) = 14 C. 493 (509).

——In a partition suit, relating to an ordinary joint family, mesne profits are not recoverable, as was pointed out in L.R. 14 I.A. at p. 59.Speaking of the provisions of the Code as to mesne profits, Sir Richard Couch says: "These provisions are intended for, and are applicable to, suits for land or other property in which the plaintiff has a specific interest and not to the suit which was instituted in 1865, or to a suit for a partition where he has no specific interest until decree." (82-3). (*Lord Hobhouse.*) SHANKAR BAKSH *v.* HARDEO BAKSH. **(1888) 16 I.A. 71 = 16 C. 397 (412) = 5 Sar. 299.**

——*Enjoyment of entire property by plaintiff for shorter period in lieu of—Direction by consent for—Propriety,*

In a suit for partition of joint family property, it was found that the defendants had kept the plaintiffs out of their share for about 6 years. The Court below decreed partition and directed, at the suggestion of the parties themselves on the appeal to its Court, that for three years the plaintiffs were to enjoy the whole property. On objection taken in appeal to the said direction,

Held, that what the Court below did was justice, though rough justice, and that as there was no alternative proposal which would not be open to greater objection, there was no reason whatever for sending the case back to India. (*Lord Macnaghten.*) GANGARAM *v.* SITARAM.
(1902) 6 C. W. N. 698.

——*Exclusion conferring—Evidence of.*

Where the evidence was that the manager was all along offering the plaintiff an allowance of Rs. 200 a month which he refused to accept as being inadequate, *Held* it did not amount to exclusion so as to entitle the plaintiff to mesne profits. (*Mr. Ameer Ali.*) SURAJ NARAIN *v.* IKBAL NARAIN. **(1912) 40 I. A. 40 (47) = 35 A. 80 (89) = 13 M. L. T. 194 = 17 C. W. N. 333 = 11 A. L. J. 172 = (1913) M. W. N. 183 = 17 C. L. J. 288 = 18 I. C. 30 = 15 Bom. L. R. 456 = 16 O. C. 129 = 24 M. L. J. 345.**

——*Members living together as joint family but under agreemeent that they are entitled to specific and definite shares — Disturbance of enjoyment of shares—Right to mesne profits in cass of.*

The appeal arose out of a suit brought by the respondents to establish against the appellant their right to partition of a 10-annas share of a taluqdari estate, and also of certain moveable estate with mesne profits. Their Lordships held affirming the courts below, that the respondents were entitled to a decree for partition of the taluqdari estate. The question then arose whether they were entitled to claim mesne profits in respect thereof.

The taluq in question was found to have been in a very peculiar position. The family were found to have been

HINDU LAW—(*Contd.*)

Joint Family—Partition—Suit for—(*Contd.*)

MESNE PROFITS IN—PLAINTIFF'S RIGHT TO—(*Contd.*)

living together as a joint family, and in commensality, the eldest son acting as head and not accounting for the profits, which was the case with an ordinary Hindu family; but still they were living under the most distinct agreement that they were entitled not as an ordinary joint family but in specific and definite shares.

Held, that if the enjoyment of those shares was in any way disturbed, the right to sue for profits would arise, as well as a right to partition (83). (*Lord Hobhouse.*) SHANKAR BAKSH *v*, HARDEO BAKSH. (1888) 16 I. A. 71 = 16 C. 397 (412-3) = 5 Sar. 299.

PARTIAL PARTITION.

———Objection to suit on ground of its being for—Maintainability—Plaint admitting certain properties to be partible and seeking complete partition thereof— Plaintiff originally alleging other properties to be impartible but subsequently throwing them into hotchpot—Effect. *See* HINDU LAW—JOINT FAMILY— PARTITION—PARTIAL PARTITION—OBJECTION TO SUIT, ETC.

(1902) 29 I. A. 76 (81) = 25 M. 367 (379)

PARTIBILITY OF PROPERTY SUBJECT-MATTER OF—PRESUMPTION—ONUS OF PROOF.

———Where, in a suit for partition of an ancestral estate brought by one brother against another, it is admitted that the family is joint and undivided, but the plea is raised that the estate is impartible, it lies on the defendant, who raises the plea, if he can displace the operation of the ordinary Hindu Law, to do so by clear proof of some family or other custom which varied the law. (*Sir James W. Colvile.*) THAKUR DURRIAO SINGH *v*. THAKUR DAVI SINGH.

(1873) 1 I. A. 1 (7) = 13 B. L. R. 165 = 3 Sar. 301 = R. & J.'s No. 25 (Oudh).

———The burden of proving, in a suit for partition of alleged joint family property, that any particular item of property is joint, primarily rests upon the plaintiff, though circumstances may readily cause the onus to be discharged. (*Lord Buckmaster.*) ANNAMALAI CHETTY *v*. SUBRAMANIAN CHETTY, (1928) 27 A. L. J. 9 = 6 O. W. N. 104 = 29 L. W. 91 = (1929) M. W. N. 19 = 49 C. L. J. 93 = I. D. 1929 P. C. 22 = 33 C. W. N. 435 = 31 Bom. L. R. 280 = 113 I. C. 897 = 10 Pat L. T. 283 = A. I. R. 1929 P. C. 1 = 56 M. L. J. 435 (440.)

———*Laches in institution of suit—Effect of—Presumption adverse from.*

Although time cannot run against a claim to partition of joint family estate unless there has been definite exclusion, yet, where the question is whether property alleged to be joint family property is really such or is only the separate self-acquisition of the defendant, and it appears that the plaintiff instituted proceedings to assert his right in the property on the footing that it is joint famtly property only years after his right therein was openly and definitely challenged by the defendant, the delay in the institution of the proceedings raises a presumption against the plaintiff and justifies the inference that his claim is a stale claim. (*Lord Buckmaster.*) ANNAMALAI CHETTY *v.* SUBRAMANYAN CHETTY. (1928) 27 A. L. J. 9 = 6 O.W N. 104 = 29 L. W. 91 = (1929) M.W N. 19 = 49 C. L. J. 93 = I. D. 1929 P. C. 22 = 33 C.W.N. 435 = 31 Bom. L. R. 280 = 113 I. C. 897 = 10 Pat. L.T. 283 = A.I.R. 1929 P. C. 1 = 56 M. L. J. 435.

———Self-acquisition—Plea of, by one of members—Onus of Proof of—Ancestral nucleus admitted. *See* HINDU LAW—SELF-ACQUISITION—ONUS OF PROOF OF.

(1922) 50 I. A. 134 (141) = 46 M. 373 (381).

HINDU LAW—(*Contd.*)

Joint Family—Partition—Suit for—(*Contd.*)

PARTIES TO.

———*All co-parceners necessary.*

In a suit for partition no effective decree can be made for a partition unless all the co-parceners whose addresses are known are parties to the suit (87). (*Sir John Edge.*) PALANI AMMAL *v*. MUTHUVENKATACHALA MONIAGAR.

(1924) 52 I. A. 83 = 48 M. 254 = 6 P. L. T. 133 = 21 L. W. 439 = (1925) M.W.N. 330 = 27 Bom. L. R. 735 = 3 P. L. R. 126 = 23 A. L. J. 746 = 29 C. W. N. 846 = 6 L. R. P. C. 143 = A. I. R. (1925) P. C. 49 = 87 I. C. 333 = 48 M. L. J. 83.

———*See* PARTITION—SUIT FOR—PARTIES.

(1914) 41 I. A. 247 = 27 M. L. J. 76 (78).

———*Partner—Joint family member—Suit on bases of—Distinction—Test.*

To show that the plaintiff (in a suit for partition) did not sue as one of the co-sharers of a joint and undivided family, but as an ordinary partner, the defendant relied on the phrase "The claim is brought in virtue of right of co-partnership," at the commencement of the plaint, and the use of the word "partnership" in other parts of the pleadings and also on the circumstance that the plaintiff claimed a lesser share than he would have been entitled to under the Hindu Law of succession.

Held that the presumption arising from this misstatement of plaintiff's rights as co-sharer in an undivided Hindu estate was by no means conclusive, especially as the claim made was also inconsistent with the hypothesis of a partnership governed by the rules which regulated the rights of mercantile partners as such *inter se* (504).

In view of the whole scope of the pleadings, *held further* that the plaintiff's claim was really based upon his alleged rights as a co-sharer, in a joint and undivided Hindu estate, and that, as such, it was sufficiently well pleaded (504-5). (*Sir James Colvile.*) RAMPERSHAD TEWARY *v*. SHEOCHURN DOSS. (1866) 10 M. I. A. 490 = 2 Sar. 177.

PRIVATE PROPERTY—SUIT ON FOOT OF—DEBUTTER PROPERTY—RELIEF ON FOOT OF—GRANT OF.

———*See* PRACTICE—PLEADINGS — PROOF — CONSISTENCY BETWEEN—RULE AS TO—PARTITION—PRIVATE PROPERTY. (1875) 3 Suth. 127(130) = 23 W. R. 369.

Joint family—Partition—Test true of.

———*Intention of members of family.*

The true test of partition of property according to Hindu Law is the inteution of the members of the family to become separate owners (10). (*Sir Andrew Scoble.*) RAM PERSHAD SINGH *v*. LAKHPATI KOER.

(1902) 30 I. A. 1 = 30 C. 231 (253) = 7 C. W. N. 162 = 5 Bom. L. R. 103 = 8 Sar. 380.

Joint Family—Partition—Unilateral declaration.

———Severance by. *See* HINDU LAW—JOINT FAMILY—PARTITION—INTENTION TO SEPARATE.

Joint Family—Partition—Widow.

———*See* HINDU LAW—WIDOW—PARTITION.

Joint Family—Partition—Wife.

———*Partition between husband and sons—Share at—Execution sale of husband's interest—Right in case of—Bengal Mithakshara.*

Semble under the Bengal Mithakshara law, on a partition between a man and his sons, his wife will be entitled to a share. She will be so entitled even as against an execution purchaser of her husband's rights (256). (*Sir James W. Colvile.*) DEENDYAL LAL *v*. JUGDEEP NARAIN SINGH.

(1877) 4 I. A. 247 = 3 C. 198 (209) = 1 C. L. R. 49 = 3 Sar. 730 = 3 Suth. 468.

HINDU LAW—(*Contd.*)

Joint Family—Partition—Will.

———Partition by. *See* HINDU LAW—JOINT FAMILY—FATHER—ANCESTRAL PROPERTY—PARTITION OF.

———*Property given to brothers as joint tenants under—Partition of—Right of.*

Even in a case where property is given to two brothers by a will to be taken by them as joint tenants, there is no reason why they should not agree to divide the property in severalty when the period of enjoyment occurs (174). (*Dr. Lushington,*) REWAN PERSAD *v.* MUSSUMMAT RADHA BEEBY. **(1847) 4 M. I. A. 137 = 7 W. R. 35 (P. C.) = 1 Suth. 172 = 1 Sar. 327.**

Joint family—Partition—Written instrument.

———*Necessity.*

According to Hindu Law a division may be effected without instrument in writing (168). (*Dr. Lushington.*) REWAN PERSAD *v.* MUSSUMAT RADHA BEEBY. **(1847) 4 M. I. A. 137 = 7 W. R. 35 (P. C.) = 1 Suth. 172 = 1 Sar. 327.**

Joint Family—Partnership with stranger.

———Dissolution of—Partition of family property—Dissolution by. *See* PARTNERSHIP—DISSOLUTION—HINDU LAW—JOINT FAMILY. **(1913) 36 M. 185 (192).**

Joint Family—Principle of—Recognition of.

———*Benares School—Bengal School.*

The principle of the joint family is not less closely, but more closely, insisted on by the Benares school than by the Bengal school of law (179). (*Sir Arthur Hobhouse.*) RAI BISHEN CHAND *v.* ASMAIDA KOER. **(1884) 11 I. A. 164 = 6 A. 560 (574) = 4 Sar. 512.**

Joint tenancy.

———Recognition of—Limits of. *See* JOINT-TENANCY—HINDU LAW. **(1896) 23 I. A. 37 = 23 C. 670 (679).**

Legitimacy.

———[*See also* (1) HINDU LAW—MARRIAGE, (2) LEGITIMACY AND (3) MARRIAGE.]

BROTHERS—LEGITIMACY OF—CLAIM IN COURTS BELOW ON FOOT OF.
CASTE LOW OR UNKNOWN—CHILDREN OF.
CONDITION OF.
EVIDENCE OF.
ISSUE AS TO—CROSS-EXAMINATION IN CASE OF.
LEGITIMATION—DISTINCTION.
PRESUMPTION AGAINST.
PRESUMPTION OF.
SON—LEGITIMACY OF—DECISION ON, BASED ON HIS RESEMBLANCE TO HIS ALLEGED FATHER.

BROTHERS—LEGITIMACY OF—CLAIM IN COURTS BELOW ON FOOT OF.

———*Illegitimacy of brothers—Claim before Privy Council on foot of—Maintainability.*

The plaintiff was the widow of one of the sons of *P*, and the 1st defendant the widow of another son of *P*. In both the Courts below and indeed up to the moment when the plaintiff's case was lodged in the appeal to the Privy Council the plaintiff insisted upon the legitimacy of her husband and his brother. It was, however, found that both the sons were illegitimate sons of *P*. At the hearing of the appeal to the Privy Council, the plaintiff for the first time contended that, assuming that both her husband and the husband of the 1st defendant were illegitimate sons of *P*, they could yet inherit from one another, and that she was therefore entitled to succeed.

Held that the appeal could not be maintained on a ground so inconsistent with all the previous proceedings in the case (182).

HINDU LAW—(*Contd.*)

Legitimacy—(*Contd.*)

BROTHERS—LEGITIMACY OF—CLAIM IN COURTS BELOW ON FOOT OF—(*Contd.*)

The plaintiff might have originally framed her case in the alternative, so as to claim heirship if the disputed issue of legitimacy was decided against her. Then the case would have been tried with reference to that contention, and all facts ascertained, aud researches into the law conducted accordingly. The question cannot be regarded as one of pure law. Indeed in cases of this kind which may involve subtle and difficult questions of personal status, it is not easy to say what matters of fact would have to be ascertained for the proper decision of each proposition of law. One may be specified. The question whether two brothers can inherit from one another, because they are equal in point of illegitimacy, could not properly be tried without knowing how they stand relatively in point of caste. It is indeed clear that to lay down a rule of inheritance between rival claimants without a trial of the case in view of that rule may involve serious risk of miscarriage (183). (*Lord Hobhouse.*) GAJAPATI RADHIKA *v.* VASUDEVA SAMBA SINGARAO. **(1892) 19 I. A. 179 = 15 M. 503 (510-1) = 6 Sar. 218.**

CASTE LOW OR UNKNOWN—CHILDREN OF.

———*Treatment as legitimate of, by persons of superior caste—Presumption against.*

There is an improbability that the Ranees as Hindoo women (presumably as sensitive as men on the subject of caste) would, notwithstanding it might be for their interest to do so, consent to the production of infants of low or unknown caste as the off-spring of their own bodies (244). (*Sir Montague E. Smith.*) BURRA LALL OPENDRANATH SAHEE DEO *v.* COURT OF WARDS. **(1879) Bald. 235 = 3 I. J. 376.**

CONDITION OF

———*Birth after, but procreation before, marriage—Effect—English law.*

Assuming that the High Court are correct in finding that the child, although born after marriage, was procreated or begotten before marriage took place, their Lordships are of opinion that that Court came to a right conclusion, in point of law, that the child was legitimate (292—3)

It does not appear, from the authorities cited, to have been distinctly laid down that, according to Hindu Law, in order to render a child legitimate the procreation as well as the birth must take place after marriage. That would be a most inconvenient doctrine. If it is the law, that law must be administered. Their Lordships, however do not think that it is the Hindu Law. They are of opinion that the Hindu Law is the same in that respect as the English Law (293). (*Sir Barnes Peacock.*) PEDDA AMANI AND CHINNA AMANI *v.* ZEMINDAR OF MARUNGAPURI. **(1874) 1 I. A 282 = 14 B. L. R. 115 = 21 W. R 358 = 3 Sar. 318.**

EVIDENCE OF.

———*Conduct and treatment—Evidence derivable from—Weight of, as against positive oral evidence of absence of marriage and of illegitimacy of son.*

It has been contended that the legitimacy of the appellant is recognised by the conduct of the father, by the title of heir-apparent given to him, by his living and eating with the father, by the investiture of the sacerdotal cord, by the admitted fact of his marriage into a Rajput family, and by the great kindness and affection with which he was treated by the father No doubt, evidence of this description is entitled to weight as confirmatory of testimony in support of the factum of the marriage ; but it is not sufficient to out-

HINDU LAW—(*Contd.*)

Legitimacy—(*Contd.*)

EVIDENCE OF—(*Contd*).

weigh the positive testimony of a great number of witnesses, many of whom are native gentlemen of rank, some of them Rajahs in the immediate neighbourhood, and all of whom speak to the illegitimacy of the appellant, from the knowledge of the family, and from the marriage never having taken place at the time and in the manner alleged by the appellant. (*Sir Edward Ryan.*) CHUOTURYA RUN MURDUN SYN *v.* SAHUB PURHULAD SYN.

(1857) 7 M. I. A. 18 (44-5)=4 W. R. 132= 1 Sar. 591=1 Suth. 313.

———*False evidence—Facilities in India for.*

Upon an issue as to legitimacy, it is very easy in India to get up any amount of false evidence, and it is not because a man has a true case that he is sure to bring it to a successful issue (266-7). (*Sir James W. Colvile.*) CHIDAMBARA CHETTY *v.* RENGA KRISHNA MUTTU VIRA PUCHAIYA NAICKER.

(1874) 1 I. A. 241=22 W. R. 148= 13 B. L R. 509=3 Sar. 373.

———Grand children — Legitimacy of—Grandmother's statements to Government made *ante litem motam* and in pursuance of rules requiringthem to be made—Description of children as heirs in—Admissibility and value of. *See* EVIDENCE—RELATIONSHIP—GRAND-CHILDREN.

(1903) 30 I. A. 94 (105)=25 A. 236 (250-2).

———*Members of family—Statements by—Hearsay reports of—Admissibility and value of.*

The question was whether the respondents' mothers *S* and *W*, were the legitimate daughters of *Z*, a son of *H*, and whether the respondents were as such the heirs of their grandmother *H*.

H's husband was in receipt of a Wasika, a pension from Government. When he died, an inquiry was made from the Wasika office of a number of persons as to the heirs of the deceased man. They said that *S* and *W* were also his heirs. The answers then obtained from them with the evidence of the same persons at the trial were received by the Court as proving the legitimacy of *S* and *W*.

Held, that that evidence was of very inferior value, as it consisted at best of hearsay reports of statements said to have been made by members of the family (105). (*Sir Arthur Wilson.*) BAKER ALI KHAN *v.* ANJUMAN ARA BEGAM.

(1903) 30 I. A. 94=25 A. 236 (248-9)= 7 C. W. N. 465=5 Bom L. R. 410=8 Sar. 397.

———*Near relations of parties concerned—Evidence of—Value of.*

In a case in which the question was whether the appellants were the legitimate sons of one *E*, by a lawfully wedded wife or the illegitimate children of *E* by a kept mistress who was a Hindu married woman whose husband was still alive at the time of the birth of the appellants, 5 close relations of *E* deposed that the appellants' mother was a Hindu married woman whose husband was still alive at the time of the birth of the appellants. The Sub-Judge rejected the evidence of those witnesses on the ground that they were not independent and impartial.

Held, that the Sub-Judge was in error in rejecting too lightly the evidence of those witnesses on the ground assigned.

It is impossible to see what better class of evidence in such a case as the present can be produced than by near relatives of the parties concerned. (*Lord Carson.*) NUH-ULLAH KHAN *v.* MD. SHAFIQ-ULLAH KHAN.

(1929) 33 C. W. N. 900=117 I. C. 6= A. I. R. 1929 P. C. 212=57 M. L. J. 522.

HINDU LAW—(*Contd.*)

Legitimacy—(*Contd.*)

ISSUE AS TO—CROSS-EXAMINATION IN CASE OF.

———Claim to be son of *A* by woman *B*—Defence that plaintiff was son of *A* by woman *C*—Cross-examination of plaintiff's witnesses in case of—Mode of. *See* CROSS-EXAMINATION—LEGITIMACY. **(1917) 42 I. C. 3 (5).**

LEGITIMATION—DISTINCTION.

———*Systems in which legitimation found.*

Legitimacy is a status which results from certain facts. Legitimation is a proceeding which creates a status which did not exist before. In the proper sense there is no legitimation under the Mahomedan Law Examples of it may found in other systems, The adoption of the Roman and the Hindu law effected legitimacy. The same was done under the Canon Law and the Scotch Law in respect of what is known as legitimation *per subsequens matrimonium*. An acknowledgment of legitimacy under the Mahomedan law is a declaration of legitimacy and not a legitimation. A declaration, though it cannot be withdrawn, may be contradicted, for it is only a statement; legitimation is an act, which being done cannot be undone. (*Lord Dunedin.*) HABIBUR RAHMAN CHOWDHURY *v.* ALTAF ALI CHOWDURY.

(1921) 48 I. A. 114 (120-1)=48 C. 856 (864, 865)= 19 A. L. J. 414=33 C. L. J. 479= (1921) M. W. N. 366=26 C. W. N. 81= 23 Bom. L. R. 636=29 M. L. T. 354=14 L. W. 175= (1922) P. C. 159=60 I. C. 837=40 M. L. J. 510.

PRESUMPTION AGAINST.

———*Inheritance of father and his undivided brother—Exclusion from—Presumption from.*

The plaintiffs, the sons of one Lall Singh, alleged that he was the son of Mohun Singh, that Mohun Singh was the brother of Tara Singh, the last male owner of the suit properties, and that they were, therefore, entitled to succeed to the properties of Tara Singh on the death of his widow, Maha Koer. The question was whether the plaintiffs had established the legitimacy of either Mohan Singh, or Lall Singh.

The illegitimacy of the said two persons was alleged by Maha Koer as early as 1837. The evidence showed that they did not share the family property with Tara Singh, that they did not succeed to it on the death of Tara Singh, but that Maha Koer excluded them and held sole possession in succession to her husband. The plaintiffs gave no evidence of the legitimacy of their ancestors.

Held, that the presumption of the illegitimacy of the said two persons was almost irresistible (536).

The proved exclusion of Mohan Singh and of Lall Singh would raise a strong presumption of their spurious birth (539). (*Sir Edward V. Williams.*) JOWALA BUKSH *v.* DHARUM SINGH. **(1866) 10 M. I. A. 511=2 Sar. 189.**

PRESUMPTION OF.

———*Acknowledgment and treatment of son as legitimate by Prince of ancient family—Presumption from—Boy of lower unknown caste—Treatment of, as legitimate by such a person—Improbability of.*

The leading improbability on the other side is that the Maharajah should have acknowledged and treated spurious children as his own. It was strongly urged that it was not possible that such children could have been palmed upon him in the manner described, and equally impossible to suppose that he would knowingly have connived at such a fraud, and especially at the introduction into his family of a boy of low or unknown caste to be the successor to the Raj. Such a successor would have been revolting to his pride as a Prince of an ancient family, and to his religious feeling as a Hindoo. His conduct in acknowledging the children was relied upon as cogent, if not conclusive, evidence of their

HINDU LAW—(*Contd.*)

Legitimacy—(*Contd.*)

PRESUMPTION—(*Contd.*)

legitimacy (240). (*Sir Montague E. Smith.*) BURRA LALL OPENDRONATH SAHEE DEO *v.* COURT OF WARDS.

(1879) **Bald. 235 = 3 I. J. 376.**

———*Marriage, cohabitation and acknowledgment of child —Presumption from—Evidence to counteract—Quantum.*

Upon an issue as to the paternity of children, *held*, that the evidence adduced by the appellants was insufficient to overthrow the *prima facie* case of the respondents, which rested upon the presumptions arising from marriage, cohabitation, and the acknowledgment of the children by the Maharajah, and upon evidence of their births, and that, though the respondents' case was improbable and weak in important respects, yet, in the face of the presumptions referred to, the unanimous judgment of the High Court declaring the children to be the sons of the Maharajah could not be reversed except upon clear and conclusive evidence, which was not forthcoming (261-2). (*Sir Montague E. Smith.*) BURRA LALL OPENDRONATH SAHEE DEO *v.* COURT OF WARDS. (1879) **Bald. 235 = 3 I. J. 376.**

———*Mother lodged and apparently treated as wife—Child of, born in father's house and treated as legitimate—Presumption of legitimacy of.*

The legal presumption in favour of a child born in his father's house of a mother lodged, and apparently treated as a wife, treated as a legitimate child by his father, and whose legitimacy is disputed after the father's death, is one safe and proper to be made ; and the opposing case should be put to strict proof (365 6.) (*Lord Justice James.*) RAMAMANI AMMAL *v.* KULANTHAI NATCHIAR.

(1871) **14 M. I. A 346 = 17 W. R. 1 = 2 Suth. 493 = 2 Sar. 736.**

———*Recognition of legitimacy by members of family— Possession long with alleged legitimate son—Question of his legitimacy raised after long lapse of time.*

In a case in which the legitimacy of a person in possession is questioned, a very considerable time after his possession has been acquired, by a party who has a strict legal right to question his legitimacy, the defendant, in order to defend his status, should be allowed to invoke against the claimant every presumption which reasonably arises from the long recognition of his legitimacy by members of the family or other persons (77). (*Sir James W. Colvile.*) RAJENDRO NATH HOLDAR *v.* JOGENDRO NATH BANERJEE.

(1871) **14 M. I. A. 67 = 15 W. R. P. C. 41 = 7 B. L. R. 216 = 2 Suth. 422 = 2 Sar. 666.**

SON—LEGITIMACY OF—DECISION ON, BASED ON HIS RESEMBLANCE TO HIS ALLEGED FATHER.

———*Legality of.*

In a case in which the question was whether the son of a deceased person whose estate he sued to recover was a legitimate child or was a spurious and supposititious child, *held* that the decision of the trial judge in favour of the plaintiff based upon the personal resemblance of the plaintiff to his deceased father could not be received or acted oa by a Court of appeal. (*Lord Brougham.*) JESWUNT SINGH-JEE *v.* JET SING-JEE. (1841) **2 M.I.A. 424 = 6 W. R. P. C. 46 = 1 Suth. 150 = 1 Sar. 213.**

Maintenance.

ADOPTED SON—ADOPTIVE MOTHER—MAINTENANCE OF—LAND ASSIGNED FOR.

AGREEMENT FOR PAYMENT OF.

AMOUNT OF.

ARREARS OF.

BABUANA GRANT FOR.

CHARGE IN RESPECT OF.

HINDU LAW—(*Contd.*)

Maintenance—(*Contd.*)

COMPROMISE OF CLAIM TO, OF PERMANENT NATURE —SETTING ASIDE OF.

CONCUBINE OF DECEASED—RIGHT OF.

COPARCENARY UNDER MITHAKSHARA LAW—RIGHT BASED ON.

GRANT FOR.

HERITABLE INTEREST—AGREEMENT FOR PAYMENT OF MAINTENANCE CREATING.

ILLEGITIMATE SON.

JOINT FAMILY—WIDOW OF DECEASED MEMBER OF —MAINTENANCE OF—ALLOTMENT OF PORTION OF JOINT ESTATE IN SATISFACTION OF.

MITHAKSHARA LAW—MAINTENANCE RIGHT UNDER —MOTHER.

PAYMENT OF, ON POSSESSION OF ESTATE BEING OBTAINED BY CONTRACTOR—AGREEMENT FOR.

PROPERTY ALLOTTED FOR, WITHOUT POWER OF TRANSFER—ATTACHMENT AND SALE OF.

PROPERTY ASSIGNED FOR—RENT PAYABLE FOR — ALTERATION OF.

RATE OF.

REFUSAL OF.

SON—CLAIM BY, AGAINST FATHER'S ESTATE.

SUIT FOR—AGREEMENT PRIOR BETWEEN PARTIES FIXING AMOUNT—SUIT APART FROM—MAINTAINABILITY.

WIDOW.

WIFE.

WRONGFUL WITHHOLDING OF.

ADOPTED SON—ADOPTIVE MOTHER — MAINTENANCE OF—LAND ASSIGNED FOR.

———Acquisition of, under Land Acquisition Act—Compensation paid for—Right in—Relinquishment of — What amounts to. *See* HINDU LAW—ADOPTION — ADOPTED SON—ADOPTIVE MOTHER—MAINTENANCE OF.

(1879) **6 I. A. 196 (210) = 2 M. 91 (103).**

AGREEMENT FOR PAYMENT OF.

———*Construction—Possession of estate being obtained by contractor—Agreement for payment on—Possession not in fact obtained by him—Effect—Charge on estate—Heritable interest—Agreement if creates.*

Where a Hindu widow, entitled to her husband's estate, executed a deed in favour of *B*, his first cousin once removed, by which she undertook, when she got possession of the estate, to pay, out of the malikana dues recovered by her, a certain sum a year to *B* as the same was paid for maintenance to his ancestors by her husband, *held*, that the agreement became wholly ineffectual because the widow never got possession at all and that the allowance promised to *B* was in any event not a heritable interest nor was it a charge on the inheritance. (*Lord Hobhouse.*) ROSHAN SINGH *v.* BALWANT SINGH. (1899) **27 I. A. 51 = 22 A. 191 = 4 C. W. N 353 = 2 Bom. L. R. 529 = 7 Sar. 642.**

AMOUNT OF.

———*Agreement—Amount fixed by—Reduction of — Suit raising question of—Decision of, on foot of decision in prior suit by plaintiff's father raising question — Propriety.*

K, the great-grandfather of the appellant and the grandfather of the respondent, bequeathed the whole of his zemindary to his eldest son, leaving a certain fixed stipend to each of his other children. The question in the suit out of which the appeal arose was whether the appellant had made out a case for the reduction of those stipends which admittedly were originally proper.

HINDU LAW—(*Contd.*)

Maintenance—(*Contd.*)

AMOUNT OF—(*Contd.*)

The appellant complained before their Lordships that the Court below had not decided the case ; that, upon reference to a former decision, they were satisfied with that, without entering into any discussion of the points of law raised by the appellant. That former decision was given in a suit to which the appellant's father was originally a party. In the suit out of which the appeal arose no new facts were brought in and no new point was raised by the appellant, and there was nothing in the case but the amount of the arrears and the amount of payment.

Held, that the suit had been properly decided upon reference to the former decision. (*Mr. Thomas Erskine.*) MAHARAJAH GREES CHUND ROY *v.* SHUMBOO CHUND ROY. **(1835) 5 W. R. 98 P. C. = 1 Suth. 24 (25) = 1 Sar. 63.**

———Agreement between parties fixing—Suit apart from agreement claiming larger amount—Amount to be allowed in case of. *See* MAHOMEDAN LAW — MAINTENANCE—RATE OF.

(1883) 10 I. A. 45 (49-50) = 9 C. 945 (951).

———Decision of Indian Courts as to—P. C.'s interference with. *See also* HINDU LAW—WIDOW—MAINTENANCE OF—RATE OF—DECISION OF INDIAN COURTS AS TO—P. C.'S INTERFERENCE WITH.

———*See* HINDU LAW—IMPARTIBLE ESTATE—JUNIOR MEMBERS—MAINTENANCE OF—DECISION OF INDIAN COURTS AS TO. **(1867) 12 M. I. A. 1 (40).**

———The quantum of maintenance to be allowed to a Hindu widow is a question with which the Courts of India, having local knowledge, and being conversant with the habits of native families, are peculiarly competent to deal, and strong grounds should be shown to justify any interference by this Committee with their discretion in that matter. (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SATHUPATHY.

(1868) 12 M.I.A. 397 (447) = 10 W. R. P. C. 17 = 1 B.L. R.P. C. 1 = 2 Suth. 135 = 2 Sar. 361.

———It remains only to notice the other point with respect to the residence. It may be fairly assumed that this question was taken into consideration by the Judge in fixing the amount of the maintenance. It was a matter for the discretion of the Judge, and a matter with which this Board would be very reluctant to interfere, unless it could be shown that the Court below had miscarried in some very gross and striking manner. (*Lord Justice Selwyn.*) KATCHEKALEYANA RUNGAPPA KALAKKA TOLA OODIAR *v.* KACHIVIJAYA RUNGAPPA KALAKKA TOLA OODIAR.

(1869) 12 M. I. A. 495 (506) = 2 B. L. R. (P. C.) 72 = 2 Suth. 206 = 2 Sar. 461 = 11 W. R. 33.

———The Judicial Committee will be extremely reluctant to interfere with the decision of the Court below upon a question of maintenance, and will hesitate very much to do so, unless there were some special circumstances in the case which indicated that there had been a miscarriage in the way in which the maintenance had been arrived at (56). (*Sir Montague E. Smith.*) SREEMUTTY NITTOKISSORY DASSEE *v.* JOGENDRO NATH MULLICK.

(1878) 5 I. A. 55 = 3 Sar. 792 = Bald. 159 = 3 Suth. 505.

———It is not the practice of the Judicial Committee to interfere in a question as to the amount of maintenance. That is a matter with which the Courts in India are better qualified to deal. (*Lord Macnaghten.*) KACHI KALIYANA RENGAPPA KALAKKA THOI A UDAYAR *v.* KACHI YUVA RENGAPPA KALAKKA THOLA UDAYAR.

(1905) 32 I. A. 261 (265) = 28 M. 508 (512) = C. L. J. 231 = 10 C. W. N. 95 = 1 M. L. T. 12 =

HINDU LAW—(*Contd.*)

Maintenance—(*Contd.*)

AMOUNT OF—(*Contd.*)

2 A. L. J. 845 = 7 Bom. L. R. 907 = 8 Sar. 855 = 15 M. L. J. 312.

———The fixing of maintenance being a pure question of discretion, the Privy Council will not interfere with the amount fixed by the High Court. (*Lord Buckmaster.*) BRAJA SUNDAR DEB *v.* SWARNA MANJERI DEI.

(1917) 22 C. W. N. 433 = 47 I. C. 36 = (1918) M. W. N. 313.

———*Determination of—Principles guiding.*

The question of determining the amount of maintenance is always a question for the discretion of the Court, and such discretion must be exercised having regard to all the circumstances affecting the case. (*Lord Buckmaster.*) BRAJA SUNDAR DEB *v.* SWARNA MANJERI DEI.

(1917) 22 C. W. N. 433 = 47 I. C. 36 = (1918) M. W. N. 313.

———*Enquiry as to, directed by remand order of High Court—Evidence at—Right of parties to adduce.*

Where, in a case as to the amount of maintenance to be awarded out of an estate, the High Court in special appeal remanded the suit for the purpose of ascertaining and fixing the amount of such maintenance, *held*, that under the inquiry it would be competent to either party to produce evidence in support of his case during the conduct of the inquiry, and that if evidence had been improperly rejected, such improper rejection of evidence would have constituted a valid ground for appeal. (*Lord Justice Selwyn.*) KATCHEKALEYANA RUNGAPPA KALAKKA TOLA OODIAR *v.* KACHIVIJAYA RUNGAPPA KALAKKA TOLA OODIAR.

(1869) 12 M. I. A. 495 (503-4) = 2 B. L. R. P. C. 72 = 2 Suth. 206 = 2 Sar. 461 = 11 W. R. 33.

ARREARS OF.

———*Right to—Demand and refusal—Proof of—Necessity—Wrongful withholding—Presumption of, from non-payment.*

In order to recover arrears of maintenance it is not necessary to prove a demand for each year's maintenance as it became payable. On the contrary, while non-payment of maintenance to a person entitled thereto does not necessarily give him a right of action for arrears, it constitutes *prima facie* proof of wrongful withholding. It is only upon a full consideration of all the circumstances of each particular case that it is possible to decide whether such *prima facie* proof has been rebutted (159). (*Sir Henry De Villiers.*) RAJA YARLAGADDA MALLIKARJUNA PRASADA NAYUDU *v.* RAJA YARLAGADDA DURGA PRASAD NAYUDU.

(1900) 27 I. A. 151 = 24 M. 147 (154-5) = 5 C. W. N. 74 = 2 Bom. L. R. 945 = 7 Sar. 761 = 10 M. L. J. 294.

———Wrongful withholding of maintenance—Inference of, from circumstances of case—Propriety. *See* HINDU LAW—IMPARTIBLE ESTATE—JUNIOR MEMBERS—MAINTENANCE OF—WRONGFUL WITHHOLDING OF.

(1900) 27 I. A. 151 (159-61) = 24 M. 147 (154-7).

———Wrongful withholding of maintenance—Presumption of, from non-payment. *See* HINDU LAW—MAINTENANCE—ARREARS OF—RIGHT TO.

(1900) 27 I. A. 151 (159) = 24 M. 147 (154-5).

———*Wrongful withholding of maintenance amounting to refusal of it—What amounts to, in case in which there was no specific demand.*

In a suit to recover arrears of maintenance brought by the widow of a deceased Hindu against his eldest son, there was no evidence that the plaintiff had made a specific demand for the maintenance. There was, however, evidence of

HINDU LAW—(*Contd.*)
Maintenance—(*Contd.*)
ARREARS OF—(*Contd.*)

antecedent litigation between the widow and the son which showed the state of hostility in the family, and accounted for the withholding by the defendant of the maintenance to which the plaintiff was entitled.

Held, affirming the Courts below, that there was a withholding of the maintenance by the son under circumstances which would amount to a refusal of it (116, 119). (*Sir Montague E. Smith.*) NARAYANA RAO RAMCHANDRA PANT *v.* RAMABAI. **(1879) 6 I. A. 114 = 3 B. 415 (417, 421) = 6 C. L. R. 162 = 4 Sar. 24 = 3 Suth. 617.**

BABUANA GRANT FOR.

———(*See also* HINDU LAW—IMPARTIBLE ESTATE—DARBHANGA RAJ.)

———*Alienability of—Custom against—Proof of—Evidence disproving custom.*

Where, in a case in which a family custom was set up to the effect that property granted for maintenance by a babuana grant was inalienable, numerous instances were proved in which alienations of small portions of the property took place, and in not a single instance was it proved that any objection, based upon the alleged custom, was raised by any one to an actual, or threatened, alienation, *held*, that the evidence disproved the custom set up. (*Lord Atkinson.*) DURGADUT SINGH *v.* RAMESHWAR SINGH.
(1909) 36 I. A. 176 (184) = 36 C. 943 (954) = 6 M. L. T. 68 = 10 C. L. J. 233 = 13 C.W.N. 1013 = 11 Bom. L. R. 901 = 6 A. L. J. 847 = 4 I. C. 2 = 19 M. L. J. 567.

———*Alienability of—Custom against—Validity of.*

Quaere, as to the legal validity of a family custom to the effect that property granted for maintenance by a babuana grant is inalienable, tying up, as it would, property for, possibly, many generations. (*Lord Atkinson.*) DURGADUT SINGH *v.* RAMESHWAR SINGH.
(1909) 36 I. A. 176 (184) = 36 C. 943 (954) = 6 M. L. T. 68 = 10 C. L. J. 233 = 13 C. W. N. 1013 = 11 Bom. L. R. 901 = 6 A. L. J. 847 = 4 I. C. 2 = 19 M. L. J. 567.

———*Alienability of—Property granted impartible.*

The question for decision was whether the fact that the grant of the suit property, made originally by the then head of the family to his son, was admittedly a babuana grant rendered the property inalienable by the son of the original grantee, to whom it had descended. It was conceded that the lands, or usufructs, granted by the babuana grant in question were impartible—descendible to the eldest male heirs of the grantee to be held, or managed, by the person to whom they descended for the maintenance of the family—and that, on failure of male descendants, they reverted to the raj and became the property of the holder of the raj for the time being, or that the interest granted then ceased to exist, whatever it might be; and further, that meanwhile the Government revenue should be paid by the grantee, or the person to whom the property should descend through the holder of the raj. There was no provision, express or implied, in the grant that the interest granted should be inalienable.

Held, that it did not follow from the fact that the property granted was impartible that it was inalienable, and that, in the absence of some special family custom regulating its enjoyment, the property granted under such a grant was alienable.

The result of the authorities as to the right to alienate is: In cases governed by the Mithakshara law, a father may sell or mortgage not only his own share but his sons' shares

HINDU LAW—(*Contd.*)
Maintenance—(*Contd.*)
BABUANA GRANT FOR—(*Contd.*)

in family property, in order to satisfy an antecedent debt of his own, not being of an immoral or illegal character, and . . . such transaction may be enforced against his sons by a suit and by proceedings in execution to which they are not parties.

Notwithstanding the impartibility of property granted by a babuana grant, it comes apparently, in the absence of some special family custom regulating its enjoyment, within this principle. (*Lord Atkinson.*) DURGADUT SINGH *v.* RAMESHWAR SINGH BAHADUR.
(1909) 36 I. A. 176 (182-184) = 36 C. 943 (952-4) = 6 M. L. T. 68 = 10 C. L. J. 233 = 13 C. W. N. 1013 = 11 Bom. L R. 901 = 6 A. L. J. 847 = 4 I. C. 2 = 19 M. L. J. 567.

———*Nature of.*

A babuana grant is a grant for the maintenance of the grantee and his family, descendible to his male descendants. (*Lord Atkinson.*) DURGADUT SINGH *v.* RAMESHWAR SINGH BAHADUR. **(1909) 36 I. A. 176 (181) = 36 C. 943 (951) = 6 M. L. T. 68 = 10 C. L. J. 233 = 13 C. W. N. 1013 = 11 Bom. L. R. 901 = 6 A. L. J. 847 = 4 I. C. 2 = 19 M. L. J. 567.**

CHARGE IN RESPECT OF.

———Agreement creating—What amounts to. *See* HINDU LAW—MAINTENANCE—AGREEMENT FOR.
(1899) 27 I. A. 51 = 22 A. 191.

———Grant creating—What amounts to. *See* HINDU LAW—IMPARTIBLE ESTATE—JUNIOR MEMBER—MAINTENANCE OF.
(1920) 47 I. A. 149 (163) = 47 C. 932 (949-50).

———*Will creating—What amounts to.*

By his will a Hindu expressed his hopes that his wives and his sons would all live amicably together, and that all would look upon and consider his eldest son as the head of his family after his death. He then bequeathed the whole of his property, real and personal, to his eldest son, directing him to provide for both of his wives and to pay them proper respect, and to provide also for his younger brothers and for the testators' dependants; and he declared that he had made those provisions with a view to prevent dissensions in the family, and to enable them to live in peace and harmony after his decease. If, however, the younger sons should not feel disposed to abide by those directions, and should insist upon a separation from the family, then the will provided that the eldest son was to receive the rents of two villages mentioned in the will, and pay over the proceeds to his younger brothers as such proceeds were from time to time received, and he was further to pay to each the sum of Rs. 25,000. The testator then gave Rs. 13,000 for the benefit of his grand-daughter, the daughter of the eldest son of the testator, on her marriage, and allotted Rs, 40,000 for what he called the customary outlay in the first year after his death, including religious pilgrimages. The will then proceeded:—"Nana, the eldest son, shall provide for both the mothers, treating them with great respect; and he shall regard each of his two younger brothers as a son, providing for them, and my old servants, in a manner befitting their several conditions in life."

Held, that, on the proper construction of the will, it did not create a right in favour of the widows of the testator which was a specific "charge on the inheritance of any estate" within the meaning of the words in sub-section 13 of S. 1 of the Limitation Act of 1859, and that a suit brought by one of the widows against the eldest son of the testator for maintenance and arrears under the will was not barred after the expiration of 12 years from the testator's death

HINDU LAW—(*Contd.*)

Maintenance—(*Contd.*)

CHARGE IN RESPECT OF—(*Contd.*)

under that sub-section (117-8). (*Sir Montague E. Smith.*) NARAYANA RAO RAMCHANDRA PANT *v.* RAMABAI.

(1879) 6 I. A. 114 = 3 B. 415 (419-20) = 6 C. L. R. 162 = 4 Sar. 24 = 3 Suth. 617.

COMPROMISE OF CLAIM TO, OF PERMANENT NATURE—SETTING ASIDE OF.

———Jurisdiction of Court. *See* COMPROMISE—MAINTENANCE. **(1899) 26 I. A. 268 (279) = 27 C. 103 (115-6).**

CONCUBINE OF DECEASED—RIGHT OF.

———*Residence in family house of deceased if a condition of.*

The real question is whether to be of the family the concubine, otherwise entitled to mainteance, must reside in the same house with the deceased together with his wife and the regular members of the family. Their Lordships are of opinion that such common residence is now unnecessary, whatever may have been the case when the concubine was a slave of the household (162).

Provided the concubinage be permanent, until the death of the paramour, and sexual fidelity to him be preserved, the right to maintenance is established, although the concubine be not be kept in the family house of the deceased. This incident of residence in the family house was not the essential reason for the right to have maintenance from the goods of the deceased paramour, but rather a means of ensuring the qualified chastity of the mistress (162-3).

Quaere, whether "avaruddha" now means no more than kept and reserved for the sexual enjoyment of one man, to whom the mistress remains faithful (161). (*Lord Darling.*) BAI NAGUBAI *v.* BAI MONGHIBAI.

(1926) 53 I. A. 153 = 50 B. 604 = 24 A. L. J. 729 = (1926) M.W.N. 514 = 3 O.W.N. 599 = 44 C. L. J. 53 = 24 L. W. 309 = 28 Bom. L. R. 1143 = 31 C. W. N. 128 = 96 I. C. 20 = A. I. R. 1926 P. C. 73 = 51 M.L.J. 577.

CO-PARCENARY UNDER MITHAKSHARA LAW—RIGHT BASED ON.

———*Beginning and end of.*

In an ordinary joint family ruled by the Mithakshara law the junior members, down to three generations from the head of the family, have a co-parcenary interest accruing by birth in the ancestral property. This co-parcenary interest carries with it the inchoate right to raise an action of partition, and until partition is *de facto* accomplished these same persons have a right of maintenance. This right is an inherent quality of the right of co-parcenary—that is, of common property. The individual enjoyment of the common property being ousted by the management of the head of the family, they have a right till they exercise their right to divide, to be maintained out of the property which is common to them, who are excluded from the management, and to the head of the family who is invested with the management. As it is expressed by the late Mr. Mayne, "those who would be entitled to share in the bulk of the property are entitled to have all their necessary expenses paid out of its income" (153).

The right to maintenance, so far as founded on or inseparable from the right of co-parcenary, begins where co-parcenary begins and ceases where co-parcenary ceases (153). (*Lord Dunedin.*) RAMA RAO *v.* RAJA OF PITTAPUR.

(1918) 45 I. A. 148 = 41 M. 778 (784) = 24 M. L. T. 276 = (1918) M. W. N. 922 = 23 C. W. N. 173 = 28 C.L.J. 428 = 20 Bom. L.R. 1056 = 16 A. L. J. 833 = 5 Pat. L.W. 267 = 47 I. C. 354 = 35 M. L. J. 392.

HINDU LAW—(*Contd.*)

Maintenance—(*Contd.*)

GRANT FOR.

———*Absolute grant—Grant resumable by grantor's successor—Evidence.*

The question was whether the grant by a former Raja of the Zemindary of Pacheet of a portion of the said zemindary to a member of his family was one for the maintenance of the grantee, and consequently resumable by the respondent, the succeeding Raja, or whether, it was an absolute grant

Held, on the evidence, affirming the court below, that the grant was only one for the maintenance of the grantee, and was resumable by the respondent (106). (*Lord Langdale,*) ANUND LAL SING DEO *v.* MAHARAJA DHERAJ GURROOD NARAYAN DEO BAHADOOR.

(1850) 5 M. I. A. 82 = 1 Sar. 399 = 1 Suth. 221.

———*Alienability of—Maintenance of particular class—Grant for—Alienability of, so long as there are members of that class.*

Quaere. whether land dedicated permanently to maintenance of a particular class is to remain inalienable in the hands of the person to whom the grant was made, and his descendants, as long as there should be descendants of his, for ever, so as to prevent a sale and to render it perpetually inalienable. (*Lord Juslice Knight Bruce.*) RAJAH NURSING DEB *v.* KOYLASNATH ROY.

(1862) 9 M. I. A. 55 = 1 Sar. 842.

———Babuana grant. *See* HINDU LAW — MAINTENANCE—BABUANA GRANT FOR.

———*Condition of—Provision for maintenance of dependants and relations if a—Non compliance with—Grant if void or voidable on ground of.*

Where by a sunnud, in the nature of a deed of maintenance, villages and lands were granted to J, to hold "possession of the villages and lands, and support his dependants and relations from generation to generation".

Quaere, whether the maintenance of the two classes of persons described was, or was not, the condition of the grant so as to render it void or voidable, in the event of the maintenance not being afforded. (*Lord Justice Knight Bruce.*) RAJAH NURSING DEB *v.* KOYLASNATH ROY.

(1862) 9 M.I.A. 55 = 1 Sar. 842.

———*Construction of—Maintenance—Means of—Failure to provide with—Condition as to—Meaning and effect of, in case of person already maintained by grantor—Failure to provide at all or failure to provide as at time of grant.*

A deed executed in 1778 by the ancestor of the defendant in favour of 4 members of the family to which the appellants belonged was in these terms :—

" For as much as from the days of the Maharajahs, my deceased ancestors, you have all along been supported in various ways (such as) by service in my kingdom and by (grants of) villages and lands; and as I too am supporting you in the same manner,... (I have determined that) a means of support, that is, a perpetual wage should be given to you ; and in case in my time or in the time of my descendants, you or your descendants should not be supported in various ways (by me or by my descendants), then, as a means of maintenance, that is to say, as wages, I do hereby assign to you seven villages, namely,..... in the nature of a fixed (perpetual) remuneration. However, as you are now being supported by (the profits derived from) three villages and by other means, for this reason four villages have not been made over to you. Those three villages that are now in your possession by virtue of farming leases, of leases for a fixed period, and of charitable grants (you will now hold), and you will pay rent for them, and other dues on account of them, as you have done from heretofore. If ever in the

HINDU LAW—(*Contd.*)
Maintenance—(*Contd.*)
GRANT FOR—(*Contd.*)

time of my descendants you are not provided with the means of maintenance (by them), then let those descendants of yours who may be living at that time produce this deed, and taking possession of the three above-mentioned villages, and also of the four villages (now held) *khos* (by me), enjoy possession of them rent-free from generation to generation."

The appellants contended that by the terms of the deed each successive Raja was under an obligation, either to maintain them, and that not merely by grants of land. but by employing them on his estate and paying them wages, or to give them the four villages named in the deed; and accordingly, that the conditional grants to descendants became at once operative in their favour, when the late Rajah had dismissed the first appellant from his service in 1876, and declined to employ either him or any other of the appellants.

Held, over-ruiing the contention, that the contingency upon which the disposition of the four villages depended, was the failure of the Rajah to provide maintenance, and that no claim could lie so long as the appellants had sufficient means of maintenance derived from the holders of the Raj (154).

The words "If ever in the time of my descendants you are not provided with the means of maintenance" must be given their primary and natural meaning. There is nothing in the context which suggests that the condition which they express must be qualified by the previous narrative of the means by which the four named grantees had actually been supported (154). (*Lord Watson.*) CHUNDI CHURN BARNA *v.* RANI SIDHESWARI DEBI.
(1888) 15 I. A. 149 = 16 C. 71 (78-9) = 5 Sar. 231.

———*Duration of—Presumption.*

Gifts or contracts expressed to be for maintenance, and indefinite as regards duration, may be shown by the acts of the parties or other circumstances to be intended to operate in perpetuity ; but *prima facie* they are limited to the life either of grantor or grantee. (*Lord Hobhouse.*) KARIM NENSEY *v.* HEINRICHS. **(1901) 28 I.A. 198 = 25 B. 563 (573) = 6 C.W.N. 1 = 3 Bom. L.R. 472 = 8 Sar. 79.**

———*Father—Cash allowance to—Grant of—Duration of—Life of grantor only.*

Plaintiff was a partner in trade with his grandfather, father, and uncles. A deed of dissolution was prepared and executed by the plaintiff's partners; but the plaintiff hesitated to sign the deed. The defendants carried on business in partnership. They employed the plaintiff's firm or his father, as one of the firm, to transact their Meccundum business, and they were consulted about the dissolution. For some reason they were desirous that the dissolution should take place as arranged, and were willing to give the plaintiff some benefit to induce him to agree. Negotiations between them resulted in a letter written by defendants to plaintiffs ; and on the same day the plaintiff signed a dissolution deed. The letter written by the defendants to plaintiff read as follows :—"In consideration of your having at our request signed the agreement of dissolution of partnership we hereby agree to pay you on behalf of your father a sum of rupees 500 per month, until such time as your father makes provision for your maintenance, so as to give thereby himself the above sum every month for such maintenance."

Held on a construction of the letter, that the liability of the defendants to pay the Rs. 500 a month to the plaintiff came to an end on the death of his father.

HINDU LAW—(*Contd.*)
Maintenance—(*Contd.*)
GRANT FOR—(*Contd.*)

The language of the contract pointed strongly to the life of the intended or supposed grantor, *viz.*, the father, as the limit of the grant. What the defendants guaranteed was that plaintiff's father should be bound to allow Rs. 500, and that, if he did not, they would pay on his behalf. There was nothing to show that they intended to incur more liability than plaintiff's father would have incurred if he had executed a bond obliging himself to pay his son Rs. 500 for maintenance. (*Lord Hobhouse.*) KARIM NENSEY *v.* HEINRICHS. **(1901) 28 I.A. 198 (201-2) = 25 B. 563 (572-3) = 6 C.W.N. 1 = 3 Bom. L.R. 472 = 8 Sar. 79.**

———*Gift or lease oral and for indefinite duration—Duration of—Gift or lease for life or resumable either at pleasure of lessor or upon notice—Evidence.*

The question for decision was whether a lease or gift made orally, and for indefinite duration, by the plaintiff (respondent) to the defendant (appellant), was a lease for life, or a lease or gift resumable either at the pleasure of the lessor or upon notice.

The parties stood in the relation of mother and daughter, and the circumstances under which the gift was made were these : The mother (plaintiff) was the talookdar of a talook containing a number of villages. The daughter married, and became a widow. For some time she lived with her husband's family. She then quarrelled with them, and it would seem that they deprived her of her share of the husband's property, upon which she came to her mother in destitute circumstances, and her mother gave her the property in question by way of maintenance. The parties belonged to the tribe of Ahbans. who appeared to be Mahomedans, but with several customs of their own ; and it would seem that their law of inheritance and their law of maintenance were tribal laws.

There was evidence in the case to the effect that where a gift was made by way of maintenance it was a gift resumable by the grantor, and upon that evidence the Courts below held that by the tribal custom of the parties the right to resumption existed.

Their Lordships affirmed the judgments below (136). (*Sir Arthur Hobhouse*). NAJBAN BIBI *v.* CHAND BIBI.
(1883) 10 I.A. 133 = 10 C. 238 (240-2) = 13 C.L.R. 401 = 4 Sar. 472.

———*Grant to a person and his heirs—Grant a maintenance grant in case of former but not such a one in case of latter—Construction of grant.*

The operative part of a sanad, by which a Pergana was granted by the Government to *K*, witnessed that the Government granted the "Taluka" of the said Pergana together with all lands cultivable or uncultivated to *K* for his life as "revenue free jagir by way of maintenance," and that "after the death of *K* the said Ilaka will continue to stand in the names of his children and *A* as a permanent zemindari assessed to a light amount of jama."

Held, on a construction of the sanad, that the grant was a maintenance grant in the case of *K*, but not in the case of his descendants (580). (*Lord Parker.*) SAKINA BAI *v.* KANIZ FATIMA BEGUM. **(1917) 22 C.W.N. 577 = 47 I.C. 632 = (1918) M.W.N. 384.**

———*Gras or hawalah tenure—Grant in—If necessarily grant merely for maintenance.*

In a case in which the question was whether a grant was one merely for maintenance, the finding of the Assistant Commissioner was as follows :—"That the grant of village *N* to the ancestors of the deceased thakur was an ordinary grant in 'gras' or 'hawalah' tenure ; no evidence has been produced to rebut this natural presumption. The word

HINDU LAW—(*Contd.*)

Maintenance—(*Contd.*)

GRANT FOR—(*Contd.*)

'Chaibat' has not been exactly defined or interpreted by the defence, and is a term which is vague in its meaning."

Held that such a finding did not show that the grants were necessarily grants for maintenance, neither of those terms necessarily importing maintenance (80). (*Sir Robert P. Collier.*) RAO BAHADUR SINGH *v.* MUSSUMAT JAWAHIR KUAR. **(1884) 11 I.A. 75=10 C. 887 (892-3)= 4 Sar. 540.**

———Humble request for subsistence — Condition of grant as to—Compliance with—What amounts to. *See* HINDU LAW—WILL—MAINTENANCE—BEQUEST FOR—HUMBLE REQUEST FOR SUBSISTENCE.

(1905) 32 I. A. 105=28 M. 173.

———*Illegitimate son—Grant to—Heritability and alienability of.*

The owner of an estate consisting of a number of villages, including village *S*, having at the time no legitimate son, but having an illegitimate son, the plaintiff, executed a Sunnud which was in these words :—" This sunnud is granted by Rajah Bahadoor " (the owner) " in favour of you Zalim Singh " (the plaintiff) "pledging to you the possession of mauzah *S*, which you will hold and enjoy in perpetuity for your personal expenses, food, clothing, Pan, Masala. You are to receive as written herein, and to be regular in rendering your service."

Quaere, whether upon the true construction of the Sunnud it was such a grant in favour of the plaintiff as would enure for the benefit of his children, if he had any, or enable him, upon an alienation of the village, to give a good title to the purchaser (162-3). (*Sir James W. Colvile.*) RAJAH PARICHAT *v.* ZALIM SINGH. **(1877) 4 I. A. 159= 3 C. 214 (217-8)=3 Sar. 728=3 Suth. 436.**

———Impartible estate—Junior members of—Maintenance of—Grant for. *See* HINDU LAW—IMPARTIBLE ESTATE—JUNIOR MEMBERS OF—MAINTENANCE OF.

———Impartible estate—Maintenance out of—Grants for. *See* HINDU LAW—IMPARTIBLE ESTATE—MAINTENANCE OUT OF.

———*Native Ruler—Grant by—Proof of, against East India Company—Validity of title thereunder against East India Company.*

A sunnud from the Raja of Benares, dated 17—7—1785 provided as follows :—" Be it known to the present and the "future mutsuddies for the affairs of the amla of Pergunnah *K*," and so on, that, as Mouza *F*. appertaining to the aforesaid pergunna, with the exception of the revenues of the sircar, together with the sayer, is in the name of Thakoor *B*, mahf of old, therefore, upon the former rule, the same has been rendered mahf in favour of my friend Baboo *U* ; you are desired not to molest the said Baboo in any way whatever as respects the aforesaid mouza, but to leave it to the enjoyment of the said Baboo, and you shall not demand a fresh sunnud for him annually."

Another sunnud from the Collector of Benares, dated 16—9—1785, was in these words :—that " As the village of *F* in the above Pergunna has been formerly granted as mahfy to the deceased Thakoor *B*, considering, therefore, the rights of Baboo *U*, as heir to the above Thakoor, the above village is to be continued as formerly, mahfy to the above Baboo, his heirs and descendants for ever."

Held that, as against the East India Company and those claiming under them, the above documents were quite sufficient to establish that mouzah *F* was hereditary in the family of *U* (257-8). (*Mr. Pemberton Leigh.*) MUSSUMAT GOLAB KOONWAR *v.* THE COLLECTOR OF BENARES. **(1847) 4 M. I, A. 246=7 W. R. P. C. 47= 1 Suth. 186=1 Sar. 343.**

HINDU LAW—(*Contd.*)

Maintenance—(*Contd.*)

GRANT FOR—(*Contd.*)

———*Oudh talookdar—Grant by, to cadet of family, of villages appertaining to talook—Duration of—Revenue payable on villages granted—Liability for.*

The respondent, an Oudh talookdar, sued the appellant, the son of *J*, for recovery of possession of two villages situated within the respondents' taluk, praying, in the alternative, that the appellant was bound to relieve the respondent of the revenue payable to Government in respect of those two villages. The ground of action alleged in the plaint was that the title upon which *J* held possession of the villages was a grant for maintenance resumable by the talukdar upon his decease.

In point of fact, the villages in question were successively possessed by *J's* father and by *J*, from a period long antecedent to the date of the Mutiny ; and, during the possession, revenue duty was invariably paid by the talukdar. Disputes having arisen on the re-settlement of the taluka after the Mutiny between the respondents' father the then talukdar, and *J*, they submitted their disputes to the British Indian Association of Oudh, who made an award which found "that the two villages given as maintenance, be decreed in favour of the plaintiff" (*J*) " (to continue) as heretofore." The award did not expressly state whether *J* was to take by succession the same right of possession which had been previously enjoyed by his father and grandfather. At the hearing of the suit the appellant produced two pottahs of 1804 and 1808 (which had been produced by *J* before the British India Association of Oudh) granted to *J's* father by respondent's then ancestor. Those pottahs were indefinite in terms, and they did not state whether the grant was confined to a right for maintenance, and whether such grants if given for maintenance only, were to *J's* father personally, or were to be inherited by his descendants.

Held, however, on the evidence of possession had under the grants and on the other evidence in the case, that the original grants to *J's* father, although intended for maintenance only, were not limited to him personally, but were in reality grants to him and his direct lineal descendants through males in the order of primogeniture, and, consequently, that the villages would not revert to the talukdar, until the line of descendants had become extinct.

Held further, that one of the incidents of possession under the grant was that the burden of paying revenue for the two villages fell upon the *talukdar*. (*Lord Watson.*) BHAIYA ARDAWAN SINGH *v.* RAJAH UDEY PARTAB SINGH. **(1896) 23 I. A. 64=23 C, 838= 7 Sar. 24=6 M. L. J. 79.**

———*Revenue payable on property subject of—Charge in respect of, on other properties of grantor and on properties granted by him to third parties—Declaration of—Suit by grantee for—Maintainability—Specific Relief Act, S. 42.*

The holder of a taluk granted certain villages appertaining to the taluk to a junior member of the family, *L*, in lieu of maintenance, it being agreed between the parties that the talukdar should pay the whole revenue and that *L* should enjoy the villages given to him rent free. Subsequently, by an arbitration award. *K*, the successor of the grantor, and the then holder of the taluk, gave other villages appertaining to the taluk to *S* and *R* for their exclusive enjoyment. In terms of that award, they obtained the registration of their names on the revenue register, notwithstanding the opposition of the grandsons of *L*, who had died in the interval. Thereupon *L's* grandsons sued *S*, *R* and *K* for a declaration that *K* was alone liable for the Government revenue of the villages granted to *L*, a declaration that the villages granted to *S* and *R* were subject to a charge for the payment of the said Government revenue, and a declaration that

HINDU LAW—(*Contd.*)

Maintenance—(*Contd.*)

GRANT FOR—(*Contd.*)

the said Government revenue was a charge on each and every village of the taluka.

K did not deny his liability for the Government revenue payable in respect of the villages granted to *L*. There was no allegation that he had not ample property to pay the same. Nor was there any allegation that any contingency had arisen which actually jeopardised the possession by the plaintiffs of the villages granted to *L*.

Held, that the plaint disclosed no cause of action, and that the action was, therefore, wholly misconceived (164).

Quaere, whether the suit brought with the object of obtaining a mere declaration that the liability to pay the revenue of the villages granted to *L* was a charge on the taluq was maintainable in view of the provisions of S. 42 of the Specific Relief Act. (*Mr. Ameer Ali.*) SUNDARLAL *v.* RAMJILAL. (1920) **47 I. A. 149** = **47 C. 932** = **24 C. W. N. 929** = **16 N. L. R. 114** = **28 M. L. T. 319** = (1920) **M. W. N. 447** = **12 L. W. 311** = **57 I. C. 156** = **2 U. P. L. R. (P. C.) 19.**

———Revenue on property subject of—Covenant by grantor to pay—Personal covenant only or charge also created. *See* HINDU LAW—IMPARTIBLE ESTATE—JUNIOR MEMBERS OF—MAINTENANCE OF. (1920) **47 I.A. 149 (163)** = **47 C. 932 (949-50).**

———Resumption of—Grantor's right of—Ahbans—Custom among. *See* TRIBES—AHBANS—MAINTENANCE. (1883) **10 I.A. 133 (136)** = **10 C. 238 (241-2).**

———*Sister married—Gift to—Estate of inheritance to her—Life estate to her with remainder to her husband.*

A Hindu executed a document called a danpatra in favour of his married sister, *S*. By the document he declared that he did of his own free will make a gift to *S* of an eight share of a mouzah for her maintenance. The document contained the following words:—

"You shall annually pay Rs. 3,611-4-2, the annual Government revenue of the said moiety to the Collectorate of *R*, and get your name registered to the extent of the said amount of Government revenue, and enjoy possession during your lifetime. On your death, your husband, sons, grandsons, and other heirs in succession will continue to enjoy and possess. The power to dispose of by gift or sale will successively vest in your husband, sons, grandsons, and others."

Held that, on the true construction of the deed, *S* took an heritable estate (184).

The words "on your death your husband, sons, grandsons and other heirs in succession will continue to enjoy and possess" are sufficient to shew that the heirs were to succeed as such, notwithstanding that those who would take as heirs are named in wrong order, or (in other words) there is an inaccurate enumeration of them. And the words that immediately follow confirm this construction (184). (*Lord Davey*). BASANTA KUMARI DEBI *v.* KAMIKSHYA KUMARI DEBI. (1905) **32 I.A. 181** = **33 C. 23 (28)** = **2 C.L.J. 238** = **10 C.W.N. 1** = **7 Bom. L.R. 904** = **2 A.L.J. 810** = **9 Sar. 1** = **15 M.L.J. 320.**

———*Step-mother—Grant by step-son to—Estate conveyed—Allotment to her of definite shares of her husband's assets and debts.*

When an arrangement is come to by which a step-mother is to receive a sum for maintenance, the presumption is that an absolute interest is not intended to be conferred upon her.

Held that that presumption had no application to a case in which the interest created in favour of the step-mother was, not by way of a transaction following a decree of the Court, but as the result of a transaction of a voluntary nature entered into by the step-sons and the step-mother with considerations *pro and contra*, and the lady was made in point of fact responsible for a definite share of the debts as well as being made entitled to a definite share of the assets of her late husband. (*Lord Shaw*). SAHEB RAI *v.* SHAFIQ AHMAD. (1927) **26 L.W. 82** = **4 O.W.N. 534** = **A.I.R. (1927) 101 P.C.** = **31 C.W.N. 972** = **101 I.C. 426** = **53 M.L.J. 507.**

———*Temination of, with life of grantor.*

The appellant admits that a grant for maintenance ceases with the life of the grantor (103). (*Lord Langdale*). ANUND LAL SING DEO *v.* MAHARAJA DHERAJ GURROOD NARAYAN DEO BAHADOOR. (1850) **5 M.I.A. 82** = **1 Suth. 221** = **1 Sar. 399.**

———*Trust or charge if created by—Grant to a person to hold possession and support his dependants and relations—Trust or charge in their favour if created.*

Where by a sunnud, in the nature of a deed of maintenance, villages and lands were granted to *J*, to hold "possession of the villages and lands, and support his dependants and relations from generation to generation," *Quaer* whether the maintenance of the two classes of persons was what English lawyers would call a trust, or a charge, affecting the lands in favour of the class to be maintained. (*Lord Justice Knight Bruce*). RAJAH NURSING DEB *v.* KOYLASNATH ROY. (1862) **9 M.I.A. 55** = **1 Sar. 842.**

———*Words "Proprietor," "For ever" in—Estate conveyed in case of.*

Where the purpose of the grant is the maintenance of the grantee, such purpose goes to show that the grant was intended to be for the life of the grantee only. In the case of such a grant the words "proprietor" and "for ever" will not *per se* create an heritable estate.

Held that a gift of villages made by a talookdar to a junior member of the joint family as a maintenance grant enured for the life of the grantee only, notwithstanding the use of the words "proprietor" and "for ever" (9-10). (*Sir Richard Couch*). RAJAH RAMESHAR BAKSH SINGH *v.* ARJUN SINGH. (1900) **28 I.A. 1** = **23 A. 194 (204-5)** = **7 Sar. 804.**

———Words—Support "in various ways" in—Meaning—Support "in some way or other." *See* GRANT—CONSTRUCTION—MAINTENANCE—PROPERTY TO BE ASSIGNED, ETC. (1888) **15 I.A. 149 (154)** = **16 C. 71 (78-9).**

HERITABLE INTEREST—AGREEMENT FOR PAYMENT OF MAINTENANCE CREATING.

———*See* HINDU LAW—MAINTENANCE—AGREEMENT FOR PAYMENT OF. (1899) **27 I.A. 51** = **22 A. 191.**

ILLEGITIMATE SON.

———Maintenance of. *See* UNDER HINDU LAW—ILLEGITIMATE SON.

IMPARTIBLE ESTATE.

———Junior members of—Maintenance of. *See* HINDU LAW—IMPARTIBLE ESTATE—JUNIOR MEMBERS—MAINTENANCE OF.

———Maintenance out of. *See* HINDU LAW—IMPARTIBLE ESTATE—MAINTENANCE OUT OF.

HINDU LAW—(*Contd.*)

Maintenance—(*Contd.*)

JOINT FAMILY—WIDOW OF DECEASED MEMBER OF—MAINTENANCE OF—ALLOTMENT OF PORTION OF JOINT ESTATE IN SATISFACTION OF.

———No partitiou by. *See* HINDU LAW—JOINT FAMILY—WIDOW—MAINTENANCE OF LAND ALLOTMENT FOR. (1899) **27 I.A.** 39 (41) = **27 C.** 515 (519).

MITHAKSHARA LAW—MAINTENANCE RIGHT UNDER.

———*Basis of—Relationship—Proprietary interest—Persons entitled by reason of.*

There are, however, certain persons who, as is explained by the express texts of the Mithakshara, while not entitled to succeed as co-owners, are given rights of maintenance. There is the category of persons who by reason of personal disqualification are not allowed to inherit. Such are the idiot, the blind from birth, the mad man, etc. Such persons are debarred from the rights of co-parcenary, but are given maintenance in lieu. That this is owing not to denial of their birth status, but to a personal disqualification preventing enjoyment, is clear by the fact that the children of such persons, being within the allowed degrees and not themselves stigmatized with the personal defect, get by their birth the full status of co-parcenary (153-4).

There must also be added another class, equally the subject of special texts. The right of this class to maintenance lies in personal relationship, but is limited to the widow, the parent, and the infant child. It does not include the grandson. It is obvious that so far as certain individuals are concerned this category overlaps the first. But it is an obligation which is independent of the fact of there being ancestral or joint family property. It is an obligation attaching to the individual. These categories exhaust the classes of persons who have such a right to maintenance under the Mithakshara law (154). (*Lord Dunedin*). RAMA RAO *v.* RAJA OF PITTAPUR. (1918) **45 I.A.** 148 = **41 M.** 778 (784-5) = **24 M.L.T.** 276 = (1918) **M.W.N.** 922 = **23 C.W.N.** 173 = **28 C.L.J.** 428 = **20 Bom. L.R.** 1056 = **16 A.L.J.** 833 = **5 Pat. L.W.** 267 = **47 I.C.** 354 = **35 M.L.J.** 392.

———Co-parcenary—Right based on—Beginning and end of. *See* HINDV LAW—MAINTENANCE—CO-PARCENARY, ETC. (1918) **45 I.A.** 148 (153) = **41 M.** 778 (784).

MOTHER.

———Maintenance of. *See* HINDU LAW—MOTHER—MAINTENANCE OF.

PAYMENT OF, ON POSSESSION OF ESTATE BEING OBTAINED BY CONTRACTOR—AGREEMENT FOR.

———Possession not obtained by him—Effect. *See* HINDU LAW—MAINTENANCE—AGREEMENT FOR PAYMENT OF, ETC. (1899) **27 I.A.** 51 = **22 A.** 191.

PROPERTY ALLOTTED FOR, WITHOUT POWER OF TRANSFER—ATTACHMENT AND SALE OF.

———*Validity—Decree-holder's remedy in case of.*

Under a compromise between the judgment-debtor and his brother, the judgment-debtor was declared to have a right of maintenance in certain villages enumerated, the right being conferred expressly "without power of transfer."

Held that the judgment-debtor's right in the villages was, under S. 60 (*n*) of Civil Procedure Code of 1908, neither attachable nor saleable.

The proper remedy lies, in a fitting case, in the appointment of a Receiver for realising the rents and profits of the property paying out of the same a sufficient and adequate sum for the mainienance of the judgment-debtor and his family, and applying the balance, if any, to the liquidation

HINDU LAW—(*Contd.*)

Maintenance—(*Contd.*)

PROPERTY ALLOTTED FOR, WITHOUT POWER OF TRANSFER—ATTACHMENT AND SALE OF—(*Contd.*)

of the judgment-creditor's debt. (*Lord Shaw*). RAJINDRA NARAIN SINGH *v.* SUNDARA BIBI. (1925) **52 I.A.** 262 = **47 A.** 385 = **41 C.L.J.** 383 = **23 A.L.J.** 634 = **27 Bom. L.R.** 849 = **3 P.L.R.** 142 = (1925) **M.W.N.** 630 = **22 L.W.** 284 = **6 L.R. P.C.** 138 = **A. I. R.** (1925) **P. C.** 176 = **87 I. C.** 295 = **49 M. L. J.** 244.

PROPERTY ASSIGNED FOR—RENT PAYABLE FOR—ALTERATION OF.

———Settlement Officer's order—Note in—If effects such alteration. *See* HINDU LAW—ILLEGITIMATE SON—MAINTENANCE OF. (1879) **3 Suth. 690.**

RATE OF.

———*See* HINDU LAW—MAINTENANCE—AMOUNT OF.

REFUSAL OF.

———*See* UNDER HINDU LAW—MAINTENANCE—ARREARS OF.

SON—CLAIM BY, AGAINST FATHER'S ESTATE.

———*Rate to be allowed—Data for fixing.*

The amount of the property, doubtless, is an element in determining the sufficiency of a maintenance, but it cannot be regarded as the criterion. Other circumstances, and even the position or conduct of the claimant (speaking generally and not of the particular claimant) may reduce the maintenance.

In this case, the respondent, whilst suing for a declaration that the dispositions in his father's will were void, also asked for maintenance during the continuance of the life-estate of the appellant. The respondent admitted a marriage gift of his father of real property, producing at the time Rs. 7,000 per annum, which, *prima facie*, was an adequate maintenance. His averment of its insufficiency was not that it was in fact unreasonable or inadequate, but only that it was insufficient "considering the amount and value of the said P. T.'s" (father's) "property."

Held, that if the plaint were considered well-founded in that respect, a son not provided for might compel a frugal father, who had acquired large means by his own exertions, to allow a larger maintenance than he himself was satisfied to live upon, and than children living as part of his own family must be content with (82-3). (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE. (1872) **Sup. I.A.** 47 = **9 B. L. R.** 377 = **18 W.R.** 359 = **3 Sar.** 82 = **2 Suth. 692.**

———*Satisfaction of—Marriage gift by father if a.*

Where the question was whether the obligation, moral or legal, of the father to provide a reasonable maintenance for his son, was satisfied by a marriage gift of a *prima facie* adequate income, *held*, that such a gift was in its character obviously a provision for maintenance which, in the circumstances of the case, must be regarded as sufficient (82-3). (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE. (1872) **Sup. I.A.** 47 = **9 B. L. R.** 377 = **18 W. R.** 359 = **3 Sar.** 82 = **2 Suth. 692.**

SUIT FOR—AGREEMENT PRIOR BETWEEN PARTIES FIXING AMOUNT—SUIT APART FROM—MAINTAINABILITY.

———Objection to, for first time before P. C.—Permissibility. *See* MAHOMEDAN LAW—MAINTENANCE—SUIT FOR—AGREEMENT PRIOR BETWEEN PARTIES AS TO MAINTENANCE. (1883) **10 I. A.** 45 (47) = **9 C.** 945 (949-51).

HINDU LAW—(*Contd.*)

Maintenance—(*Contd.*)

WIDOW

———Maintenance of. *See* HINDU LAW — WIDOW—MAINTENANCE.

WIFE.

———Maintenance of. *See* UNDER HINDU LAW—HUSBAND AND WIFE—WIFE—MAINTENANCE OF.

WRONGFUL WITHHOLDING OF.

———*See* UNDER HINDU LAW — MAINTENANCE — ARREARS OF.

Marriage.

(*See also* MARRIAGE AND HINDU LAW—LEGITIMACY.)

AGES OF HUSBAND AND WIFE — DIFFERENCE BETWEEN.
ANTE-NUPTIAL AGREEMENT.
ANTE-NUPTIAL SETTLEMENT.
CEREMONIES AND FORMS NECESSARY TO CONSTITUTE VALID.
DANCING-GIRL IF CAN CONTRACT.
EFFECT OF, ON WIFE'S FAMILY.
EVIDENCE OF.
INFANT MARRIAGE—CUSTOM OF.
PRESUMPTION IN FAVOUR OF.
PROOF OF—QUANTUM.
REPUTE AS TO—CONDITIONS.
SAPINDA FOR PURPOSES OF.
SISTER'S DAUGHTER—HALF-SISTER'S DAUGHTER — MARRIAGE WITH.
SUDRAS—SUB-CASTES OF—MARRIAGE AMONG.
VALIDITY OF.

AGES OF HUSBAND AND WIFE — DIFFERENCE BETWEEN.

———*Practice as regards.*

Mr. Justice Kemp thinks that Hindu marriages are usually arranged so that there is a difference considerably more than one or two years between the ages of the husband and wife; and their Lordships think this is more probable and reasonable. It is to be expected, both for physical and moral reasons, that marriages should be arranged so that the husband, when called upon to receive his wife for permanent cohabitation, should have attained the full age of adolescence, and also the age which the law fixes as that of discretion (78). (*Sir James W. Colvile.*) JUMOONA DASSYA CHOWDHRANI *v.* BAMASOONDERAI DASSYA CHOWDHARANI. **(1876) 3 I. A. 72 = 1 C. 289 (294-5) = 25 W. R. 235 = 3 Sar. 602 = 3 Suth. 222.**

ANTE-NUPTIAL AGREEMENT.

———*See* ANTE-NUPTIAL AGREEMENT.

ANTE-NUPTIAL SETTLEMENT.

———*See* DEED — CONSTRUCTION — ANTI-NUPTIAL SETTLEMENT.

CEREMONIES AND FORMS NECESSARY TO CONSTITUTE VALID.

———*Presumption in favour of.*

The second ground of attack upon the marriage rested upon the allegation that the forms and ceremonies necessary to constitute a valid marriage had not been gone through on the occasion in question. To such matters of form and ceremony the established presumption in favour of marriage undoubtedly applies (125). (*Sir Arthur Wilson.*) MONJI LAL *v.* CHANDRABATI KUMARI.
(1911) 38 I. A. 122 = 38 C. 700 = 13 Bom. L. R. 534 = 15 C.W.N. 790 = (1911) 2 M. W N. 391 = 14 C.L.J. 72 = 10 M. L. T. 53 = 11 I. C. 502 = 21 M. L. J. 933.

HINDU LAW—(*Contd.*)

Marriage—(*Contd.*)

DANCING-GIRL IF CAN CONTRACT.

———The term "Dancing-girl" denotes a particular class of woman, described in treatises on Hindu law as incapable of contracting marriage (350). (*Lord Justice James.*) RAMAMANI AMMAL *v.* KULANTHAI NATCHIAR.
(1871) 14 M. I. A. 346 = 17 W. R. 1 = 2 Suth. 493 = 2 Sar. 736.

EFFECT OF, ON WIFE'S FAMILY.

———The Hindu wife upon her marriage passes into and becomes a member of her husband's family (191). (*Sir James W. Colvile.*) SRI RAGHUNADHA *v.* SRI BROZO KISHORO. **(1876) 3 I.A. 154 = 1 M. 69 (81) = 25 W. R. 291 = 3 Sar. 583 = 3 Suth. 263.**

EVIDENCE OF.

———*Admission before Tahsildar by party disputing — Value of.*

The question was whether the late zemindar, the brother of the appellant, had in fact been married to the mother of the 1st respondent, or, she was merely his concubine, as alleged by the appellant.

Held, that an admission made by the appellant himself before the Tahsildar that such a marriage had taken place was a very material fact (155). (*Lord Justice Giffard.*) INDERUN VALUNGYPOOLY TAVER *v.* RAMASAMY PANDIA TALAVAR. **(1869) 13 M.I.A. 141 = 12 W.R.P.C. 41 = 3 B. L. R. 1 = 2 Suth 267 = 2 Sar. 498.**

———*Criminal case — Magistrate's judgment in — Note in, of admission of marriage made to Magistrate—Admissibility of, in civil suit raising issue as to marriage.*

In a civil suit the question was whether the defendant was a married man and the father of children. To prove the fact that he was a married man and the father of children the plaintiff relied upon a statement in the judgment of the Magistrate in a criminal case against the defendant that an admission of the marriage was made in the course of it.

Held, that the note of the admission made to the magistrate was rightly rejected as not being by itself evidence of the fact recorded therein (81). (*Lord Shaw.*) RAM PARKASH DAS *v.* ANAND DAS. **(1916) 43 I.A. 73 = 43 C. 707 (720-1) = 33 I. C. 583 = 20 C. W. N. 802 = 14 A. L. J. 621 = (1916) 1 M. W. N. 406 = 18 Bom. L. R. 49 = 24 C. L. J. 116 = 20 M. L. T. 267 = 3 L.W. 556 = 31 M. L. J. 1.**

———*General statements of belief on part of witnesses—Weight due to—Evidence conclusive upon material particulars available but not called.*

In face of the fact that conclusive evidence upon material particulars with regard to the issue having been available to the defendants and not called, their Lordships are not prepared to accept in lieu thereof general statements of belief on the part of other witnesses to the effect that, so far as they know, the defendant No. 2 is not a married man, and that his conduct in representing himself and acting as mahant proves that he is not disqualified (82-3). (*Lord Shaw.*) RAM PARKASH DAS *v.* ANAND DAS.
(1916) 43 I. A. 73 = 43 C. 707 = 33 I. C. 583 = 20 C. W. N. 802 = 14 A. L. J. 621 = (1916) 1 M. W. N. 406 = 18 Bom. L. R. 49 = 24 C. L. J. 116 = 20 M. L. T. 267 = 3 L. W. 556 = 31 M. L J. 1.

———*Husband's family—Members of alleged—Evidence of—Weight due to.*

The question was whether the plaintiff was the wife of a deceased Zemindar.

HINDU LAW—(*Contd.*)

Marriage—(*Contd.*)

EVIDENCE OF—(*Contd.*)

The plaintiff called many witnesses, twenty-four in number, thirteen of whom deposed to the marriage; amongst those, not fewer than 5 witnesses of the Zemindar's family, nearly allied to him, *prima facie* at least, unimpeached and credible witnesses, proved their actual presence at the marriage.

Held, that the members of the Zemindar's family were such witnesses as a Court would ordinarily desire to hear on a question of the kind in issue before it, and would be most disposed to trust (351). They are the very witnesses whose evidence in like cases is looked for by a Court, and the absence of which weakens every case where such absence is found (355). (*Lord Justice James.*) RAMAMANI AMMAL *v.* KULANTHAI NATCHIAR. **(1871) 14 M. I. A. 346 = 17 W. R. 1 = 2 Suth. 493 = 2 Sar. 736.**

———*Treatment of children as legitimate.*

Where the question was whether the plaintiff was the wife of a deceased Zemindar, *held*, that the treatment by the deceased of his children by her as legitimate would by itself, unless answered, suffice to establish a claim to a direct lineal succession against a reversioner, and must receive due weight (355-6). (*Lord Justice James.*) RAMAMANI AMMAL *v.* KULANTHAI NATCHIAR.

(1871) 14 M. I. A. 346 = 17 W. R. 1 = 2 Suth. 493 = 2 Sar. 736.

INFANT MARRIAGE—CUSTOM OF.

———*Foundation of—Objection of.*

The foundation upon which marriages between infants, which so many philosophical Hindus consider one of the most objectionable of their customs, is the religious obligation which is supposed to lie upon parents of providing for their daughter, so soon as she is *matura virgo*, a husband capable of procreating children; the custom being that when that period arrives, the infant wife permanently quits her father's house, to which she had returned after the celebration of the marriage ceremony, for that of her husband. (*Sir James Colvile.*) JUMOONA DASSYA CHOWDHRANI *v.* BAMASOONDERAI CHOWDHRANI.

(1876) 3 I. A. 72 (78) = 1 C. 289 (295-6) = 25 W. R. 235 = 3 Sar. 602 = 3 Suth. 222.

PRESUMPTION IN FAVOUR OF.

———*Applicability of — Validity of marriage and of legitimacy of offspring admitted but point as to whether marriage was conducted in such a way as to confer a particular status and precedence upon offspring—Case of.*

The presumption which exists in favour of a marriage and against concubinage, and in favour of legitimacy and against bastardy, ought not to be extended to a case in which the validity of the marriage and the legitimacy of the offspring are admitted and where the only point is as to whether the marriage was conducted in such a way as to confer a particular status and precedence upon the offspring of the union. (*Lord Chancellor.*) MOLAPO MOJELA *v.* THABO LEROTHOLI MOJELA. **(1928) 28 L. W. 744 = 111 I. C. 193 = 5 O. W. N. 1142 = A. I. R. 1928 P. C. 276.**

———*Ceremony of marriage—Proof of—Effect.*

It would be a most unlikely thing for a person of the caste of the late Zemindar to go through the ceremony of marriage, if it was known that that marriage was a marriage which was invalid in law (158). (*Lord Justice Giffard.*) INDERUN VALUNGYPOOLY TAVER *v.* RAMASAMY PANDIA TALAVER. **(1869) 13 M. I. A. 141 = 12 W. R. P. C. 41 = 3 B. L. R. 1 = 2 Suth. 267 = 2 Sar. 498.**

HINDU LAW—(*Contd.*)

Marriage—(*Contd.*)

PRESUMPTION IN FAVOUR OF—(*Contd.*)

———Where the question was whether *G* was married to *P*, and it appeared that from the time of the alleged marriage *P* and *G* were recognised by all persons concerned as man and wife, and so described in important documents and on important occasions; that their daughters were respectably married as would be natural in the case of legitimate children; and that a ceremony of marriage undoubtedly took place, though its validity was attacked, *held*, that there was an extremely strong presumption in favour of the validity of the marriage and the legitimacy of its offspring (125). (*Sir Arthur Wilson.*) MONJI LAL *v.* CHANDRABATI KUMARI.

(1911) 38 I. A. 122 = 38 C. 700 = 13 Bom. L. R. 534 = 15 C. W. N. 790 = (1911) 2 M. W. N. 391 = 14 C. L. J. 72 = 10 M. L. T. 53 = 11 I. C. 502 = 21 M. L. J. 933.

———*Cohabitation and repute—Presumption from—Conditions.*

Before applying the presumption of marriage arising from cohabitation with habit and repute, it is necessary to make sure that the conditions necessary for its existence do exist. First of all, there must be some body of neighbours, many or few, or some sort of public, large or small, before repute can arise. Secondly the habit and repute, which alone is effective, is habit and repute of that particular status which, in the country in question, is lawful marriage (45). (*Lord Robertson.*) MA WUN DI *v.* MA KIN.

(1907) 35 I. A. 41 = 35 C. 232 (239-40) = 3 M. L. T. 93 = 7 C. L. J. 112 = 12 C. W. N. 220 = 10 Bom. L. R. 41 = 5 A. L. J. 63 = 14 Bur. L. R. 3 = 4 L. B. R. 175 = 18 M. L. J. 3.

———*Cohabitation and repute — Presumption from — England—Oriental nations with lax notions of sex relationship—Distinction.*

English and oriental customs differ widely as regards the relations of the sexes. Among most English people, open cohabitation in many classes of society of itself sets up, as a matter of fact, a repute of marriage. But in countries where customs are different it is necessary to be more discriminating, more especially owing to the laxity with which the word "wife" is used by witnesses in regard to connections not reprobated by opinion but not constituting marriage. (*Lord Robertson.*) MA WUN DI *v.* MA KIN.

(1907) 35 I.A. 41 (45) = 35 C. 232 (240) = 3 M.L.T. 93 = 7 C. L. J. 112 = 12 C. W. N. 220 = 10 Bom. L. R. 41 = 5 A. L. J. 63 = 14 Bur. L. R. 3 = 4 L.B.R. 175 = 18 M.L.J. 3.

———De facto *marriage—Proof of—Effect.*

If there was a marriage in fact was there a marriage in law? When once you get to this, *viz.*, that there was a marriage in fact, there would be a presumption in favour of there being a marriage in law (158). (*Lord Justice Giffard.*) INDERUN VALUNGYPOOLY TAVER *v.* RAMASAMY PANDIA TALAVER. **(1869) 13 M. I. A. 141 = 12 W. R. P. C. 41 = 3 B. L. R. 1 = 2 Suth. 267 = 2 Sar. 498.**

———If a marriage *de facto* were proved by the plaintiff's witnesses, it lay on the defendants to show conclusively that such *de facto* marriage could not legitimate the children of it (351). (*Lord Justice James.*) RAMAMANI AMMAL *v.* KULANTHAI NATCHIAR. **(1871) 14 M. I. A. 346 = 17 W. R. 1 = 2 Suth. 493 = 2 Sar. 736.**

———A marriage *de facto* then being established and supported by recognition by the deceased Zemindar of these children as legitimate, the very strongest evidence would be required to show that the law denied to these children their presumable legal *status*, on the ground of their mother's in-

HINDU LAW—(*Contd.*)

Marriage—(*Contd.*)

PRESUMPTION IN FAVOUR OF—(*Contd.*)

capacity to contract a marriage (359-60). (*Lord Justice James.*) RAMAMANI AMMAL *v.* KULANTHAI NATCHIAR. **(1871) 14 M. I. A. 346 = 17 W. R. 1 = 2 Suth. 493 = 2 Sar. 736.**

———*Lady admittedly taken to alleged husband's house for purposes of marriage—Detention of her by him and their living together without protest from her parents—Presumption in case of.*

The question was whether a lady, the mother of the 2nd defendant, was the lawfully married wife of a deceased poligar. It was proved that the lady had been carried to the poligar's palace for the purpose of being married; and she gave her own evidence in the case, and swore to the fact of a marriage having taken place. There was no evidence whatever to shew that her parents ever complained that she had not been married, or that she was detained in the palace by the deceased poligar against her will, or that he had taken her there under pretence of marrying her and had then refused to do so.

Held that, if the case were true that the deceased poligar had not married the lady, one would expect that some evidence would have been given to shew that the father and mother of the lady had complained of the manner in which their daughter had been treated, and that they had been deceived in allowing her to go to the palace, under the pretence that she was to be married (291). (*Sir Barnes Peacock.*) PEDDA AMANI AND CHINNA AMANI *v.* ZAMINDAR OF MARUNGAPURI. **(1874) 1 I.A. 282 = 14 B. L. R. 115 = 21 W. R. 358 = 3 Sar. 318.**

———*Mental incapacity to contract—Invalidity on ground of, alleged.*

Their Lordships agree with the learned judges of the High Court in thinking that, to put it at the highest, the objection to a marriage on the ground of mental incapacity must depend on a question of degree, and that in the present case the evidence of mental infirmity is wholly insufficient to establish such a degree of that defect as to rebut the extremely strong presumption in favour of the validity of the marriage (125). (*Sir Arthur Wilson.*) MONJI LAL *v.* CHANDRABATI KUMARI. **(1911) 38 I. A. 122 = 38 C. 700 = 13 Bom. L. R. 534 = 15 C. W. N. 790 = (1911) 2 M.W.N. 391 = 14 C. L. J. 72 = 10 M.L.T. 53 = 11 I. C. 502 = 21 M. L. J. 933.**

PROOF OF—QUANTUM.

———*Held*, on the evidence affirming the courts below, that the appellant had failed to establish the alleged marriage of his father with his mother, and that consequently his claim as the legitimate son of his father could not be sustained (45). (*Sir Edward Ryan.*) CHUOTURYA RUN MURDUN SYN *v.* SAHUB PURHULAD SYN. **(1857) 7 M.I.A. 18 = 4 W.R. 132 = 1 Suth. 313 = 1 Sar. 591.**

———*Wife alleged to be a dancing-girl.*

The suit was brought by the appellant, as mother and guardian of her infant son, to establish his right as the legitimate and sole son and heir of one *S*, to inherit the property, moveable and immovable, of the father. The plaintiff claimed as a widow, stating herself to have been the second wife of the deceased. The first defendant was the childless widow of the late Zemindar. The defendant pleaded that the plaintiff was a dancing-girl, and treating that *status*, or caste, as continuing, she insisted that she could not be the wife of her alleged husband, that her son could not, since she was a prostitute, be the son of the late Zemindar, and could not have any title to inherit, even had a marriage between the Zemindar and the child's mother

HINDU LAW—(*Contd.*)

Marriage—(*Contd.*)

PROOF OF—QUANTUM—(*Contd.*)

been celebrated in fact. She denied that any marriage had taken place.

Held, on the evidence, reversing the High Court and restoring the trial judge, that plaintiff was not a dancing-girl but was a legitimate daughter of a Vellala, that she had been validly married to the deceased Zemindar and was his lawful wife and that her son was the legitimate son of the deceased and therefore entitled to inherit his estate. (*Lord Justice James.*) RAMAMANI AMMAL *v.* KULANTHAI NATCHIAR. **(1871) 14 M. I. A. 346 = 17 W. R. 1 = 2 Suth. 493 = 2 Sar. 736.**

———In this appeal the question was whether the 2nd defendant in the suit was the legitimate brother of the deceased poligar of Marungapuri. The High Court had held that he was, and their Lordships thought there was sufficient evidence to support the finding of the High Court (287-8).

There is some express evidence as to the marriage having taken place, and there is no doubt whatever that the lady, the mother of the second defendant, was taken to the palace of his father for the purpose of being married. It may be taken as a fact that the marriage was interrupted, but there is evidence from which it may be presumed that, notwithstanding that interruption, a marriage did take place between the father and the mother of the second defendant prior to his birth (288). Further, we have the admission of the late Zemindar that the second defendant was his brother, and we have also the admission of the plaintiff (the widow of the late Zemindar), and his other widows, that the second defendant was the son of the lawfully married wife of his father (291). (*Sir Barnes Peacock*). PEDDA AMANI AND CHINNA AMANI *v.* ZAMINDAR OF MARUNGAPURI. **(1874) 1 I. A. 282 = 14 B. L. R. 115 = 21 W. R. 358 = 3 Sar. 318.**

———Where the question was whether the appellant was the lawfully wedded wife of one *R*, *held* that, in spite of certain circumstances militating against the theory of marriage, the preponderance of evidence was in favour of the appellant.

Their Lordships reversed the judgment of the High Court. (*Lord Robertson*). LUCHMI KOER *v.* CHOWDHRY MOHUNT ROGHUNATH DAS. **(1900) 27 I. A. 142 = 27 C. 971 = 4 C. W. N. 685 = 7 Sar. 734.**

REPUTE AS TO—CONDITIONS.

———*Neighbours or public—Existence of—Necessity.*

There must be some body of neighbours, many or few, or some sort of public, large or small, before repute can arise. (*Lord Robertson.*) MA WUN DI *v.* MA KIN. **(1907) 35 I. A. 41 (45) = 35 C. 232 (239) = 3 M. L. T. 93 = 7 C. L. J. 112 = 12 C. W. N. 220 = 10 Bom. L. R. 41 = 5 A. L. J. 63 = 14 Bur. L. R. 3 = 4 L. B. R. 175 = 18 M. L. J, 3.**

SAPINDA FOR PURPOSES OF.

———Meaning of. *See* HINDU LAW—INHERITANCE—SAPINDA—DEFINITION OF. **(1880) 7 I. A. 212 (233) = 5 B. 110 (120).**

SISTER'S DAUGHTER—HALF-SISTER'S DAUGHTER—MARRIAGE WITH.

———*Validity—Brahmins.*

In this case the first court held that a Hindu (Brahmin) could not legally marry his own half-sister's daughter, but the High Court, without formally deciding the point, threw out the opinion that a sister's daughter was a non-sapinda and that therefore a Hindu might have intermarried his half-sister's daughter.

HINDU LAW—(*Contd.*)

Marriage—(*Contd.*)

SISTER'S DAUGHTER—HALF-SISTER'S DAUGHTER—MARRIAGE WITH—(*Contd.*)

Their Lordships, without expressing any opinion on the point, thought that the reasons assigned by the High Court for their view were not satisfactory (177). (*Sir Barnes Peacock.*) KARUNABDI GANESA RATNAMAIYAR *v.* GOPALA RATNAMAIYAR. **(1880) 7 I. A. 173 = 2 M. 270 (279) = 4 Sar. 149 = 3 Suth. 740.**

SUDRAS—SUB-CASTES OF—MARRIAGE AMONG.

———*Validity.*

Seeing that these parties are both of the Sudra caste and that the utmost that has been alleged really is, that the Zemindar was of one part of the Sudra Caste, and the lady to whom he was married was of another part, or of a sub-caste, their Lordships hold the marriage to have been valid; to hold the contrary would in fact be introducing a new rule, and a rule which ought not to be countenanced (159). (*Lord Justice Giffard.*) INDERUN VALUNGYPOOLY TAVER *v.* RAMASWAMY PANDIA TALAVER.

(1869) 13 M. I. A. 141 = 12 W. R. P.C. 41 = 3 B. L. R. P.C. 1 = 2 Suth. 267 = 2 Sar. 498.

———A marriage between persons of two sub-classes of the Sudra caste is perfectly legal (352).

In this case the woman was of the Vellala caste and the husband was of the Maravar caste. (*Lord Justice James.*) RAMAMANI AMMAL *v.* KULANTHAI NATCHIAR.

(1871) 14 M.I.A 346 (352) = 17 W. R. 1 = 2 Suth. 493 = 2 Sar. 736.

VALIDITY OF.

——— Presumption as to. *See* HINDU LAW—MARRIAGE—PRESUMPTION IN FAVOUR OF.

Migrating family—Law applicable to.

———*Bengali Sudra Satgops—Family of, which had migrated, at a remote period, from Burdwan to Poornea.*

The question was as to the law of inheritance applicable to the family of the parties, whether it was the Bengal or the Mythila law. *R* was the last male owner.

The parties were members of a family of Bengali Soodra Satgops, which had migrated, at a remote period, from the district of Burdwan, in the south-western part of Bengal, to the district of Poornea. The properties the succession to which was in question in the cause were situate in Poornea in the north of the province of Bengal. The court below found upon the evidence that the family had adopted and performed their religious rites and ceremonies, according to the law of Mythila, and held that the Mythila law governed the descent of its property,

Their Lordships affirmed the decision of the court below (290-1).

So far from there being anything in the facts before us which is inconsistent with the conclusion of the Court below, the most important fact appears to us to be consistent with it, and only consistent with it. On the death of the father of *R*, *R* and *P* his brother, became joint proprietors, and entered into possession of the suit estate. *P* died, leaving a widow, and, according to the Bengal Law, the widow of *P* would have been entitled, under those circumstances, to succeed to the share of *P* for her life. It appears, however, that *R*, upon the death of *P*, presented a petition, stating his title as a title to the whole estate, and that he was let into possession of it, and that she was entitled to maintenance out of it, according to the Mythila law, and that that maintenance was preserved to her. Again, upon the death of *R*, the appellant herself presented a petition, and she claimed, under the will (which she alleged that the

HINDU LAW—(*Contd.*)

Migrating family—Law applicable to—(*Contd.*)

deceased *R* had executed in her favour but which has been found against), the whole of the property of *R*. It seems, therefore, clear that, upon the death of *P* and upon the death of *R*, the succession was regulated by the Mythila Law, and not by the Bengal Law. (*Mr. Pemberton Leigh.*) RANY PUDMAVATI *v.* BABOO DOOLAR SING.

(1847) 4 M. I. A. 259 = 7 W. R. 41 P. C. = 1 Suth. 178 = 1 Sar. 348.

———*India—Migration from, to another country.*

When a family governed by the Hindu Law of succession emigrate from India to another country, and, being themselves Mahomedans, settle among Mahomedans, the presumption that they have accepted the law of the people whom they have joined seems to be one that should be much more readily made. All that has to be shown is that they have so acted as to raise the inference that they have cut themselves off from their old environments. The analogy is that of a change of domicil on settling in a new country rather than the analogy of a change of custom on migration within India. The question is simply one of the proper inference to be drawn from the circumstances (41). (*Viscount Haldane.*) ABDURAHIM HAJI ISMAIL MITHU *v.* HALIMABAI. **(1915) 43 I. A. 35 = 20 C. W. N. 362 = (1916) 1 M. W.N. 176 = 18 Bom. L. R. 635 = 32 I. C 413 = 30 M. L. J. 227.**

———*India—Migration from one part of, to another.*

Where a Hindu family migrate from one part of India to another, *prima facie* they carry with them their personal law, and if they are alleged to have become subject to a new local custom, this new custom must be affirmatively proved to have been adopted (41). (*Viscount Haldane.*) ABDURAHIM HAJI ISMAIL MITHU *v.* HALIMABAI.

(1915) 43 I. A. 35 = 20 C. W. N. 362 = (1916) 1 M. W. N. 176 = 18 Bom. L R. 635 = 32 I. C. 413 = 30 M. L. J. 227.

———*Mahratta Brahmin whose original abode was Bombay—Property of, in Central Provinces—Succession to—Question as to.*

The question was as to the law governing the succession to the estate of *B*, who died, leaving amongst other properties, two mouzas situated in the Wardha district of the Central Provinces. It was found that *B* was a Maharashtra Brahman, though it was not known whether *B* had himself emigrated, or whether his ancestors had done so. There was no trace of evidence that *B* had ever renounced the law as expounded in Bombay, that is, the law of his original abode. The Courts below, treating the question as one of domicil, found that the deceased had his real domicil in the Central Provinces, and held that the law prevailing in the Central Provinces governed the succession.

Held that that was not the way to approach the subject.

The question was not one of domicil; the family of *B* was subject to the law as expounded in Bombay and as there was no trace of renunciation of that law, it continued to govern the succession to *B's* estate (219-21). (*Lord Dunedin*). BALWANT RAO *v.* BAJI RAO.

(1920) 47 I. A. 213 = 48 C. 30 (39-40) = 25 C. W. N. 243 = 18 A. L. J. 1049 = (1920) M. W. N. 483 = 28. M. L. T. 157 = 12 L. W. 679 = 22 Bom. L. R. 1070 = 57 I. C. 545 = 39 M. L. J. 166.

———*Original abode—Law of—Presumption of applicability of.*

It is undisputed that these people came from the North-West Provinces. Tradition names Dharanaggar as their original home; but the precise place is of no moment, for it is not suggested that in any place in the North-West does

HINDU LAW—(*Contd.*)

Migrating family—Law applicable to—(*Contd.*)

the Dayabhaga prevail. The presumption therefore is that the family continued to observe the Mithakshara. (*Lord Robertson.*) SRIMATI RANI PARBATI KUMARI DEBI *v.* JAGADIS CHUNDER DHABAL.

(1902) 29 I. A. 82 (95-7) = 29 C. 433 (452) = 6 C. W. N. 490 = 4 Bom. L. R. 365 = 8 Sar. 205.

———*Original abode—Law of—Retention of—Evidence of.*

A Hindu family migrated many generations before the date of suit from Mithila, where the Mithakshara law was prevalent at the time of the migration, and continued to prevail at the date of the suit, and settled in Bengal, where the Dayabhaga prevailed. In a suit relating to the right to succeed to property belonging to a member of that family and wholly situate in Bengal, it appeared that the family came to Bengal attended by Ministers of religion, and continued joint, retaining their customs, usages, and religious observances, as before their migration, according to the doctrines of the Mithakshara. On a question arising as to which law was applicable to the case, the Mithakshara or the Dayabhaga, *held* that the former, and not the latter, the *lex loci*, was the governing authority to determine the right of succession.

From the admissions in the pleading and from the evidence, it may be safely concluded that this family came from a part of India where the Mithakshara was and is the governing authority; that it came not unattended by Ministers of religion, and that it originally continued in Bengal its ancient law. As, at the time of that migration, the Mahomedan was the governing power, and as the Hindus were rather connived at than sanctioned by the governing power in the exercise of their religion, their law was in the nature of a personal usage or custom, and it is probable that migratory families, or tribes amongst Hindus would retain their own usages (95-96). This, indeed, is not decisive of the question as to the devolution of property in the family by right of succession, since a family might retain its religious rights, and yet acquiesce in a devolution of property in the common course of descent of property in that district, amongst persons of the same race. But still there is in the Hindu law so close a connection between their religion and their succession to property, that the preferable right to perform the Sraddh is commonly viewed as governing also the question of the preferable right to succession of property; and as a general rule they would be expected to be found in union. Now, it is proved by the Purohit, the proper witness to be adduced for the purpose, that the surviving member of the family performed the Sraddh of his deceased cousin, and that proof is not opposed by counter-proof. It is a fact, which, unexplained, bears strongly on the question of the right to the succession being under the Mithakshara, and should have inclined the scale in favour of that side (which contended that the Mithakshara continued to apply), especially when it is remembered that a presumption existed in favour of the continuance of the ancient family custom (96-7). (*Sir James W. Colvile.*) SOORENDRANATH ROY *v.* MUSSUMAT HEERAMANEE BURMONEAH.

(1868) 12 M. I. A. 81 = 10 W. R. P. C. 35 = 1 B. L. R. P. C. 26 = 2 Suth. 147 = 2 Sar. 372.

———Where the question is whether a migrating family continued to observe the law of its original abode, or adopted the law of the place of their new settlement, the evidence which, next to successions, is valuable is that relating to ceremonies at marriages, births and Sraddhs (*Lord Robertson.*) SRIMATI RANI PARBATI KUMARI DEBI *v.* JAGADIS CHUNDER DHABAL. **(1902) 29 I. A. 82 = 29 C. 433 (452) = 6 C. W. N. 490 = 4 Bom. L. R. 365 = 8 Sar. 205.**

HINDU LAW—(*Contd.*)

Migrating family—Law applicable to—(*Contd.*)

———When the question is whether a migrating family continued to observe the law of its original abode, or adopted the law of the place of their new settlement, the occasions which afford the most direct evidence are successions. (*Lord Robertson.*) SRIMATI RANI PARBATI KUMARI DEBI *v.* JAGADIS CHUNDER DHABAL.

(1902) 29 I. A. 82 = 29 C. 433 (452) = 6 C. W. N. 490 = 4 Bom. L. R. 365 = 8 Sar. 205.

———*Original abode—Law of, as it was at time of emigration—Applicability of—Customs subsequent becoming incorporated in that law—Binding nature of.*

The law of succession is in any given case to be determined according to the personal law of the individual whose succession is in question. If nothing is known about a man except that he lived in a certain place, it will be assumed that his personal law is the law which prevails in that place. In that sense only is domicil of importance. But if more is known, as for example, that he was an immigrant, then in accordance with that knowledge his personal law must be determined; unless it can be shown that he has renounced his original law in favour of the law of the place to which he migrated (219). The law which, subject to renunciation, governs an emigrated family, is the law of the original abode as it was when the family left it. A subsequent judgment declaratory of the law of the original abode as having always been would bind; but it would be a different thing if subsequent customs became incorporated in the law (222). (*Lord Dunedin.*) BALWANT RAO *v.* BAJI RAO.

(1920) 47 I. A. 213 = 48 C. 30 (39-40) = 25 C. W. N. 243 = 18 A. L. J. 1049 = (1920) M. W. N. 483 = 28 M. L. T. 157 = 12 L. W. 679 = 22 Bom. L. R. 1070 = 57 I.C. 545 = 39 M. L. J. 166.

———*Original abode—Religion of—Retention of—Effect.*

In a case where a family migrates from one territory to another, if they preserve their ancient religious ceremonies, they also preserve the law of succession. If they preserve their ancient religion, the law of succession would be according to the country from whence they migrated (166). (*Mr. Baron Parke.*) RUTCHEPUTTY DUTT JHA *v.* RAJUNDER NARAIN RAE. **(1839) 2 M. I. A. 132 = 2 Suth. 1 = 1 Sar. 161.**

———The last owner of the property in dispute was of a family which had formerly come from the Upper Provinces, and, though settled in Lower Bengal, where the property in dispute is situated, is admitted to have retained the ceremonial and other law of its original habitat. There is, therefore, no dispute that any question touching the succession to the last owner is determinable by the law of inheritance current at Benares (458-9). (*Sir James Colvile.*) GRIDHARI LALL ROY *v.* THE BENGAL GOVERNMENT.

(1868) 12 M. I. A. 448 = 10 W. R. P. C. 31 = 1 B. L. R. P. C. 44 = 2 Suth. 159 = 2 Sar. 382.

———*See also* HINDU LAW—MIGRATING FAMILY—LAW APPLICABLE TO—ORIGINAL ABODE—LAW OF—RETENTION OF—EVIDENCE OF.

Minor—

AGE—FRAUDULENT MISREPRESENTATION AS TO.
AGE OF DISCRETION.
COMPROMISE AFFECTING.
COMPROMISE DECREE AFFECTING.
CONTRACT BY.
COURT OF WARDS REPRESENTING — DECREE AGAINST MINOR IN CASE OF—VALIDITY OF.
CUSTODY OF.
DAMAGES—LIABILITY FOR.
DECREE AGAINST.

HINDU LAW—(*Contd.*)

Minor—(*Contd.*)

De facto GUARDIAN OF.
EDUCATION OF.
ESTOPPEL AGAINST.
FATHER.
GUARDIAN OF.
GUARDIANSHIP.
HEIR—AGREEMENT BY FATHER TO GIVE MINOR SON AS.
KNOWLEDGE IF CAN BE IMPUTED TO.
MAJORITY—AGE OF.
MINORITY—EXECUTION OF DEED DURING — PLEA OF.
MORTGAGE DEED EXECUTEED BY.
MORTGAGE FOR TERM—PROPERTY SUBJECT TO—UNAUTHORIZED SALE OF—EFFECT.
MOTHER—DECREE AGAINST, FOR FATHER'S DEBT—SALE IN EXECUTION OF.
NEXT FRIEND OF—AUTHORITY TO SUE OF—OBJECTION TO.
PERSONAL LIABILITY OF—SUIT BROUGHT TO ESTABLISH.
POWER-OF-ATTORNEY GRANTED BY.
PROMISSORY NOTE EXECUTED BY.
RELIGION AND STATUS, CIVIL AND SOCIAL, OF.
SUIT ON BEHALF OF—INSTITUTION OF.

Minor—Age—Fraudulent misrepresentation as to.

———Estoppel against minor by reason of—Opposite party knowing representation to be false—Effect. *See* HINDU LAW—MINOR—ESTOPPE AGAINST—AGE.

(1903) 30 I. A. 114 (122) = 30 C. 539 (546).

———Money obtained on mortgage by—Damages in case of—Liability for. *See* CONTRACT—MINOR—MORTGAGE BY—AGE—FRAUDULENT REPRESENTATION AS TO.

(1916) 43 I. A. 256 (264).

———*Statement amounting to.*

Held that a statement made by a minor as to his age on a declaration before a Magistrate, " by the declaration of Dr. Wright, I believe I am over twenty-one years of age," could not be justly characterised as fraudulent (264). (*Lord Shaw.*) MAHOMED SYEDOL ARIFFIN *v.* YEOH OOI GARK. (1916) 43 I. A. 256 = 21 C. W N. 257 = (1917) M. W. N. 162 = 19 Bom. L R. 157 = 39 I. C. 401.

Minor—Age of discretion.

———*What is—Bengal Law.*

15 or 16 is an age which, according to the law prevalent in Bengal, is to be regarded as the age of discretion (78). (*Sir James W. Colvile.*) JUMOONA DASSYA CHOWDHRANI *v.* BAMASOONDERAI DASSYA CHOWDHRANI.

(1876) 3 I. A. 72 = 1 C. 289 (295) = 25 W. R. 235 = 3 Sar. 602 = 3 Suth. 222.

Minor—Compromise affecting.

———*See* UNDER C. P. C. OF 1908, O. 32, R. 7.

Minor—Compromise decree affecting.

———*See* UNDER C. P. C. OF 1908, O. 32, R. 7.

Minor—Contract by.

———*See* CONTRACT—MINOR—CONTRACT BY.

Minor—Court of Wards representing—Decree by consent against minor in case of—Validity of.

———Onus of proof of, in suit brought by minor on attaining age challenging decree and seeking to recover property adjudged to opposite party under decree. *See* HINDU LAW—MINOR—DECREE AGAINST—CONSENT—DECREE BY.

(1896) 23 I. A. 75 = 23 C. 934.

HINDU LAW—(*Contd.*)

Minor—Custody of.

———(*See also* HINDU LAW—MINOR—GUARDIANSHIP OF.)

———*Education of—Father's right of—Delegation of—Revocability of—Revocation of—Court's interference to prevent—Conditions.*

Under the Hindu law, as under the English, a father may in the exercise of his discretion as guardian, entrust the custody and education of his minor children to another, but the authority he thus confers is essentially a revocable authority, and if the welfare of the children require it, he can, notwithstanding any contract to the contrary, take such custody and education once more into his own hands. If, however, the authority has been acted upon in such a way as, in the opinion of the Court exercising the jurisdiction of the Crown over infants, to create associations or give rise to expectations on the part of the infants which it would be undesirable in their interests to disturb or disappoint, such Court will interfere to prevent its revocation (321). (*Lord Parker.*) BESANT *v.* NARAYANIAH.

(1914) 41 I. A. 314 = 38 M. 807 (819) = 16 M. L. T. 165 = (1914) M. W. N. 585 = 1 L. W. 520 = 18 C. W. N. 1089 = 20 C. L. J. 253 = 16 Bom. L. R. 625 = 12 A. L. J. 1155 = 24 I. C. 290 = 27 M. L. J. 30.

———*Mother becoming convert—Right of—Question as to—Wishes of minor (young girl) to remain with mother and to follow her religion—Value of.*

A girl was the issue of a Christian marriage between the appellant and her deceased husband, who was a Christian. On the death of her husband, the appellant professed to become a Mahomedan, and contracted a marriage in the Mahomedan form with one *J*, who was himself a Christian and was the husband in Christian marriage of a living Christian wife, but who professed to become a Mahomedan for the purpose of contracting a marriage with the appellant. The girl, who had till the alleged second marriage of the appellant been brought up and educated as a Christian girl, was thereafter introduced to a Moulvie who confirmed her in her alleged resolution to become a Mahomedan and to adopt the Oriental mode of feminine life in seclusion behind the *purdah*. Thereupon an application was made by the relatives of the girl to remove her from the custody and guardianship of the appellant on the ground that by reason of the alleged second Mahomedan marriage of the appellant, her home had become a Mahomedan home and she was no longer fit to be guardian of the infant.

At the hearing of the application, the girl, who had attained the age of 14 years, or thereabout, was herself examined, and, in her deposition, she expressed a wish to remain with the appellant and to become a Mahomedan like her, rather than continue a Christian and go to a strange Christian school. The Judges of the High Court did not think that deposition sufficient to induce them to abstain from making an order removing the girl from the custody of the appellant, and they accordingly made an order removing the girl from the custody and guardianship of the appellant.

Held, that the Judges of the High Court were right in refusing to attach any weight to the girl's deposition (327-8).

It would be very easy, of course, for a mother, under such circumstances, to procure from a young daughter the expression of a wish to remain with her and to become a Mahomedan like her, rather than continue a Christian and go to a strange school (328). (*Lord Justice James.*) SKINNER *v.* ORDE. (1871) 14 M. I A. 309 = 17 W. R. P. C 77 = 10 B. L. R. 125 P. C. = 8 Moo. P. C. N. S 261 = 2 Suth. 521 = 3 Sar. 34.

HINDU LAW—(*Contd.*)

Minor—Custody of—(*Contd.*)

———*Natural guardian—Custody of—Removal of minor from—Independent person as guardian—Appointment of—Desirability of.*

In a case in which the High Court thought fit to remove the minor daughter of a deceased Christian from the custody and guardianship of her mother, who had professed to become a Mahomedan and to contract a second marriage in the Mahomedan form, and to place the infant under a Christian guardian, their Lordships suggested, for the consideration of the Court in India in similar cases, that while selecting a school for the minor it would be desirable, where practicable, to have some independent person as guardian, to whom the ward could apply, in whom the Court and the ward could confide, and whose duty it would be to communicate to the Court any matter which might arise (329). (*Lord Justice James.*) SKINNER *v.* ORDE.

(1871) 14 M. I. A 309 = 17 W. R. P. C. 77 = 10 B L.R. 125 P.C. = 8 Moo. P. C. N. S. 261 = 2 Suth. 521 = 3 Sar. 34.

———Restoration by defendant to plaintiff of—Validity—Jurisdiction—Minor resident in England and of age of discretion—Minor not properly represented and his wishes not ascertained—Effect. *See* HINDU LAW—MINOR—GUARDIANSHIP—CUSTODY OF—PROCEEDINGS RELATING TO.

(1914) 41 I. A. 314 = 38 M. 807.

———*Suit by father for recovery of—Minor resident in England under care of defendant—Relief grantable in case of—Minor of age of discretion—Mandatory order directing defendant to hand over custody—Jurisdiction of Indian Court to make.*

A Hindu father, who had entrusted the custody and education of his infant sons to the defendant, purported to revoke the authority delegated by him to the defendant, and instituted a suit against the defendant praying for a mandatory order directing the defendant to take possession of the persons of the infants then in England, bring them to India, and hand them over to the plaintiff. At the date of the suit the two infant sons were respectively 17 and 14 years old.

Held that, in view of the age of the infants any attempt on the part of the defendant to comply with the order prayed for would, if the infants had refused to return to India, have been contrary to the law of England, and would have at once exposed the defendant to proceedings in England on writ of *habeas corpus*, and that no Court ought to make an order which might lead to those consequences (322-3).

The most which a Court of competent jurisdiction in India could do under circumstances such us existed in the present case was to order the defendant to concur with the plaintiff as the infants' guardian in taking proceedings in England to regain the custody and control of his sons (323). (*Lord Parker.*) BESANT *v.* NARAYANIAH.

(1914) 41 I.A. 314 = 38 M. 807 (820-1) = 16 M.L.T. 165 = (1914) M.W.N. 585 = 1 L. W. 520 = 18 C.W.N. 1089 = 20 C.L.J. 253 = 16 Bom. L.R. 625 = 12 A.L.J. 1155 = 24 I.C. 290 = 27 M.L.J. 30.

Minor—Damages—Liability for.

———Age—False representation as to—Money obtained on mortgage by—Liability in case of. *See* CONTRACT—MINOR—MORTGAGE BY—AGE. **(1916) 43 I.A. 256 (264).**

Minor—Decree against.

———*Consent—Decree by—Validity—Onus of proof of, in suit by minor challenging its validity—Court of Wards representing minor—Consent by alleged* mukhtar *of—Decree based on.*

HINDU LAW—(*Contd.*)

Minor—Decree against—(*Contd.*)

During appellant's minority his estate was under the management of the Court of Wards. The defendant, who was a lessee from the Court of Wards of a share of an ancestral village appertaining to appellant's estate, instituted in the Settlement Court a claim for *birt* tenure against appellant, then a minor. One *T*, alleging himself to be *mukhtar* of the Court of Wards, made a verbal admission of the claim, whereupon a decree by admission was passed for *birt* tenure in favour of the defendant. Appellant, on attaining majority, sued to recover the village, alleging that *T* was not competent to make an admission of the claim, and that the decree of the Settlement Court was not binding upon the appellant.

Held that the onus was on the defendant to prove that *T* had authority to consent to a decree in that way, that the manager under the Court of Wards was authorized by the Court of Wards to give *T* authority to make the admission, and that it was not sufficient that *T* was the mukhtar of the Court of Wards and said he had authority to admit the *birt* right.

It is necessary that one who rests his case on a decree made by consent against an infant should show that the consent was given by some body having authority to bind the infant. It was not sufficient for a decision against the appellant that the Court of Wards was defendant and on its behalf an appearance was put in by a person who represented himself to be, and was accepted by the Settlement Officer as being the *mukhtar* or agent of the Court of Wards. (*Sir Richard Couch.*) RAJAH MUHAMMAD MUMTAZ ALI KHAN *v.* SHEORATTANJIR.

(1896) 23 I.A. 75 = 23 C. 934 = 7 Sar. 41 = 6 M.L.J. 131.

———*Declaration of invalidity of, and of sale in execution thereof—Suit for—C. P. C., S. 47 if a bar to—Guardian duly appointed—Non-representation by—Invalidity based on.*

A minor, who is not represented by a guardian *ad litem* appointed in accordance with the provisions of the Code, is not a party to the suit in the proper sense of the term. S. 244 of C. P. C. of 1882 does not therefore bar a suit by a minor for a declaration that certain decrees and sales in execution affecting him are invalid as against him on the ground that he was not properly represented in the proceedings from which they resulted (175). (*Sir Andrew Scoble.*) MUSSUMAT RASHID-UN-NISSA *v.* MUHAMMAD ISMAIL KHAN. **(1909) 36 I. A. 168 = 31 A. 572 (582) = 6 M. L. T. 279 = 10 C.L.J. 318 = 13 C.W.N. 1182 = 11 Bom. L. R. 1225 = 3 I. C. 864 = 19 M. L. J. 631.**

Minor—De facto Guardian of.

See HINDU LAW—MINOR—GUARDIAN OF—*De facto* GUARDIAN.

Minor—Education of.

———Father's right of—Delegation of—Revocability of—Revocation of—Court's interference to prevent—Conditions. *Seee* HINDU LAW—MINOR—CUSTODY OF—EDUCATION OF. **(1914) 41 I. A. 314 (321) = 38 M. 807 (819).**

———*Religious education—Father's wishes as to—Regard for—English rule as to—Basis of—Applicability of, in India.*

The course of decision in the English and Irish Courts of Chancery has been such as to lay it down as a matter of positive law of the court, that in the matter of religious education great, and in the absence of controlling circumstances, paramount, weight should be given to the expressed or implied wishes of the deceased father (322).

Quaere whether this rule had its origin in the statutory power of English fathers to appoint guardians for their children (322-3).

HINDU LAW—(*Contd.*)

Minor—Education of—(*Contd.*)

Quaere whether this rule is applicable in India (323). (*Lord Justice James*). SKINNER *v.* ORDE.

(1871) 14 M. I. A. 309 = 17 W. R. P. C. 77 = 10 B. L. R. 125 P. C. = 8 Moo. P. C. (N. S.) 261 = 2 Suth. 521 = 3 Sar. 34.

———*Religious education—Nature of, to be imparted.*

From the very necessity of the case, a child in India, under ordinary circumstances, must be presumed to have his father's religion, and his corresponding civil and social tatus ; and it is, therefore, ordinarily, and in the absence of controlling circumstances, the duty of a guardian to train his infant ward in such religion (323) (*Lord Justice James.*) SKINNER *v.* ORDE. (1871) 14 M. I. A. 309 = 17 W. R. P. C. 77 = 10 B. L. R. 125 P. C. = 8 Moo. P. C. (N. S.) 261 = 2 Suth. 521 = 3 Sar. 34.

Minor—Estoppel against.

———*Age—False representation as to, known to other party—Effect.*

Their Lordships hold in accordance with English authorities, that a false representation, made to a person who knows it to be false, is not such a fraud as to take away the privilege of infancy. The same principle is recognised in the explanation to S. 19 of the Indian Contract Act, in which it is said that a fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable (122). (*Sir Ford North.*) MOHORI BIBEE *v* DHURMODAS GHOSE. (1903) 30 I. A. 114 = 30 C. 539 (546) = 7 C. W. N. 441 = 5 Bom. L. R. 421 = 8 Sar. 374.

———*Evidence Act—S.* 115 *of—If applicable.*

The Courts below seem to have decided that S. 115 of the Evidence Act does not apply to infants ; but their Lordships do not think it necessary to deal with that question now (122). (*Sir Ford North.*) MOHORI BIBEE *v.* DHURMODAS GHOSE.

(1903) 30 I. A. 114 = 30 C. 539 (545-6) = 7 C. W. N. 441 = 5 Bom. L R. 421 = 8 Sar. 374.

------*Mortgage deed executed by minor—Plea of estoppel if can be founded upon.*

A mortgage deed executed by minors is a nullity and incapable of founding a plea of estoppel. (*Lord Salvesen.*) SADIQ ALI KHAN *v.* JAI KISHORI.

(1928) 47 C. L. J. 628 = 26 A. L. J. 685 = 32 C. W. N. 874 = 5 O. W. N. 547 = 28 L. W. 17 = 109 I. C. 387 (2) = 30 Bom. L. R. 1346 = A. I. R. 1928 P. C. 152 = 55 M. L. J. 88 (95).

Minor—Father.

———Adverse possession against minor child—Possession of father if and when. *See* LIMITATION—ADVERSE POSSESSION—FATHER.

———Agreement to give minor son as heir by—Validity against minor of—Repudiation of agreement by minor after attaining age—Right of. *See* HINDU LAW—MINOR—HEIR—AGREEMENT BY FATHER TO GIVE MINOR SON AS. (1897) 25 I. A. 46 (53) = 20 A. 209 (217-8).

———Custody of minor child—Suit for recovery of—Minor resident in England under care of defendant—Relief grantable in case of—Minor of age of discretion—Mandatory order directing defendant to hand over custody—Jurisdiction of Indian Court to make. *See* HINDU LAW—MINOR—CUSTODY OF—SUIT BY FATHER FOR RECOVERY OF. (1914) 41 I. A. 314 (322-3) = 38 M. 807 (820-1).

———Custody and education of minor child—Right of—Delegation of—Revocability of—Revocation of—Court's

HINDU LAW—(*Contd.*)

Minor—Father—(*Contd.*)

interference with—Conditions. *See* HINDU LAW—MINOR—CUSTODY OF—EDUCATION OF.

(1914) 41 I. A. 314 (321) = 38 M. 807 (819).

———Education of minor son. *See* HINDU LAW—MINOR—EDUCATION OF.

Minor—Guardian of.

ADMISSION BY.
ADVERSE CLAIM AGAINST MINOR BY.
ADVERSE POSSESSION AGAINST MINOR OF PROPERTY OBTAINED BY FALSE REPRESENTATION—MESNE PROFITS IN CASE OF.
ALIENATION BY.
APPEAL BY—WITHDRAWAL BY MINOR OF, ON ATTAINING MAJORITY.
ARBITRATION—REFERENCE TO, OF MATTER CONNECTED WITH REVERSIONARY INTEREST OF MINOR.
BOND BY.
CAPACITY OF, IN TRANSACTIONS AFFECTING MINOR'S ESTATE.
CHARGE ON MINOR'S ESTATE.
COMPROMISE BY.
CONTRACT BY.
COVENANT TO INDEMNIFY BY.
DEBT CONTRACTED BY.
DECREE IN FAVOUR OF MINOR—SALE OF INTEREST IN—SUIT BY MINOR TO SET ASIDE.
DEED BY—EXECUTION OF—CAPACITY IN REGARD TO (INDIVIDUAL CAPACITY OR CAPACITY OF GUARDIAN).
DEED BY—RECITALS IN.
De facto GUARDIAN.
LEASE TAKEN BY—RENT DUE UNDER—LIABILITY OF MINOR'S ESTATE FOR.
MARRIED WOMAN—NATURAL GUARDIAN OF.
MESNE PROFITS IN RESPECT OF PROPERTY HELD ADVERSELY TO MINOR BY—LIABILITY FOR—PERIOD OF.
MORTGAGE BY.
PARTNERSHIP IN WHICH MINOR INTERESTED—DISSOLUTION OF.
PERSONAL LIABILITY ON MINOR—COVENANT IMPOSING.
REVERSIONARY INTEREST OF MINOR.
SALE BY.
SUIT BY OR AGAINST—CAPACITY IN (INDIVIDUAL CAPACITY OR CAPACITY OF GUARDIAN).
UNAUTHORIZED PERSON—ASSUMPTION OF GUARDIANSHIP BY.

ADMISSION BY.

———Admissibility against minor of. *See* ADMISSION—GUARDIAN. (1903) 31 I.A. 38 = 26 A. 108 (117-9).

———*See* HINDU LAW—ADOPTION—ADOPTED SON—ADOPTIVE MOTHER—ADMISSION IN PLEADINGS BY.

(1862) 9 M. I. A. 287 (301).

———*Previous transactions—Admission of, so as to affect estate of minor—Authority to make.*

Although a person properly acting as guardian of a minor may have authority to manage the estate of the minor, or possibly even to make a partition between the minor and his co-parcener, it does not follow that he will have power to make admissions of previous transactions so as to affect the estate of the minor. *e. g.*, of a prior partition between the minor and his brother (380). MUSSAMAT SURUJ MOOKHI KONWAR *v.* MUSSAMAT BHAGWATI KONWAR.

(1881) 10 C. L. R. 377 = Bald. 393.

HINDU LAW—(*Contd.*)

Minor—Guardian of—(*Contd.*)

ADVERSE CLAIM AGAINST MINOR BY.

———*Presumption of—Propriety.*

It cannot be presumed that the mother and natural guardian of a minor son claims the estate adversely to her son (186). (*Sir Richard Couch.*) WATSON & CO. *v.* SHAM LAL MITTER. **(1887) 14 I. A. 178 = 15 C. 8 (16) = 5 Sar. 66.**

ADVERSE POSSESSION AGAINST MINOR OF PROPERTY OBTAINED BY FALSE REPRESENTATION—MESNE PROFITS, IN CASE OF.

———Liability for—Period of. *See* HINDU LAW—MINOR—GUARDIAN OF—MESNE PROFITS, ETC.
(1905) 32 I. A. 181 (184) = 33 C. 23 (28-9).

ALIENATION BY.

———*Deed of—Execution of—Capacity in regard to—"Proprietor and heir"—Description of guardian as—Effect.*

On the death of a Hindu, leaving a widow and infant son, the latter succeeded to the estate of his deceased father. During the minority of the son, his mother executed a mortgage mortgaging the estate to which the son had succeeded. In the deed of mortgage the widow was described as "proprietor" and "heir". The question arose whether, on the right construction of the deed and under all the circumstances of the case, she ought to be deemed to have executed the deed in her character of the real beneficial owner of the estate or in her character of manager or guardian of her infant son and heir.

Held, dissenting from the Court below, that she must be deemed to have executed the deed only in her capacity of manager or guardian of her infant son and heir (412).

It is not suggested that she ever claimed any beneficial interest in the estate as proprietor; had she done so, it would have been, *pro tanto*, a claim adverse to her son; and it is conceded that she did not claim adversely to her son. The acts of the mother cannot, therefore, be reasonably viewed otherwise than as acts done on behalf of another, whatever description she gave to herself, or others gave to her. She must be viewed as a Manager, inaccurately and erroneously described as "proprietor", or "heir." (*Lord Justice Knight Bruce.*) HUNOOMANPERSAUD PANDAY *v.* MUSSUMAT BABOOEE MUNRAJ KOONWEREE **(1856) 6 M. I. A. 393 (412) = 18 W.R. 81 = 2 Suth. 29 = 1 Sar. 552 = Sevestre 253 N.**

———*Hunooman Pursaud Panday's case—Principles laid down in, as to onus of proof on lender—Applicability of, to alienations by widow and by father.*

Their Lordships have applied the principles laid down in Hunooman Pursaud Panday's as to the onus of proof on a lender, not only to the case of a manager for an infant, which was the case there, but to transactions on all-fours with the present, namely, alienations by a widow, and to transactions in which a father, in derogation of the rights of his son under the Mithakshara law, has made an alienation of ancestral family estate (11). (*Sir James W. Colvile.*). BABOO KAMESWAR PERSHAD *v.* RUN BAHADOOR SINGH. **(1880) 8 I. A. 8 = 6 C. 843 (847)) = 8 C.L.R. 361 = 4 Sar. 210.**

———Necessity for — Evidence of—Recitals in deed of alienation—Admissibility of—Value of. *See* HINDU LAW—MINOR—GUARDIAN OF—SALE BY—NECESSITY FOR—EVIDENCE OF—RECITALS, ETC.

———*Necessity for — Evidence of — Representations by guardian accompanying loan — Admissibility of, as res gestoe—Proof of such representations—Onus on alienee.*

The representations by the Manager accompanying the loan as part of the *res gestoe*, and as the contemporaneous

HINDU LAW—(*Contd.*)

Minor—Guardian of—(*Contd.*)

ALIENATION BY—(*Contd.*)

declarations of an agent, though not actually selected by the principal, have been held to be evidence against the heir; and such *prima facie* proof has been generally and reasonably and rightly required in the Supreme Court of Calcutta between the lender and the heir where the lender is enforcing his security against the heir (419 20.) (*Lord Justice Knight Bruce.*) HUNOOMAN PERSAUD PANDAY *v.* MUSSUMAT BABOOEE MUNRAJ KOONWEREE.
(1856) 6 M.I A. 393 = 18 W. R. 81 = 2 Suth. 29 = 1 Sar. 552 = Sevestre 253 N.

———*Necessity for—Proof of — Onus—Nature of proof required—Original parties alive—Original parties dead and lapse of time and enjoyment and apparent acquiescence—Cases of—Distinction.*

The question on whom does the onus of proof lie in suits in which the validity as against an infant heir of a mortgage executed by his mother as his *de facto* guardian is brought into question. is one not capable of a general and inflexible answer. The presumption proper to be made will vary with circumstances, and must be regulated by and dependent on them. Thus, where the mortgagee himself with whom the transaction took place, is setting up a charge in his favour made by one whose title to alienate he necessarily knew to be limited and qualified, he may be reasonably expected to allege and prove facts presumably better known to him, than to the infant heir, namely, those facts which embody the representations made to him of the alleged needs of the estate, and the motives influencing his immediate loan (419). It is obvious, however, that it might be unreasonable to require such proof from one not an original party, after a lapse of time, and enjoyment and apparent acquiescence; consequently, if the charge be created by substitution of a new security for an older one, where the consideration of the older one was an old precedent debt of an ancestor not previously questioned, a presumption in favour of the validity of the charge would be reasonable (420).

The dictum in 6 Sud. Dew. N.-W. P. 218 to the effect that, if the factum of a deed of charge by a manager for an infant be established, and the fact of the advance be proved, the presumption of law is *prima facie* to support the charge, and the onus of disproving it rests on the heir, though professing to be a general one, is not to be so regarded and must be read in connection with the facts of that case (418-9). (*Lord Justice Knight Bruce.*) HUNOOMANPERSAUD PANDAY *v.* MUSSUMAT BABOOEE MUNRAJ KOONWEREE. **(1856) 6 M. I. A. 393 = 18 W. R. 81 = 2 Suth. 29 = 1 Sar. 552 = Sevestre 253 N.**

———*Validity of—Proprietorship of estate—Assumption wrongful by manager of—Alienation in right of.*

Under the Hindu Law, the right of a *bona fide* incumbrancer who has taken from a *de facto* Manager a charge on lands created honestly, for the purpose of saving the estate, or for the benefit of the estate, is not (provided the circumstances would support the charge had it emanated from a *de facto* and *de jure* manager) affected by the want of union of the *de facto* with the *de jure* title (412-3).

A mortgage bond to secure a sum of money lent to a party deceased, in substitution of a previous deed executed by a former proprietor, by way of further security for a sum advanced by the mortgagee to the widow of the deceased, charging part of the ancestral estate. described the widow as having a beneficial proprietary right in the mortgaged estates, although, in fact, she was only the manager of her son, a minor, the deceased's heir. In a suit brought by the son on attaining age to recover the property mortgaged

HINDU LAW—(*Contd.*)

Minor—Guardian of—(*Contd.*)

ALIENATION OF—(*Contd.*)

from the mortgagee, the court below, holding that the mother had assumed proprietorship of the estate and executed the mortgage only in her capacity as proprietor, declined to go into the question of the binding nature of the charge as against the estate.

Held that the assumption of proprietorship by the mother did not necessarily invalidate the charge, and that the decision of the court below against the charge without further inquiry was not well founded even if the view which it took of the character of the mother's act, as not having been done by her as guardian, had been correct (413.) (*Lord Justice Knight Bruce.*) HUNOOMAN PERSAUD PANDAY *v.* MUSST. BABOOEE MUNRAJ KOONWEREE.

(1856) 6 M. I. A. 393 = 18 W. R. 81 = 2 Suth. 29 = 1 Sar. 552 = Sevestre 253 N.

APPEAL BY—WITHDRAWAL BY MINOR OF, ON ATTAINING MAJORITY.

———*Right of—Opposition to—Guardian's right of—Costs incurred by him on behalf of minor—Remedy in respect of.*

A suit brought by a Hindu widow, as Guardian of an infant, the adopted son of her deceased husband, was dismissed by the High Court, and she, as guardian of the infant, preferred an appeal to His Majesty in Council against the decision of the High Court. After the transcript was forwarded to England, and before the appeal was heard, the infant came of age and petitioned the High Court for the withdrawal of the appeal, and the High Court referred the application to the Judicial Committee. On a question arising whether the widow could resist the adopted son's application for the withdrawal of the appeal, *held* that she could not.

The widow has not such an interest in the appeal or such a *locus standi* in this court as entitles her to resist the application and to insist that the appeal shall go on, although the party in whose name it is brought wishes to withdraw from it.

If she has incurred costs on behalf of the infant in this suit, she may have a claim to be recouped from his estate, if he has any; but that does not entitle her to prosecute this appeal in his name against his will. If the lady herself, as widow has a better title, that title cannot be litigated in this suit, but must be litigated in an independent suit, in which, rejecting the adoption, she would come forward as the next heir of the deceased (605-6). (*Lord Cairns.*) RANEE BISTOOPRIA PUTMADAYE *v.* NUND DHULL.

(1870) 13 M. I. A. 602 = 6 B. L. R. 190 = 2 Suth. 391 = 2 Sar. 631 = 15 W. R. P. C. 19.

ARBITRATION—REFERENCE TO, OF MATTER CONNECTED WITH REVERSIONARY INTEREST OF MINOR.

———Null and void. *See* HINDU LAW—MINOR—GUARDIAN OF—REVERSIONARY INTEREST OF MINOR—ARBITRATION. **(1917) 45 I.A. 35 (39) = 45 C. 590 (603).**

BOND BY.

———Consideration for—Recital in bond as to—Admissibility in evidence of, against minor. *See* HINDU LAW—ADOPTION—ADOPTED SON—ADOPTIVE MOTHER—BOND BY. **(1861) 8 M. I. A. 319 (322-3).**

———Validity against minor of—Proof of—Validity recognised by him after coming of age. *See* HINDU LAW—ADOPTION—ADOPTED SON—ADOPTIVE MOTHER—BOND BY—VALIDITY AGAINST ADOPTED SON.

(1861) 8 M. I. A. 319.

HINDU LAW—(*Contd.*)

Minor—Guardian of—(*Contd.*)

CAPACITY OF, IN TRANSACTIONS AFFECTING MINOR'S ESTATE.

———Alienation by guardian—Deed of—Execution of—Capacity in regard to. *See* HINDU LAW—MINOR—GUARDIAN OF—ALIENATION BY—DEED OF.

(1856) 6 M. I. A. 393 (412).

———*Presumption as to.*

If there is any doubt as to the capacity in which the mother and natural guardian of a minor son acted in a transaction affecting the estate of the minor, that is, as to whether she acted in her own individual capacity claiming the estate in her own individual right adversely to the minor or in her capacity as his guardian, it should be presumed that she did so in her lawful capacity (186) (*Sir Richard Couch.*) WATSON & CO. *v.* SHAM LAL MITTER.

(1887) 14 I. A. 178 = 15 C. 8 (16) = 5 Sar. 66.

———Suit by or against—Capacity in. *See* HINDU LAW—MINOR—GUARDIAN OF—SUIT BY OR AGAINST.

CHARGE ON MINOR'S ESTATE.

———*Benefit to minor's estate by—Proof of—Quantum.*

Held, on the evidence affirming the courts below, that an ikrar executed by the guardian of the respondent, during his minority, charging the minor's estate with the payment of amounts was not shown to be for the benefit of the minor's estate (471). (*Sir James W. Colvile.*) LALLA BUNSEEDHUR *v.* KOONWAR BINDESEREE DUTT SINGH.

(1866) 10 M. I. A. 454 = 2 Suth. 39 = 2 Sar. 167.

———*Binding nature of—Conditions—Onus of proof of.*

He who sets up a charge upon a minor's estate, created in his favour by the guardian, is bound to show, at least, that when the charge was so created, there were reasonable grounds for believing that the transaction was for the benefit of the estate (464). (*Sir James W. Colvile.*) LALLA BUNSEEDHUR *v.* KOONWAR BINDESEREE DUTT SINGH.

(1866) 10 M. I. A. 454 = 2 Suth. 39 = 2 Sar. 167.

———*Creation of, not* per se *improvident management.*

It is obvious that money to be secured on any estate is likely to be obtained on easier terms than a loan which rests on mere personal security, and that, therefore, the mere creation by a Manager of a charge securing a proper debt cannot be viewed as improvident management (424). (*Lord Justice Knight Bruce.*) HUNOOMAN PERSAUD PANDAY *v.* MUSST. BABOOEE MUNRAJ KOONWEREE.

(1856) 6 M. I. A. 393 = 18 W. R. 81 = 2 Suth. 29 = 1 Sar. 552 = Sevestre 253 N.

———*Fraud on minor by transaction creating—Proof of.*

Their Lordships are disposed to say that the Courts below were warranted in imputing the character of fraudulent contrivance to this transaction (an ikrar executed by the guardian of the respondent, a minor, charging the respondent's property.)

The negotiation out of which it sprang was one between a *Purdah* woman acting as the guardian and manager of an infant's estate, and a keen man of business, at that time a debtor to the estate. She is induced to sign an instrument which transforms the debtor into a creditor, and heavily burdens her ward's property without consideration, except the merely colourable one of the abandonment of the appeal, and the promise of future advances for the purposes of litigation, of which a portion at least, was neither necessary nor prudent; of litigation which, if unsuccessful, would be ruinous to the estate, and, if successful, was to result in a division of spoils absolutely in compatible with her duty as guardian. It is not shown that, in coming to this agreement, she had the assistance of proper or independent advisers. On the other hand, it is not shown affirmatively by what practice (if any) upon her ignorance or her fears she may

HINDU LAW—(*Contd.*)

Minor—Guardian of—(*Contd.*)

CHARGE ON MINOR'S ESTATE—(*Contd.*)

have been induced to execute the document. She may or may not have been fully informed as to what she was doing. But whether she was herself defrauded, or whether she acted in collusion with the appellant, the transaction was in either case a fraud upon the respondent (471-2) (*Sir James W. Colvile.*) LALLA BUNSEEDHUR *v.* KOONWAR BINDESEREE DUTT SINGH. **(1866) 10 M. I. A. 454 = 2 Suth. 39 = 2 Sar. 167.**

———*Fraudulent transaction—Setting aside of transaction as being a—Money advanced under it for binding purposes—Chargee's right to.*

An ikrarnamah executed by the guardian of the respondent, during his minority, charging the minor's estate in favour of the appellant, and an execution purchase of that property by the appellant in a suit brought by him on foot of that ikrarnamah were set aside as being prejudicial to the interests of the respondent. The decree in the suit brought by the appellant to enforce the ikrar was for Rs. 70,000 odd, and the purchase in execution was for Rs. 51,000 odd. It was found that, out of the sum for which the ikrar was executed, a sum of Rs. 27,000 had been advanced by the appellant for purposes binding on the estate of the respondent, and that the appellant was entitled to the said amount with interest at the rate provided by the ikrar. The courts below decreed possession of the property in question to the respondent with mesne profits, and allowed the appellant to set off against the amount to the respondent for mesne profits the said sum of Rs. 27,000 with interest at the contract rate.

On appeal to their Lordships it was contended for the appellant that the execution was good, at least, to the extent of the Rs. 27,000 advanced for binding purposes; and that the rights of the respondent against the appellant, taking them at their highest, were limited to the recovery of the difference between that sum and the price bid at the execution sale.

Held that, if the respondent had been wronged by the sale of his property at the suit of the appellant, the relief suggested fell very far short of an adequate remedy for that wrong, that to restore the property to the respondent on the terms of paying to the appellant what might be justly due to him was far more equitable than the proposed limitation of his remedy to the surplus proceeds of the sale, and that the decree-holder being himself the purchaser the execution sale was no effectual bar to the application of the more appropriate equity (473-4).

The property of which the respondent has been deprived was ancestral; and the feeling on the subject of ancestral property is so strong in these Provinces, that the policy of allowing it to be taken in execution and sold under judicial sales has been seriously questioned. And even if no account is to be taken of that feeling, it is notorious that landed property when sold under an execution, rarely, if ever realises its full value (473). (*Sir James W. Colvile.*) LALLA BUNSEEDHUR *v.* KOONWUR BINDESEREE DUTT SINGH.

(1866) 10 M.I.A. 454 = 2 Suth. 39 = 2 Sar. 167.

———*Fraudulent transaction—Setting aside of transaction as being a, on payment to chargee of portion of money advanced by him for binding purposes — Interest on that amount—Rate of, to be allowed—Contract rate or not*

An ikrarnama executed by the guardian of the respondent, during his minority, charging the minor's estate in favour of the appellant, and an execution purchase of that property by the appellant in a suit brought by him on foot of that ikrarnama were set aside as being fraudulent transactions intended to deprive the respondent of his estate. A portion of the amount for which the ikrar was executed was, however, found to have been advanced by the appellant for purposes binding on the respondents' estate, having been advanced by the appellant to satisfy a judgment debt binding upon the minor's estate. The appellant was, therefore, held entitled to the payment of the said sum by the respondent, and the question arose as to the rate of interest to be allowed on it.

The rate provided for by the ikrar was 6 per cent. The Court below allowed only 5 per cent. It was contended for the respondent that it was a favour to the appellant, in the circumstances, to give him any interest at all on that sum; that the rate was in the discretion of the court below; and that their Lordships should not interfere with that discretion. On behalf of the appellant, it was argued that the rate ought to be 12 per cent., such being the current rate of interest, and that which the judgment debt paid off with the amount would naturally have carried.

Held, that the Court below was right in allowing interest to the appellant, that the rate should be fixed according to some principle, not according to the arbitrary discretion of the judge, and that the appellant was entitled to the contract rate (475).

It may be true that the appellant would not have advanced his money on terms so favourable to the estate if he had not had in view the corrupt advantages for which he had stipulated in the ikrar. But there is no reason why the court, because it will not let him reap the benefit of those improper stipulations, should make a new contract for him in respect of this particular advance (475). (*Sir James W. Colvile.*) LALLA BUNSEEDHUR *v.* COONWUR BINDESEREE DUTT SINGH. **(1866) 10 M.I.A. 454 = 2 Suth. 39 = 2 Sar. 167.**

COMPROMISE BY.

———*Alienation by—Ratification by minor of—Evidence of—Omission for a long time to question compromise though it was acted upon if important.*

Held, that assuming that a solenamah by a guardian conveying property of his or her ward was invalid and could have been set aside by the ward, the fact that though the solenamah had been acted upon, the ward allowed, without objection, 20 years to elapse, even after attaining his majority, without taking any steps to set aside the solenamah was sufficient evidence that he ratified and adopted it (224-5). (*Sir Richard Couch.*) MOULVI ABU MAHOMED ABDUL KADER *v.* SRIMATI AMTAL KARIM BANU.

(1888) 15 I. A. 220 = 16 C. 161 (168-9) = 5 Sar. 224.

———*Debt due by minor's father—Suit to recover—Compromise by guardian of—Decree on foot of — Minor's suit to set aside, and to recover amount realised thereunder—Onus of proof on minor in.*

The deceased father of the respondent was the manager of a business carried on first by the deceased father of the appellant, and then in the names of the appellant's mother and the appellant. The respondent's father died having adopted the respondent, a minor, and having appointed by will two persons as his guardians. The said two peesons obtained a certificate under Act No.20 of 1841. Thereafter, the appellant's mother instituted a suit against the said guardians to recover from the estate of the respondent's father a sum alleged to have been misappropriated by him. That suit was settled by a deed of compromise, whereby it was agreed that Rs. 74,000 should be paid by the defendants, in instalments, and a decree was passed on foot of the compromise.

The respondent, after attaining age, commenced the suit out of which the appeal arose to set aside that compromise decree as fraudulent and collusive, and to recover the

HINDU LAW—(*Contd.*)
Minor—Guardian of—(*Contd.*)
COMPROMISE BY—(*Contd.*)

amount paid under that decree from the appellant. The courts below held that the burden of proving the debt lay upon the appellant.

Held, that the burden of proving his allegations that the suit was fictitious and the compromise fraudulent and collusive lay upon the plaintiff-respondent ; and an element in that proof, without which his case amounted to nothing, was the non-existence of a debt ; and that it rested, therefore, with him to give, at all events, *prima facie* evidence of that before the burden of proof was shifted to the appellant (399). (*Sir Robert P. Collier.*) BABOO LEKRAJ ROY *v.* BABOO MAHTAB CHUND.

(1871) 14 M.I.A. 393=17 W. R. 117=
10 B. L. R.35 P. C.=2 Suth. 536=3 Sar. 43.

———*Decree against guardian on foot of — Fraudulent and collusive nature of—Evidence of—Public belief at time —Evidence of—Admissibility.*

In a suit by a minor, after attaining majority, to set aside a decree which had been obtained against his guardians on foot of a compromise on the ground that it was fraudulent and collusive, *held*, that evidence that it was publicly known at the time that the settlement was unjust was inadmissible (397). (*Sir Robert P. Collier.*) BABOO LEKRAJ ROY *v.* BABOO MAHTAB CHUND. (1871) 14 M.I.A. 393=
10 B.L.R. 35 (P. C.)=17 W.R. 117=2 Suth 536=
3 Sar. 43.

———*Litigation—Compromise of—Powers of—Decree on foot of compromise—Setting aside of, after long lapse of time—Propriety.*

It is undoubtedly the duty of guardians scruplously to regard the interest of minors in dealing with their estates and the Court will, when necessary, enforce the performance of this duty. But the interests of infants would seriously suffer if a notion were to prevail, that Guardians were bound for their own security to contest all claims against an infant's estate, whether well or ill-founded ; and such a notion might prevail if the compromise of a claim of debt confirmed by a decree of a Court were to be set aside after 16 years without distinct proof of fraud (398-9). (*Sir Robert P. Collier.*) BABOO LEKRAJ ROY *v.* BABOO MAHTAB CHUND. (1871) 14 M.I.A. 393=10 B.L.R. 35 (P.C.)=
17 W. R. 117=2 Suth. 536=3 Sar. 43.

———*Rent of minor's taluk—Compromise permanently settling—Binding character of.*

In a suit for enhancement of the rent of a talook which was instituted in July, 1882, the defence was that a deed of compromise was executed in August, 1825, by virtue of which the defendants alleged that the rent of the talook was permanently settled. That deed was executed by one *B*, who was the widow of *J*, to whom the property had belonged, and who had adopted, before the execution of the deed, *N*, the grandfather of the plaintiff.

The circumstances under which that deed of compromise was executed were these. Sometime before March, 1823, a suit was brought by *B* and *K*, the owner of the other four annas of the zemindari, for enhancement of the rent of the talook ; and the defence set up to that suit by the ancestors of the defendants was that the mouzahs had been granted to them in permanent mokurruri, and that the rent was not liable to be enhanced. The suit was brought in the Zillah Court, and a decree was made in favour of the plaintiffs, deciding that the rent was liable to be enhanced, and that if the defendants did not pay the rent demanded, the mouzahs in dispute should be measured according to the *hustbood jarib* stated by the plaintiffs, and the jumma be assessed thereon. An appeal from that decree to the civil Appellate Court was dismissed on 11th May, 1824. In that state of

HINDU LAW—(*Contd.*)
Minor—Guardian of—(*Contd.*)
COMPROMISE BY—(*Contd.*)

things the deed of compromise was made in August, 1825. It was addressed to *M*, the ancestor of the defendants, and was executed by *B* ; it stated that the defendants were paying the annual istimrari rent of Rs. 399 odd, with progressive increase added, that, in appeal to the Court of the Zillah and the provincial Court, a decree was passed for measurement and ascertainment of gross rents, and that for amicably settling with the defendants for an increase in the rent, the rent was fixed at sicca Rs. 600, including the old rent The balance payable by the defendants, after certain named deductions on account of their share, was fixed in perpetuity. The defendants also presented a petition to the Court, saying that they assented to that compromise.

Nothing more appeared to have taken place, except that the rent was regularly paid according to the compromise, until about 1854, and then a suit was again brought for enhancement of rent. That passed through various stages of appeal until it reached the Sudder Court. That Court found that *B*. acted as guardian for *N*, when she signed that deed of compromise, and that from the date of the compromise up to the period of *N* attaining his majority, the rent was collected according to the deed of compromise, and after that time until the institution of that suit in 1853. The Sudder Court therefore held that *N* was bound by the act of his mother done in 1832, as his guardian, and acquiesced in by him since he reached his majority.

Held, that the deed of compromise was a binding one, and that therefore the suit for the enhancement of rent ought to be dismissed (69).

The circumstances existing at the time of the compromise must be considered. The parties were litigating not merely as to whether the rent was of the proper amount, or ought to be enhanced, but the defendants were contending that they had a perpetual tenure at a then fixed rent, and this was a settlement which was to put an end to the litigation, and which would also prevent the expense, and delay, and the uncertainty of the result, which was dependent upon the investigation that the Court had ordered to decide what the amount of rent, if it were to be enhanced, should be. Apparently it is a compromise which it cannot be said would not be beneficial to the infant, the adopted son (*N*), but is one which might fairly and naturally be come to as putting an end to the litigation and deciding once for all the matter which was in dispute between the parties ; because it must not be forgotten that although there had been a decree affirmed on appeal that the rent was liable to be enhanced, that was subject to a further appeal, and the case might have been carried further by the defendant if this compromise had not been entered into (67). (*Sir Richard Couch.*) RANI HEMANTA KUMARI DEBI *v.* BROJENDRO KISHORE ROY CHOWDHRY.

(1890) 17 I. A. 65=17 C. 875=5 Sar. 542.

———Reversionary interest of minor—Compromise wiping out, without any consideration—Validity. *See* HINDU LAW—MINOR—GUARDIAN OF—REVERSIONARY INTEREST OF MINOR—COMPROMISE, ETC.

(1917) 45 I. A. 35 (39)=45 C. 590 (603).

CONTRACT BY.

———*Power to bind minor by.*

The contention that the guardian of a minor could bind the minor by contract could not be sustained (92). (*Lord Hannen.*) INDUR CHUNDER SINGH *v.* RADHAKISHORE GHOSE. (1892) 19 I. A. 90=
19 C. 507 (511)=6 Sar. 185.

———*Purchase of immovable property—Contract for—Minor not bound by—Specific performance of contract—Minor's right to obtain.*

HINDU LAW—(*Contd.*)

Minor—Guardian of—(*Contd.*)

CONTRACT BY—(*Contd.*)

It is not within the competence of a manager of a minor's estate, or within the competence of a guardian of a minor to bind the minor or the minor's estate by a contract for the purchase of immoveable property ; and where the minor is not bound by such a contract there is no mutuality, and the minor cannot, on attaining age. obtain specific performance of the contract.

Quaere, whether there is no difference between the position and powers of a manager and those of a guardian. (*Lord Macnaghten.*) MIR SARWARJAN *v.* FAKHRUDDIN MAHOMED CHOWDHURI. **(1911) 39 I.A. 1=39 C. 232= 9 A. L. J. 33=14 Bom. L. R. 5=15 C L.J. 69= 16 C. W. N. 74=(1912) 1 M. W. N. 22=13 I.C. 331= 11 M. L. T. 8=21 M. L. J. 1156.**

———Reversionary interest of minor—Contract in respect of—Validity of. *See* HINDU LAW—MINOR—GUARDIAN OF—REVERSIONARY INTEREST OF MINOR—ARBITRATION. **(1917) 45 I. A. 35 (39)=45 C. 590 (603).**

COVENANT TO INDEMNIFY BY.

———*Personal liability imposed on minor by—Validity.*

The mother and guardian of a minor executed a conveyance of a part of the infant's estate in discharge of a debt binding upon the minor. The land conveyed was represented to be rent free and was conveyed as rent free. To indemnify the purchaser in case the Government should enforce their claim to receive rent out of the land, the mother entered into a covenant, which was so framed as to bind both the guardian and the infant, who was nominally by his guardian a party to the deed.

Held, that the guardian exceeded her powers so far as she purported to bind her ward (96). (*Lord Hobhouse.*) WAGHELA RAJSANJI *v.* SHEIKH MASLUDIN.

(1887) 14 I. A. 89=11 B. 551 (561)=5 Sar. 16.

———*Sale-deed by guardian—Covenant in—Charge created on other property of minor for due performance of covenant—Validity.*

The mother and guardian of a minor sold land forming part of the minor's estate in discharge of a debt binding upon the minor. The land was represented to be rent free and was sold as being rent free. To indemnify the purchaser in case the Government should enforce their claim to receive rent out of the land, the mother entered into a covenant binding herself and the minor. By way of security for its performance, the deed gave a charge upon the other property of the minor.

Quaere, whether it was not within the power of the guardian to deal with the remaining family land of which she was manager, so as to make it a security to the vendee against his loss by the Government exacting rent (96-7).

By selling the land as rent free, the guardian sold less land than she could have sold if it had been valued as subject to rent. It was, therefore, not only reasonable but within her powers as guardian to create a security on other land of the minor to indemnify him against any claim for rent by the Government (96-7). (*Lord Hobhouse.*) WAGHELA RAJSANJI *v.* SHEIK MASLUDIN.

(1887) 14 I. A. 89=11 B. 551 (561-2)=5 Sar. 16.

DEBT CONTRACTED BY.

———*Bond by minor on attaining age for—Suit on—Plea in, of no adjustment of accounts before giving of bond—Maintainability—Waiver of right to look into accounts—What amounts to—Effect.*

The appellant was a banker. She had made very large payments for the respondents, during the time that they, or some of them, were minors, in respect of revenue due to the Government from a zemindary belonging to them. Those advances were made at the instance of a person who was the guardian of the infants, and executor and trustee under the will of their father. For those sums the respondents on taking possession of their zemindary had given a *kistbundy*, or engagement, to pay the amount by instalments, and the suit by the appellant was for one of the instalments so secured.

There appeared to be great reason to suspect fraud on the part of the guardian, and some reason to believe that the agents of the appellant were privy to it. It was very possible that if the respondents had instituted a suit to take the accounts of the guardian, and, challenging collusion between him and the appellant, had investigated the transactions which had taken place between the guardian and the appellant, it might have appeared that there was no such sum as was claimed by the appellant justly due to her. But as the guardian was their spiritual guide the respondents elected not to challenge the transactions and thus expose him to a suit, and thought better to come to terms with the appellant, to obtain time for payment of the debt by instalments. The kistbundy was accordingly executed, and the respondents were advised by a person who was their confidential agent that the arrangement was beneficial to them.

Held, that under the circumstances, the objection that no adjustment of accounts had taken place to ascertain the balance really due to the appellant before the kistbundy was granted could not be allowed to prevail ; and that the respondents could not be permitted, after the death of the guardian, to dispute their liability for payment of the debt which they had deliberately undertaken to pay. (*Lord Kingsdown.*) GOLAUB KOONWARREE BEBEE *v.* ESHAN CHUNDER CHOWDHOOREE. **(1861) 8 M. I. A. 447= 2 W R 47=1 Suth. 443=1 Sar.804.**

———*Misapplication by guardian of—Creditor when not affected by.*

The purposes for which a loan is wanted are often future, as respects the actual application, and a lender can rarely have, unless he enters on the management, the means of controlling and rightly directing the actual application. Their Lordships do not think that a *bona fide* creditor should suffer when he has acted honestly and with due caution, but is himself deceived (424). (*Lord Justice Knight Bruce.*) HUNOOMANPERSHAD PANDAY *v.* MUSST BABOOEE MUNRAJ KOONWEREE. **(1856) 6 M. I. A. 393= 18 W. R. 81=2 Suth. 29=1 Sar. 552= Sevestre 253 N.**

DECREE IN FAVOUR OF MINOR—SALE OF INTEREST IN —SUIT BY MINOR TO SET ASIDE.

———*Onus on alienee—Mistake as to extent af interest—Sale based on—Minor if entitled to avail himself of.*

A suit by the plaintiffs' guardians for the plaintiffs' mother's share in certain dower resulted in a decree for Rs. 62,913 calculated on the allegation in the plaint that such share was one-third of the entire amount of dower. That decree having been sold by the guardians for the alleged sum of Rs. 51,000, the plaintiffs brought the present suit to set aside that sale as collusive.

Held, that it was incumbent on the defendants in this suit to prove that they paid the rupees to the plaintiffs when they came of age, or at least that the money reached the plaintiffs' hand when they came of age.

A compromise set up by the defendants in the present suit having been rejected, a decree was given to the plaintiffs for the sum of Rs. 62,913 awarded in the original suit. The decree was upheld in appeal ; but as it was alleged that on the facts stated in the plaint in the original suit the

HINDU LAW—(*Contd.*)

Minor—Guardian of—(*Contd.*)

DECREE IN FAVOUR OF MINOR—SALE OF INTEREST IN—SUIT BY MINOR TO SET ASIDE—(*Contd.*)

mother's share of the dower was one-eighth and not one-third, the Privy Council held, that the plaintiffs ought not to benefit by that mistake, if it was a mistake, and they accordingly left to the lower Court to inquire into that point and to let execution go for the 1/3 or 1/8 share, according as the fact might turn out. MOULVIE ABDOOL ALI *v.* MOZUFFER HOSSEIN.

(1871) 16 W. R. 22 P.C. (24-5, 26) = 2 Suth. 462.

DEED BY—EXECUTION OF—CAPACITY IN REGARD TO (INDIVIDUAL CAPACITY OR CAPACITY OF GUARDIAN).

———*Deed signed "H, mother of S, minor"—Effect.*

H, a Hindu widow, who had a minor son, named Sham Lal Mitter, executed a kabuliyat, the document being signed "*H*, mother of Sham Lal Mitter, minor."

Held, the addition to *H*'s name of the words "mother of Sham Lal Mitter, minor," must be considered as meaning that she was contracting as the mother and guardian of her infant son (186). (*Sir Richard Couch.*) WATSON & CO. *v.* SHAM LAL MITTER. (1887) 14 I. A. 178 = 15 C 8 (15) = 5 Sar. 66.

———Description of guardian as "proprietor and heir"—Effect. *See* HINDU LAW—MINOR — GUARDIAN OF — ALIENATION BY—DEED OF. (1856) 6 M.I.A. 393 (412).

———Presumption as to. *See* HINDU LAW — MINOR—GUARDIAN—CAPACITY OF, ETC.

(1887) 14 I. A. 178 (186) = 15 C. 8 (16).

DEED BY—RECITALS IN.

———Admissibility of, against minor. *See* (1) HINDU LAW—ADOPTION—ADOPTED SON—ADOPTIVE MOTHER —BOND BY. (1861) 8 M. I. A. 317 (322-3).

(2) HINDU LAW—MINOR—GUARDIAN—SALE BY — NECESSITY FOR—EVIDENCE OF—RECITALS IN, ETC.

(1888) 16 I. A. 96 (102) = 16 C. 627 (634).

DE FACTO GUARDIAN.

———Bona fide *incumbrancer from a, without the* de jure *title—Rights of.*

Under the Hindu law, the right of a *bona fide* incumbrancer who has taken from a *de facto* Manager a charge on lands created honestly, for the purpose of saving the estate, or for the benefit of the estate, is not (provided the circumstances would support the charge had it emanated from a *de facto* and *de jure* manager) affected by the want of union of the *de facto*, with the *de jure* title (412-3). (*Lord Justice Knight Bruce.*) HUNOOMANPERSHAD PANDAY *v.* MUSST. BABOOEE MUNRAJ KOONWEREE.

(1856) 6 M. I. A. 393 = 18 W. R. 81 = 2 Suth. 29 = 1 Sar. 552 = Sevestre 253 N.

———*Unauthorised person—Assumption of guardianship by—Powers and duties of.*

It is difficult to see how the situation of an unauthorized guardian is bettered by describing him as a "*de facto*" *guardian*. He may, by his *de facto* guardianship, assume important responsibilities in relation to the minor's property, but he cannot thereby clothe himself with legal power to sell it (1). (*Lord Robson*) MATA DIN *v.* AHMAD ALI.

(1911) 39 I. A. 49 (55) = 34 A. 213 (222) = (1912) M. W. N. 183 = 16 C. W. N. 338 = 13 I. C. 976 = 11 M. L. T. 145 = 9 A.L. J. 215 = 15 C. L. J. 270 = 14 Bom. L. R. 192 = 15 O. C. 49 = 23 M. L. J. 6.

———(2) (*Mr. Ameer Ali.*) IMAMBANDI *v.* MUTSADDI.

(1918) 45 I. A. 73 (84) = 45 C 878 (893) = 23 C. W N. 50 = 28 C. L J. 409 = 20 Bom. L. R. 1022 = 16 A. L. J. 800 = (1919) M. W. N. 91 = 24 M.L.T. 330 = 5 Pat. L. W. 276 = 47 I. C. 513 = 35 M.L. J. 422.

HINDU LAW—(*Contd.*)

Minor—Guardian of—(*Contd.*)

LEASE TAKEN BY—RENT DUE UNDER — LIABILITY OF MINOR'S ESTATE FOR.

———*Estate not purporting to be dealt with or affected by guardian—Lease for minor's benefit.*

The respondent was the adopted son of one *G*, deceased. During the minority of the respondent the mother and widow of *G* took a fresh lease of property which *G* had during his lifetime held under a lease. The lessees therein described themselves respectively as "mother of the late *G*" and "mother of the minor adopted son" and they bound themselves to pay the rents reserved. and to pay interest on any arrears. A few months before the respondent attained age, the widow of *G* surrendered the lands to the plaintiffs, the lessors. The mother of *G* had died previously.

In a suit brought to recover arrears of rent due under the said lease. the estate of *G* was sought to be made liable for the said arrears on the ground that, under the terms of *G*'s will, his mother and widow had power to bind his estate, and had done so by the fresh lease in question, and that the respondent, having succeeded to that estate was bound by the act of his adopted mother and grandmother as his guardians, done in the *bona fide* belief that it was beneficial to the estate. The Sub-judge, while admitting that there was nothing in the lease to show that it was taken for the benefit of the respondent, held that the estate was liable because it was proved that the lease was really taken for the respondent's benefit, and the lessees were in possession for the respondent's benefit. The Sub-judge relied upon the case of Hunooman Persaud Panday.

Held, dissenting from the Sub-judge, that the respondent's estate was not liable (93).

The present case is distinguishable from that of Hunooman Persaud Panday. In the present case the mother and widow of *G* were not dealing with, and did not purport to deal with or affect, his estate, but were incurring new obligations which it is now sought to transfer from them to the estate. It may be that, as between them and the infant, they might be able, in some circumstances, to show that the estate ought to bear the burden they had taken upon themselves, but that is not the question raised in this case, in which the plaintiffs seek to establish a direct relation between themselves and the estate of the infant, and a liability on the part of the infant now that he is of age, and of his estate, to fulfil the obligations entered into by the lessees in their own name (93-4). (*Lord Hannen.*) INDUR CHUNDER SINGH *v.* RADHAKISHORE GHOSE.

(1892) 19 1. A 90 = 19 C. 507 (512-3) = 6 Sar 185.

MARRIED WOMAN—NATURAL GUARDIAN OF.

———*Father not a.*

On the marriage of a minor girl her father ceases to be her natural guardian. (*Lord Atkinson.*) AMBA *alias* PADMAVATHI *v.* SHRINIVASA KAMATHI.

(1921) 14 L. W. 575 (581-2) = 26 C. W. N. 369 = (1922) P. C. 135 = 68 I. C. 754.

MESNE PROFITS IN RESPECT OF PROPERTY HELD ADVERSELY TO MINOR BY—LIABILITY FOR—PERIOD OF.

———*False representation—Property obtained by guardian by.*

The appellant was the widow of *D*, and the original respondent was the daughter of *D* by his first wife. The suit by the original respondent was for the recovery, with mesne profits, of property which had descended to the respondent from her mother, which was in the possession of *D*, and which was taken possession of by the appellant, his sole heiress and executrix of his will on his death. The question was whether the respondent was entitled to mesne profits only

HINDU LAW—(*Contd.*)

Minor—Guardian of—(*Contd.*)

MESNE PROFITS IN RESPECT OF PROPERTY HELD ADVERSELY TO MINOR BY—LIABILITY FOR—PERIOD OF—(*Contd.*)

for 3 years before suit or from the date of the death of her mother.

Held that, in view of the fact that *D* was the respondent's natural guardian, and that he only obtained a possession which was apparently adverse to her by an untrue representation in his petition for mutation of names, the Court below was right in awarding mesne profits from the date of the death of the respondent's mother (184). (*Lord Davey.*) BASANTA KUMARI DEBI *v.* KAMIKSHYA KUMARI DEBI. **(1905) 32 I. A. 181 = 33 C. 23 (28-9) 2 C. L. J. 238 = 10 C. W. N. 1 = 7 Bom. L. R. 904 = 2 A. L. J. 810 = 9 Sar. 1 = 15 M. L. J. 320.**

MORTGAGE BY.

———Binding character against minor of—Issue raising question of—Issue whether minor is bound to pay off the debt if an.

In a suit to enforce against the defendant a mortgage bond executed by her guardian during her minority, one of the issues raised was whether the guardian really executed the suit bond, and whether the defendant was bound to pay off the debt.

Held, that the portion of the issue whether the guardian really executed the suit bond put into issue the execution of the bond, while the other portion whether the defendant was bound to pay off the debt put in issue the validity of the bond, not only on account of non-execution by the guardian, but its validity generally as against the defendant and therefore suggested the question whether the defendant was bound by the acts of her guardian (50-1). (*Sir Arthur Hobhouse.*) GUNGAPERSHAD SAHU *v.* MAHARANI BIBI. **(1884) 12 I. A. 47 = 11 C. 379 (384-5) = 4 Sar. 621.**

———Interest at rate provided for by—Necessity for—Plea of want of, as distinguished from necessity for principal—Absence of specific—When not material.

In a suit to enforce against the defendant a mortgage bond executed by her guardian during her minority, one of the issues raised was whether the guardian really executed the suit bond, and whether the defendant was bound to pay off the debt. On appeal to the High Court, the defendant raised the ground, amongst others, that she was in no way bound by the acts or statements of her guardian unless it was proved that those acts were done under necessity and for the benefit of the estate. On that ground of appeal, the High Court considered the question of necessity for the rate of interest provided for by the suit bond, and decided in favour of the defendant.

Held that, though the defence did not clearly draw the distinction between the principal and the interest of the suit bond, yet as the decision of the High Court was right on the merits and there was no suggestion even of any injustice being done to the plaintiff (appellant) by the want of particularity in the defendant's written statement and by her not having drawn a proper distinction between the principal due on the bond and the interest, the decision of the High Court would not be interfered with (50-1.) (*Sir Arthur Hobhouse.*) GUNGAPERSHAD SAHU *v.* MAHARANI BIBI. **(1884) 12 I. A. 47 = 11 C. 379 (385) = 4 Sar. 621.**

———Invalidity of—Prior binding mortgage paid off with money raised under—Subrogation to rights under—Creditor's right of.

In a suit by an heir for the recovery of the property of the deceased after setting aside a mortgage thereof made by his mother during his minority, *held* that, even if the mortgage was found to be invalid and ineffectual against the

HINDU LAW—(*Contd.*)

Minor—Guardian of—(*Contd.*)

MORTGAGE BY—(*Contd.*)

plaintiff, the mortgagee would still be entitled to the benefit of any prior mortgage or mortgages paid off by him affecting the property comprised in the bond, if and so far as such prior mortgage or mortgages was or were valid and effectual. (*Lord Justice Knight Bruce.*) HUNOOMANPERSAUD PANDAY *v.* MUSST. BABOOEE MUNRAJ KOONWEREE. **(1856) 6 M. I. A. 393 (425) = 18 W. R. 81 = 2 Suth. 29 = 1 Sar. 552 = Sevestre 253 N.**

———Power of—Validity—Creditor's duty—Antecedent mismanagement—Creditor's responsibility for—Application of money—Creditor's duty to see to.

The power of the Manager for an infant heir to charge an estate not his own is, under the Hindu law, a limited and qualified power. It can only be exercised rightly in case of need, or for the benefit of the estate. But where, in the particular instance, the charge is one that a prudent owner would make, in order to benefit the estate, the *bona fide* lender is not affected by the precedent mismanagement of the estate. The actual pressure on the estate, the danger to be averted, or the benefit to be conferred upon it, in the particular instance, is the thing to be regarded. But, of course, if that danger arises or has arisen from any misconduct to which the lender is or has been a party, he cannot take advantage of his own wrong, to support a charge in his own favour against the heir, grounded on a necessity which his wrong has helped to cause. Therefore, the lender unless he is shown to have acted *mala fide*, will not be affected, though it be shown that, with better management the estate might have been kept free from debt. Their Lordships think that the lender is bound to inquire into the necessities for the loan, and to satisfy himself as well as he can with reference to the parties with whom he is dealing, that the Manager is acting in the particular instance for the benefit of the estate. But they think that if he does so inquire, and acts honestly, the real existence of an alleged sufficient and reasonably-credited necessity is not a condition precedent to the validity of his charge, and they do not think that, under such circumstances, he is bound to see to the application of the money. (423-4). (*Lord Justice Knight Bruce.*) HUNOOMANPERSAUD PANDAY *v.* MUSST, BABOOEE MUNRAJ KOONWEREE. **(1856) 6 M. I. A. 393 = 18 W. R. 81 = 2 Suth. 29 = 1 Sar. 552 = Sevestre 253 N.**

———Proprietor—Mortgage by guardian as—Suit to enforce—Binding character of mortgage on minor's estate—Issue as to—Propriety of—Trial of—Necessity—Mortgagee insisting upon guardian's character as proprietor.

The suit was to set aside a mortgage bond executed by the plaintiff's mother, one of the defendants in the suit, in favour of the appellant, the other defendant, in respect of plaintiff's estate, and to recover possession of the property comprised in the bond. The bond was executed during the plaintiff's minority, his mother being his then natural guardian.

The appellate Court decreed the suit on the sole ground that the bond was executed by the mother in her proprietary character, and not as guardian for the plaintiff, that the appellant insisted at the trial and in the appeal that she was the proprietor of the estate mortgaged, and that, as the estate really belonged to the plaintiff, she had no title to it, and that the mortgage bond executed by her as proprietor could not affect the plaintiff's estate. The appellate Court thought that that was the only question to be tried in the suit, and it declined to enter into the question whether the charge created by the bond bound the property in the hands of the plaintiff.

HINDU LAW—(*Contd.*)

Minor—Guardian of—(*Contd.*)

MORTGAGE BY—(*Contd.*)

The issue raised on the point was " whether it (the mortgage bond) ought to have effect against the mortgaged villages."

Held that the issue in substance was whether the charge under the instrument bound the property in the hands of the heir, and that the appellate Court ought to have decided that question (411). (*Lord Justice Knight Bruce.*) HUNOOMANPERSAUD PANDAY *v.* MUSST. BABOOEE MUNRAJ KOONWEREE. **(1856) 6 M. I. A. 393 = 18 W. R. 81 = 2 Suth. 29 = 1 Sar. 552 = Sevestre 253 N.**

PARTNERSHIP IN WHICH MINOR INTERESTED—DISSOLUTION OF.

———Binding character of, on minor. *See* PARTNERSHIP—DISSOLUTION—MINOR. **(1903) 30 I. A. 130 (138) = 30 C. 725 (736-7).**

PERSONAL LIABILITY ON MINOR—COVENANT IMPOSING.

———*Power to make.*

There is not in Indian law any rule which gives a guardian and manager greater power to bind the infant ward by a personal covenant than exists in English law. In point of fact, the matter must be decided by equity and good conscience, generally interpreted to mean the rules of English law if found applicable to Indian society and circumstances. Their Lordships are not aware of any law in which the guardian has such a power, nor do they see why it should be so in India. They conceive that it would be a very improper thing to allow the guardian to make covenants in the name of his ward, so as to impose a personal liability upon the ward (96). (*Lord Hobhouse.*) WAGHELA RAJSANJI *v.* SHEIKH MASLUDIN. **(1887) 14 I. A. 89 = 11 B. 551 (561) = 5 Sar. 16.**

REVERSIONARY INTEREST OF MINOR.

———*Arbitration—Reference to, of matter connected with such interest—Null and void.*

During the lifetime of the widow the interest of a reversioner is mere *spes successionis*. His guardian, if he happens to be a minor, cannot bargain with it on his behalf or bind him by any contractual engagement in respect thereto. The action of the father of a Hindu minor presumptive reversioner in referring to arbitration any matter connected with his son's reversionary interest is therefore null and void (39). (*Mr. Ameer Ali.*) AMRIT NARAYAN SINGH *v.* GAYA SINGH. **(1917) 45 I. A. 35 = 45 C. 590 (603) = 23 M. L. T. 142 = 22 C. W. N. 409 = 27 C. L. J. 296 = 4 Pat. L. W. 221 = 16 A. L. J. 265 = (1918) M.W.N. 306 = 20 Bom. L. R. 546 = 7 L.W. 581 = 44 I. C. 408 = 34 M. L. J. 298.**

———*Compromise wiping out — Validity—No consideration therefor.*

The father of a Hindu minor reversioner has no power to enter into a compromise which wipes out all the minor's interest in the property of the deceased without any consideration. It is difficult to see how such an arrangement can be said to be for the benefit of the minor (39). (*Mr. Ameer Ali.*) AMRIT NARAYAN SINGH *v.* GAYA SINGH. **(1917) 45 I. A. 35 = 45 C. 590 (603) = 23 M. L. T. 142 = 22 C. W. N. 409 = 27 C. L. J. 296 = 4 Pat. L.W. 221 = 16 A.L.J. 265 = (1918) M.W.N. 306 = 20 Bom. L. R. 546 = 7 L. W. 581 = 44 I. C. 408 = 34 M. L. J. 298.**

———*Sale of—Validity.*

Their Lordships are not prepared to affirm that the interest of a minor in the estate of a collateral after the death of his (collateral's) widow then alive can be made the

HINDU LAW—(*Contd.*)

Minor—Guardian of—(*Contd.*)

REVERSIONARY INTEREST OF MINOR—(*Contd.*)

subject of a sale, highly speculative as any such sale must be, by a guardian acting or purporting to act on behalf of an infant (737). (*Sir James W. Colvile.*) BABOO DOOLI CHAND *v.* BABOO BRIJ BHOOKUN LAL AWASTI. **(1880) 3 Suth. 734 = 6 C. L. R. 528 = Bald 357.**

SALE BY.

———*Admission in, of his having relinquished his share in estate sold—Binding character of, against purchasers.*

In a suit brought by the plaintiffs respondents to have it declared that a deed of sale executed by their father, one of the defendants in the suit, in favour of the others, was invalid, and for possession of one-anna share in talook wari, which was the subject of that deed, the purchasers contended that the plaintiffs were not entitled to a decree for the one-anna share claimed, *inter alia*, on the ground that, even assuming that the plaintiff's father had no right to sell their interest, his own interest in talook wari equalled, or exceeded, that which he had professed to sell, and that the plaintiffs had no title to what they claimed.

The Sub-Judge upheld that contention, but the High Court overruled it being of opinion that the evidence of the plaintiffs, and especially the language of the deed of sale in question proved that the father had relinquished his interest in the said property, which had belonged to his deceased wife and the mother of the plaintiff.

Held, that an admission of the father that he had relinquished his share in his wife's estate, even if it was clearly made in the deed of sale, ought not to affect the other defendants (103). (*Sir Richard Couch.*) KALI DUTT JAH *v.* SHEIK ABDOOL ALI. **(1888) 16 I. A. 96 = 16 C. 627 (635) = 5 Sar. 326.**

———*Necessity for—Evidence of—Recitals in deed of sale as to purpose of sale not conclusive against purchaser—Other evidence of real necessity admissible.*

In a suit brought by the plaintiffs-respondents to have it declared that a deed of sale, executed by the defendant, *R*, their father, was invalid, and for possession of the property, which was the subject of that deed, it appeared that there was an incorrect recital in the deed as to the purpose of the sale. *Held*, that that recital did not preclude the purchasers from proving the real nature of the transaction, and that it was a beneficial one to the minors (plaintiffs) (102). (*Sir. Richard Couch.*) KALI DUTT JHA *v.* SHEIK ABDOOL ALI. **(1888) 16 I. A. 96 = 16 C. 627 (634) = 5 Sar. 326.**

———*Necessity for—Onus of proof of, on purchaser.*

A person seeking to recover property from the defendant on the strength of a sale-deed executed, during his minority, by his mother and guardian, must show that it was a transaction within the rules which enable a guardian effectually to alienate the property of an infant ward. It is essential for the plaintiff to prove that there was a justifying necessity for the conveyance (736). (*Sir James W. Colvile.*) BABOO DOOLI CHAND *v.* BABOO BRIJ BHOOKUN LAL AWASTI. **(1880) 3 Suth. 734 = 6 C. L. R. 528 = Bald 357.**

SUIT BY OR AGAINST—CAPACITY IN (INDIVIDUAL CAPACITY OR CAPACITY OF GUARDIAN.)

———" N. C., *guardian, on behalf of her own minor son,* S. C."—*Suit against.*

In a case in which the plaint in a suit described one of the defendants thus, " *N. C.*, guardian, on behalf of her own minor son, *S. C.*," the High Court at Calcutta held that, it appearing that the suit was substantially brought against the minor, and the error of description in the plaint being one of mere form, it could not, without proof of prejudice, invalidate a decree against nim in the suit.

HINDU LAW—(*Contd.*)

Minor—Guardian of—(*Contd.*)

SUIT BY OR AGAINST—CAPACITY IN (INDIVIDUAL CAPACITY OR CAPACITY OF GUARDIAN)—(*Contd.*)

This decision was referred to with approval by their Lordships (206-7). (*Sir Richard Couch.*) HARI SARAN MOITRA *v.* BHUBANESWARI DEBI. (1888) **15 I. A. 195 = 16 C. 40 (60) = 5 Sar. 198.**

———*Suit against father, in his own right and as guardian of his minor son.*

A suit against the father, in his own right and as guardian of his minor son, is not tantamount to a suit against the father and the son (163). (*Sir Barnes Peacock.*) SREE NARAIN MITTER *v.* SREEMUTTY KISHEN SOONDARY DASSEE. (1873) **Sup. I.A. 149 = 11 B. L. R. 171 = 19 W. R. 133 = 3 Sar. 203 = 2 Suth. 774.**

———"*Widow of the late* R, *mother of* S, *minor*"—*Suit by.*

Where the title to a plaint ran as follows: "Widow of the late *R*, mother of *S*, minor", *held* that it might be consistent with her suing either in her own capacity or as guardian of her minor son. (*Sir Richard Couch.*) RAJA SURJA KANT ACHARYA *v.* RANI HEMANTA KUMARI DUBI. **(1892) 20 I. A. 25 (27-8) = 20 C. 498 = 6 Sar. 279.**

UNAUTHORISED PERSON—ASSUMPTION OF GUARDIANSHIP.

———Powers and duties of. *See* HINDU LAW—MINOR—GUARDIAN OF—*De facto* GUARDIAN—UNAUTHORISED PERSON.

Minor—Guardianship of.

See also HINDU LAW—MINOR—CUSTODY OF.

———*Cousin of minor—Person in whose favour ikrarnamah executed by—Right of.*

An ikrarnama executed by a cousin of a minor will not give authority to the person in whose favour it is executed to act as the guardian of the minor in a suit brought against him, or to bind the minor by proceedings therein (379-80). MUSSAMAT SURUJ MOOKHI KONWAR *v.* MUSSAMAT BHAGWATI KONWAR. **(1881) 10 C. L. R. 377 = Bald. 393.**

———*Father's right of—Delegation of—Validity—Hindu law and English law.*

As, in England so among the Hindus, the father is the natural guardian of his children during their minorities, but this guardianship is in the nature of a sacred trust, and he cannot therefore during his lifetime substitute another person to be guardian in his place (320-1). (*Lord Parker.*) BESANT *v.* NARAYANIAH. **(1914) 41 I. A. 314 = 38 M. 807 (819) = 16 M. L. T. 165 = (1914) M. W. N. 585 = 1 L. W. 520 = 18 C. W. N. 1089 = 20 C. L. J. 253 = 16 Bom. L. R. 625 = 12 A. L. J. 1155 = 24 I. C. 290 = 27 M. L. J. 30.**

———*Minor of age of discretion—Wishes of—Consultation of—Propriety and Necessity of.*

While affirming the order of the High Court removing a minor girl, whose deceased father was a Christian, from the custody and guardianship of the appellant, her mother who had professed to become a Mahomedan and contracted a second marriage in Mahomedan form with one *J*, and placing her under a Christian guardian, their Lordships observed: This recommendation of their Lordships is, of course, without prejudice to any application to be made by or on behalf of the ward concerning her future position; and considering the present age of the young lady, their Lordships think it would be very proper for the court to ascertain for itself what her present opinions and wishes

HINDU LAW—(*Contd.*)

Minor—Guardianship of—(*Contd.*)

are, and what, having regard to those wishes and opinions, would in the present state of things be best for her (328-9). (*Lord Justice James.*) SKINNER *v.* ORDE. **(1871) 14 M. I. A. 309 = 17 W. R. (P. C.) 77 = 10 B. L. R. 125 P.C. = 8 Moo. P. C. N. S. 261 = 2 Suth. 521 = 3 Sar. 34.**

———*Minor of age of discretion and resident in England—Guardianship and custody of—Proceedings relating to—Representation of minor—Wishes of minor—Ascertainment of—Necessity.*

In March 1910, a Hindu father affected to appoint appellant to be guardian of the persons of his two infant sons and authorised her to act as such from that time forward. The appellant thereupon took charge of the boys and defrayed the expenses of their maintenance and education. In February, 1912, they left India in the company of the appellant and were finally left by her in England, with arrangements for their entering the University of Oxford. In July 1912, the father (respondent) purported to cancel the appointment of the appellant guardian of his sons, and demanded back their custody. He instituted a suit in the District Court of Chingleput for a declaration that he, and not the appellant, was entitled to the charge and guardianship of his sons, and for an order on the appellant to hand over such sons to him (the respondent). The infants were respectively 17 and 14 at the date of the suit and were resident in England. The High Court, to which the suit was transferred under clause 13 of the Letters Patent, declared that the respondent was guardian of the persons of his infant sons and ordered the appellant to hand over the custody of the infants to the respondent as such guardian.

Held, that the order of the High Court directing the appellant to take the infants back to India could not be lawfully carried out without their consent or without an order from the Court exercising the jurisdiction of the Crown over infants in England, and that the order of the High Court ought not therefore to be allowed to stand (324).

The real questions were whether the respondent was still entitled to exercise the functions of guardian and resume the custody of his sons and alter the scheme which had been formulated for their education, and whether in the events which had happened the respondent was at liberty to revoke the authority given by him to the appellant in March, 1910. Both questions fell to be determined having regard to the interests and welfare of the infants, bearing in mind of course, their parentage and religion, and could only be decided by a Court exercising the jurisdiction of the Crown over infants, and in their presence. The infants should have been properly represented, and their wishes ascertained. (*Lord Parker*). BESANT *v*, NARAYANIAH. **(1914) 41 I. A. 314 = 38 M. 807 = 16 M. L. T. 165 = (1914) M. W. N. 585 = 1 L. W. 520 = 20 C. L.J. 253 = 18 C. W. N. 1089 = 16 Bom. L. R. 625 = 24 I. C. 290 = 12 A. L. J. 1115 = 27 M.L. J. 30.**

———*Mother's right of custody and of—Conversion of mother to Mahomedanism and re-marriage in Mahomedan form—Effect.*

The question was as to the correctness of an order of the High Court removing an infant ward and her property from the custody and guardianship of her mother, the appellant, and the alleged second husband of that mother.

Beyond all questions the ward was the child of a Christian father, the issue of a Christian marriage. She was left an infant of very tender years, her father being massacred at Delhi in the year 1857. She remained thenceforth under the protection of her mother (appellant), a lady, apparently, of ancestry not Christian, and with no great knowledge of

HINDU LAW—(*Contd.*)

Minor—**Guardianship of**—(*Contd.*)

Christian tenets, or attachment to Christian habits. But she was married to a Christian in a Christian church, and did not appear to have professed any other faith, or to have reverted in costume or customs to her ancestral faith until 1867. The child up to that time had certainly been brought up and, so far as she was educated at all, educated as a Christian girl eating, drinking, and associating with her Christian cousins, and going to a school.

In 1867 this occurred. *J* with whom she had been living and cohabiting as husband and wife desired to marry her. He was however, a Christian, and was already the husband in Christian marriage of a living Christian wife. This device was, therefore, resorted to. The appellant became a Mahomedan, *J* became a Mahomedan, and he contracted in Mahomedan form a Mahomedan marriage with the appellant.

After the alleged second marriage of the appellant, some relatives interfered, in order that the child might be sent to a proper school—a proper Christian school ; and *J* and the appellant, professing to yield to the suggestion, took the girl in June. 1869, up to Simla, with the avowed object of placing her in a Christian school there. The appellant alleged that that project failed, by reason of the girl's refusal to go to school ; and that she began to express a preference for the Mahomedan religion, and the Oriental mode of feminine life in seclusion behind the *purdah* ; and that at some period (the time was not exactly fixed) a Moulvie was introduced, who coufirmed her in her resolution to become a Mahomedan.

On an application by the relatives of the girl. the courts in India made an order, under the provisions of the Acts Nos. XL of 1858 and IX of 1861, removing the infant from the custody of the appellant, and placing her under a Christian guardian.

Held, that the order was right (328).

When the connection between *J* and the appellant was formed, whether it was merely adulterous or under the cover of a Mahomedan marriage the home was no longer a fit home for a Christian young girl ; and if the matter had then been brought to the notice of the Judge, it would have been his plain duty, without delay, to find a more suitable home and guardianship than what had become, in fact, the home and guardianship of *J* (325). (*Lord Justice James.*) SKINNER *v.* ORDE. **(1871) 14 M. I. A. 309 = 17 W. R. P. C. 77 = 10 B. L. R. 125 P. C. = 8 Moo. P. C. N. S. 261 = 2 Suth. 521 = 3 Sar. 34.**

———Natural guardian—Custody of—Removal of minor from—Guardianship in case of. *See* HINDU LAW—MINOR—CUSTODY OF—NATURAL GUARDIAN.

(1871) 14 M. I. A. 309 (329).

———*Question as to custody and—English decisions in similar matters—Reference to—Propriety.*

In a case in which the question was as to the correctness of an order of the Court below removing an infant ward and her property from the custody and guardianship of her mother, and the alleged second husband of that mother, their Lordships observed : "It is, obviously, of very great assistance to the courts in India, and to this Board, to see how, in the exercise of a similar jurisdiction for the same object, the courts in this country have thought it best to act for the protection and welfare of infant wards." (322). (*Lord Justice James.*) SKINNER *v.* ORDE.

(1871) 14 M. I. A. 309 = 17 W. R. P. C. 77 = 10 B. L. R. 125 P. C. = 8 Moo. P. C. N. S. 261 = 2 Suth. 521 = 3 Sar. 34.

———*Scheme of—Discretion of Indian Courts as to—Interference with, by Privy Council—Practice.*

HINDU LAW—(*Contd.*)

Minor—**Guardianship of**—(*Contd.*)

Affirming the principle of the order (which removed a minor girl from the custody and guardianship of her mother and placed her under a Christian guardian), their Lordships feel that it would be very difficult for an appellate Tribunal in this country to interfere without injury, as to the details of the particular guardianship and scheme, which must so essentially be a matter of *quasi* parental discretion to be exercised on the spot by those best acquainted, or best able to acquaint themselves, with all the circumstances, and their Lordships disclaim any desire so to interfere (329). (*Lord Justice James.*) SKINNER *v.* ORDE.

(1871) 14 M. I. A. 309 = 17 W. R. P. C. 77 = 10 B. L. R. 125 P. C. = 8 Moo. P. C. N. S 261 = 2 Suth. 521 = 3 Sar. 34.

———Unauthorised person—Assumption of guardianship by—Rights and duties of. *See* HINDU LAW—MINOR—GUARDIAN—*De facto* GUARDIAN.

Minor—Heir—Agreement by father to give minor son as.

———*Validity against minor son of—Repudiation of, by minor on attaining majority—Right of.*

Where it was alleged that *D*, a childless Hindu, covenanted with defendant's father (*G*) on his behalf to make the defendant his heir and owner of the property, and in the event of his having issue, to give a portion of the property to the defendant, and that in pursuance of that contract *G* made over charge of the defendant to *D*, waiving all claim to him, *held* that *G* could, according to any view, only bind the defendant during his minority by such a contract, and that the defendant could, after attaining majority, refuse to be bound by such an agreement (53). (*Sir Richard Couch.*) LALA NARAIN DAS *v.* LALA RAMANUJ DAYAL.

(1897) 25 I. A. 46 = 20 A. 209 (217-8) = 2 C. W. N. 193 = 7 Sar. 257.

Minor—Knowledge if can be imputed to.

The view that you cannot impute knowledge to a minor is certainly not in accordance with the facts of human nature. (*Lord Phillimore.*) KALYANADAPPA *v.* CHANBASAPPA. **(1924) 51 I. A. 220 (230) = 48 B. 411 = 28 C. W. N. 666 = 22 A. L. J. 508 = 26 Bom. L. R. 509 = 10 O. & A. L. R. 1114 = A. I R. 1924 P. C. 137 = (1924) M. W. N. 414 = 34 M. L. T. 111 = 20 L. W. 109 = 11 O. L. J. 181 = 79 I. C. 971 = 46 M. L. J. 598.**

Minor—Majority—Age of.

———Guardian under Act XL of 1858—Appointment of—Effect. *See* MAJORITY ACT OF 1875, S. 3.

(1903) 30 I. A. 165 (170) = 25 A. 407 (416).

Minor—Minority—Execution of deed during—Plea of.

———Onus of proof of. *See* DEED—EXECUTION OF—MINORITY.

Minor—Mortgage deed executed by.

———Age—False representation as to—Money obtained on mortgage by—Damages in case of—Liability for. *See* CONTRACT—MINOR—MORTGAGE BY—AGE.

(1916) 43 I. A. 256 (264).

———Cancellation of, in suit by minor—Money advanced under mortgage—Restoration to mortgagee of—Provision for—Discretion of Courts below as to—P. C's interference with. *See* CONTRACT—MINOR—MORTGAGE DEED EXECUTED BY—CANCELLATION OF.

(1903) 30 I. A. 114 (125) = 30 C. 539 (549).

———Estoppel plea if can be founded upon. *See* HINDU LAW—MINOR—ESTOPPEL AGAINST—MORTGAGE EXECUTED BY MINOR. **(1928) 55 M. L. J. 88 (95).**

———Nullity. *See* CONTRACT — MINOR—MORTGAGE DEED, ETC.

HINDU LAW—(*Contd.*)

Minor—Mortgage for term—Property subject to—Unauthorised sale of—Effect.

———Minor's right to ignore sale and to sue for its redemption. *See* LIMITATION ACT OF 1908—ART. 144—MINOR. **(1911) 39 I. A. 49 (56) = 34 A. 213 (223).**

Minor—Mother—Decree against, for father's debt—Sale in execution of.

———Minor s interest if and when passes under. *See* HINDU LAW—WIDOW—DECREE AGAINST—SALE IN EXECUTION OF—MINOR SON. **(1872) 14 M. I. A. 605 (615-6).**

Minor—Next friend of—Authority to sue of—Objection to.

———Privy Council appeal—Maintainability for first time in. *See* C. P. C. OF 1908, S. 99—MINOR.
(1883) 11 I. A. 26 (27-8) = 10 C. 626 (634).

Minor—Personal liability of—Suit brought to establish.

———*Estate of minor— Liability of—Case in appeal of—Permissibility—Evidence new necessary.*

The suit was for the recovery of arrears of rent personally from the respondent and from his adoptive mother. The arrears were due in respect of a lease taken, during the minority of the respondent, by his said adoptive mother and by his grandmother. The grandmother having died previously, the adoptive mother had, before the respondent attained majority, surrendered possession to the lessors (plaintiffs); but there were arrears of rent due under the lease in respect of which the suit was brought.

The suit as brought was to make the respondent and his adoptive mother personally liable for the said arrears. The Courts below held, and their lordships agreed, that neither the respondent nor his adoptive mother was personally liable for the said arrears. Before their Lordships the plaintiffs suggested that, under the terms of the will of the respondent's adoptive father, his mother and widow had power to bind his estate, and had done so, and that the respondent, having succeeded to that estate, was bound by the act of his adoptive mother and grandmother as his guardians, done in the *bona fide* belief that it was beneficial to his estate. But neither in the plaint nor in the issues was any claim made against the estate of the adoptive father. And there was enough in the evidence to show that if the claim made by the suit was treated as one against the estate and against the heir, to the extent of the assets received by him, it would raise entirely new issues, both as to the extent of assets received and as to the extent to which the plaintiffs themselves were responsible for the renewal of the lease; that it would, in fact, be a new suit, and that it would be improper to allow such a change of case at that period of the litigation.

Held that, under the circumstances, the new ground of liability suggested by the plaintiffs could not be allowed to be raised (93). (*Lord Hannen.*) INDUR CHUNDER SINGH *v.* RADHAKISHORE GHOSE. **(1892) 19 I.A. 90 = 19 C. 507 (511-2) = 6 Sar. 185.**

Minor—Power-of-attorney granted by.

———*Ratification of, on attaining majority.*

There can be no ratification by an infant after coming of age of a power of attorney granted by him during his infancy. (*Sir Arthur Channell.*) CHUAH HOOI GNOH NEOH *v.* KHAW SIM BEE.
(1915) 19 C. W. N. 787 (790) = 31 I. C. 637.

Minor—Promissory note executed by.

———Minority—Note executed during—Renewal of, on attaining majority—Effect. *See* CONTRACT—MINOR—PROMISSORY NOTE EXECUTED BY, DURING MINORITY.
(1891) 19 I. A. 4 (6-7).

HINDU LAW—(*Contd.*)

Minor—Promissory note executed by—(*Contd.*)

———Void. *See* CONTRACT—MINOR — PROMISSORY NOTE BY. **(1919) 38 M. L. J. 353 (359).**

Minor—Religion and status, civil and social, of.

———*Father's religion and status.*

From the very necessity of the case, a child in India, under ordinary circumstances, must be presumed to have his father's religion, and his corresponding civil and social status (323). (*Lord Justice James.*) SKINNER *v.* ORDE.
(1871) 14 M. I. A. 309 = 17 W. R P. C. 77 = 10 B. L. R. 125 P. C. = 8 Moo P. C. N. S. 261 = 2 Suth. 521 = 3 Sar. 34.

Minor—Suit on behalf of—Institution of.

———*Appointment of public officer for—Jurisdiction of Supreme Court of Madras as to—Order appointing such officer under general jurisdiction of court to regulate its practice—Validity.*

Acting under the general jurisdiction of the Court to regulate its practice and not under the powers given by the Statute of the 2nd & 3rd Vict., C. 34, the Supreme Court of Madras made on its equity side a general order that "whenever it shall appear that the property of any infant is unprotected, and not secured for his or her benefit, the Registrar shall, with the previous consent of the Court or a Judge, institute proceedings on behalf of such infant, for the purpose of protecting his or her person or property." The order was not transmitted to England, and had never been submitted to the Governor in Council.

Held that the Supreme Court had no authority to make such an order.

If it was considered by the Court that it was advisable to appoint a public officer to institute suits on behalf of infants, and that it had authority to make it, it should have been done under the provisions of the Statute of Victoria, in which case the Regulation would have been subject to be altered or rescinded by Her Majesty in Council (345). (*Mr. Pemberton Leigh.*) KERAKOOSE *v.* SERLE.
(1844) 3 M. I. A. 329 = 4 Moo. P. C. 459 = 1 Sar. 286.

———*Appointment of public officer for purpose of—Propriety,*

Quaere as to the propriety of the appointment of a public officer to institute suits on behalf of infants, in all cases where their property appears to be unprotected (344-5). (*Mr. Pemberton Leigh.*) KERAKOOSE *v.* SERLE.
(1844) 3 M. I. A. 329 = 4 Moo. P. C. 459 = 1 Sar. 286.

———*Petition by Registrar of Supreme Court for—Order on, made after notice—Validity—Absence of pending suit—Effect.*

By a general order of the Supreme Court of Madras, the Registrar of that Court was directed to institute proceedings with the previous consent of the court, in all cases where the property of infants should appear to be unprotected. With a view to obtain that consent, the Registrar of that Court presented a petition to it for leave to institute a suit in Chancery against the appellant on behalf of the infant children of the appellant. Notice of the application was given to the appellant to show cause against it. She appeared of her own accord, without any process being issued to compel appearence, and without any order being sought to be made upon her, and objected to the grant of the leave prayed for. Her objections were, however, overruled, and leave was granted.

On objection taken to the validity of the order on the ground that it was made upon petition without the existence of any suit to found the jurisdiction of the court, *held* that the presentation of the petition was the only proper mode of making the application, and that no question of jurisdiction

HINDU LAW—(*Contd.*)

Minor—Suit on behalf of—Institution of—(*Contd.*)

arose (343). (*Mr. Pemberton Leigh.*) KERAKOOSE *v.* SERLE. **(1844) 3 M. I. A. 329 = 4 Moo. P. C. 459 = 1 Sar. 286.**

———*Right of—English practice—Abuse of.*

In England the protection of the interests of infants, whose interests appear to be unprotected, is left to persons who may be willing to come forward at the risk of costs, and, subject to that risk, any person is permitted to do so. That this practice gives rise to many improper suits is well known to all who have any experience in the court of Chancery (345). (*Mr. Pemberton Leigh.*) KERAKOOSE *v.* SERLE. **(1844) 3 M. I. A. 329 = 4 Moo. P.C. 459 = 1 Sar, 286.**

Mother.

INHERITANCE TO SON—RIGHT OF.

———*Conveyance of, or contract to convey—Suit brought on behalf of son (minor at the time) by another person as guardian—Petition by mother in, admitting that guardian's right to sue and stating that she had no interest in property in suit—Effect of.*

A suit to redeem a mortgage made by a deceased Hindu was brought in the name of *S*, his infant son, represented by the appellant as his adoptive mother and guardian. The defendants-mortgagees resisted the suit on the ground that the respondent, the natural mother of *S*, and not the appellant, was his proper guardian, and was the person entitled to bring the suit. On that occasion the respondent presented a petition stating that the appellant was every way proprietor in her own right and as guardian of her adopted son, *S*, and that she (respondent) herself had no interest in the property. The attempted adoption of *S* by the appellant was invalid, and therefore the respondent became entitled, on the death of *S*, to his property as mother and heiress, and she sued the appellant for the recovery of the same. The appellant resisted the suit on the ground that, by virtue of the respondent having filed the aforementioned petition in the mortgage suit, she was precluded from claiming and recovering the property as mother and heiress of *S*.

Held, that the petition operated neither as a conveyance nor as a contract to convey the subsequently acquired interests of the respondent, and was no bar to the enforcement of her right (599).

At the time when the respondent presented this petition she had not in fact any interest in the property at all, and certainly had not become entitled to any interest as the heir of her son, who was at that time alive. Further, there is not the least reason to suppose that in the petition she in any degree contemplated a conveyance of any such right. That was not the right which they were then considering at all. The main object of the petition was simply to enable the redemption suit to go on. There was nothing in the language and nothing in the position of the parties which could lead any one to suppose that she had any interest that she might hereafter acquire as heir of her son, in her contemplation at all (598-9). (*Lord Justice Mellish.*) MUSSUMAT OODEY KOOWAR *v.* MUSSUMAT LADOO.
(1870) 13 M.I.A. 585 = 15 W.R. P.C. 16 = 6 B. L. R. 283 = 2 Suth. 388 = 2 Sar 628.

———*Enforcement of—Estoppel—Conveyance by her during sons' lifetime of present interest in his properties—Effect.*

Assuming that the widow did intend to convey, during her son's lifetime, a present interest, which she supposed or assumed she had, in the properties which were then vested in her son, there is no principle of law or justice by which

HINDU LAW—(*Contd.*)

Mother—(*Contd.*)

INHERITANCE TO SON RIGHT OF—(*Contd.*)

that can prevent her from setting up her real right when that right has accrued (600). (*Lord Justice Mellish.*) MUSSUMAT OODEY KOOWAR *v.* MUSSUMAT LADOO.
(1870) 13 M. I. A. 585 = 15 W. R. 16 = 2 Suth. 388 = 6 B.L.R. 283 = 2 Sar. 628.

MAINTENANCE OF.

———*Partition between sons and step-sons—Right of widow before and after—Distinction—Step-sons—Right against shares of, after partition.*

Where there are several groups of sons of a deceased Hindu, the maintenance of their mothers must, so long as the estate remains joint, be a charge upon the whole estate; but when a partition is made, the law appears to be that their maintenance is distributed according to relationship, the sons of each mother being bound to maintain her. The step-sons are not under the same obligation (124). (*Sir Richard Couch.*) SRIMATI HEMANGINI DASI *v.* KEDAR NATH KUDU CHOWDHRY. **(1889) 16 I. A. 115 = 16 C. 758 (766) = 5 Sar. 374.**

———*Son or Son's widow in possession of ancestral estate—Claim for maintenance against—Nature of.*

A Hindu mother is entitled to be maintained by her son out of ancestral estate derived by him from his father. The maintenance of the mother is a charge upon the inheritance which comes from the father. The liability to maintain the mother passes to the son when he gets the estate of his father, and when the estate passes from the son to his widow the liability to maintain the mother still attaches to the inheritance, and the daughter-in-law is bound to maintain her mother-in-law out of the inheritance (279). (*Sir Barnes Peacock.*) BAIJUN DOOBEY *v.* BRIJ BHOOKUN LALL AWASTI. **(1875) 2 I.A. 275 = 1 C. 133 (138) = 24 W. R. 306 = 3 Sar. 541 = 3 Suth. 207.**

PARTITION.

———Share at. *See* HINDU LAW—JOINT FAMILY—PARTITION—MOTHER.

POSITION AND INFLUENCE IN THE FAMILY OF.

———*Influence over young dying son.*

It is well known what the position of a mother in a Hindu family is: what influence, although she may not be concerned at all in the management of the property, she exercises over the family; what respect is paid to her opinion. Nor is the influence of a mother likely to be least when her son, a youth, is dying in the house (81). (*Sir James W. Colvile.*) JUMOONA DASSYA CHOWDHRANI *v.* BAMASOONDERI DASSYA CHOWDHRANI.
(1876) 3 I. A. 72 = 1 C. 289 = 25 W. R. 235 = 3 Sar. 602 = 3 Suth. 222.

Niyoga—Practice of.

———Adoption by widow with assent of Sapindas—Practice of—Analogy between. *See* HINDU LAW—ADOPTION—WIDOW—ADOPTION BY—ASSENT OF SAPINDAS—ADOPTION WITH—NIYOGA PRACTICE.

———*Obsolete.*

The practice of raising up issue to a deceased Hindoo by carnal intercourse with his widow is obsolete (441). (*Sir James W. Colvile.*) COLLECTOR OF MADURA *v.* MOOTTOO RAMALINGA SATHUPATHY.
(1868) 12 M. I. A. 397 = 10 W. R. P. C. 17 = 1 B. L. R. P. C. 1 = 2 Suth. 135 = 2 Sar. 361.

HINDU LAW—(*Contd.*)

Partition.

JOINT ESTATE.

———*Partibility of.*

It is impossible to hold that a joint estate is not also partible (194). (*Lord Watson.*) MUSSAMMAT SUNDAR *v.* MUSSAMMAT PARBATI. **(1889) 16 I. A. 186 = 12 A. 51 (57) = 5 Sar. 448.**

———Possession of—Partition between persons having—Right to—Title to property in others—Effect. *See* HINDU LAW—WIDOW—CO-WIDOWS — PARTITION BETWEEN TO. **(1889) 16 I. A. 186 = 12 A. 51.**

JOINT FAMILY—PARTITION.

———*See also* HINDU LAW—JOINT FAMILY—PARTITION.

SUIT FOR—PARTNER—JOINT FAMILY MEMBER—SUITS ON BASES OF

———Distinction—Test—Pleadings — Construction. *See* PRACTICE—PLEADINGS— CONSTRUCTION—PARTITION —SUIT FOR. **(1866) 10 M. I. A. 490 (504-5).**

Pollution.

———*Period of.*

The period of pollution, according to Hindoo law and custom, is 16 days (512-3). (*Lord Chelmsford.*) RAMALINGA PILLAI *v.* SADASIVA PILLAI. **(1864) 9 M. I. A. 506 = 1 W. R. 25 P. C. = 1 Suth. 538 = 2 Sar. 57.**

Principal—Increment.

———*Increment following principal—Rule as to, among persons joint in estate—Extent and limits of.*

Quaere as to the extent and limits of the rule of the Hindoo law, that the increment follows the principal where the parties are joint in estate (554). (*Lord Justice Turner.*) SREEMUTTY SOORJEEMONEY DOSSEE *v.* DENOBUNDOO MULLICK. **(1857) 6 M. I. A. 526 = 4 W. R. 114 = 1 Suth. 291 = 1 I. J. N. S. 37 = 1 Bour. Rep. 228 = 1 Sar. 583.**

———*Separability of, under Hindu law—Inseparability for purposes of equal division among heirs.*

The law does not treat the principal and the increment as undistinguishable in their nature, for there is no doubt that they may be severed, but it treats them as united for the purpose of dividing them equally among all the united family, that is, all the heirs (555-6). (*Lord Justice Turner.*) SREEMUTTY SOORJEEMONEY DOSSEE *v.* DENOBUNDOO MULLICK. **(1857) 6 M. I. A. 526 = 4 W. R. 114 = 1 Suth. 291 = 1 I. J. N. S. 37 = 1 Bour. Rep. 228 = 1 Sar. 583.**

Property.

———Devolution of—Legal course of—Alteration of—Deed or transfer resulting in—Validity of. *See* HINDU LAW —INHERITANCE—LEGAL COURSE OF; AND HINDU LAW —WILL—ESTATE UNKNOWN TO LAW—BEQUEST OF.

———*Devolution of—Modes of—Inheritance—Transfer—Distinction.*

The power of parting with property once acquired, so as to confer the same property upon another, must take effect either by inheritance or transfer, each according to law (64).

Inheritance does not depend upon the will of the individual owner; transfer does. Inheritance is a rule laid down (or in the case of custom recognised) by the State, not merely for the benefit of individuals, but for reasons of public policy (64). (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE. **(1872) Sup. I. A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.**

HINDU LAW—(*Contd.*)

Property—(*Contd.*)

———*Real and Personal property—No distinction between.*

According to the Laws of the Hindoos, as in the Civil Law, no distinction is made between real property and personal property (241.) (*Lord Campbell.*) DHURM DAS PANDEY *v.* MUSSUMAT SHOMA SOONDARI DEBIAH. **(1843) 3 M. I. A. 229 = 6 W. R. 43 P. C. = 1 Suth. 147 = 1 Sar. 271.**

———Transfer—Inheritance—Devolution of property by—Distinction. *See* HINDU LAW—PROPERTY—DEVOLUTION OF—MODES OF. **(1872) Sup. I. A. 47 (64).**

———*Transfer of—English law general principles—English law rules of detail—Applicability of.*

Whilst rules of detail prevailing in England are to be laid aside, there are general principles affecting the transfer of property which must prevail wherever law exists, and to which resort must be had in deciding several questions of an elementary character, as to which there is no precise authority (64). (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANANDROMOHUN TAGORE. **(1872) Sup. I. A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.**

———Transfer of—Validity—Eldest son or other single heir of transferee—Transfer limited to. *See* PROPERTY—TRANSFER OF—HINDU AND MAHOMEDAN LAWS. **(1879) 7 I. A. 38 (47) = 2 M. 128 (134).**

———*Transfer of—Writing—Necessity.*

No special mode of transfer is required by the Hindu law; even a verbal transfer is sufficient (278). (*Sir Barnes Peacock.*) HURPURSHAD *v.* SHEO DYAL. **(1876) 3 I. A. 259 = 26 W. R. 55 = 3 Sar. 611 = 3 Suth. 304 = Bald. 25 = R. & J.'s No. 41 (Oudh).**

Prostitution.

———*Practice of—Legality of—Limits of.*

In the case of Hindus there are stronger grounds for maintaining that practices of prostitution are related to worship in the temples, and meet with countenance from the law. But even in the case of Hindus great difficulties have been felt by Courts of Justice in admitting the validity of transactions intended for the furtherance of prostitution. See the case reported in I. L. R. 4 B. 545 and the authorities there referred to (201-2). (*Lord Hobhouse.*) GHASITI AND NANHI JAN *v.* UMRAO JAN. **(1893) 20 I. A. 193 = 21 C. 149 = 6 Sar. 370 = 52 P. R. 1893.**

Pundits.

———*See* HINDU LAW—AUTHORITIES—PUNDITS.

Religious ceremonies.

———*Capacity to perform—Adopted son—Natural-born son—Distinction.*

By Hindu law the natural son could perform certain religious ceremonies which his brother by adoption could not perform (560). (*Sir John Edge.*) ASITA MOHAN GHOSH MOULIK *v.* NIRODE MOHAN ROY GHOSH MOULIK. **(1920) 12 L. W. 556 = 24 C. W. N. 794 = (1920) M. W. N. 541 = 28 M. L. T. 399.**

Religious charity—Dedication of landed property to.

———*Writing—Necessity—Landed property—Dedication of.*

A dedication of a portion of the family property for the purposes of a religious charity may, according to Hindu law, be validly made without an instrument in writing, even if it be an appropriation of some landed property (140). (*Lord Phillimore.*) GANGI REDDI *v.* TAMMI REDDI. **(1927) 54 I. A. 136 = 50 M. 421 = 45 C. L. J. 512 = 25 A. L. J. 593 = (1927) M. W. N. 502 = 31 C. W. N. 799 = 26 L. W. 139 = 8 Pat. L. T. 681 = 29 Bom. L. R. 856 = 4 O. W. N. 482 = 101 I. C. 79 = A. I. R. 1927 P. C. 80 = 52 M. L. J. 524.**

HINDU LAW—(*Contd.*)

Religious Endowment

ASTHAL.
DEBUTTER PROPERTY OF.
DEDICATION OF PROPERTY TO.
DEED CREATING.
FAMILY ENDOWMENT.
GRANT PERSONAL TO A PERSON SUBJECT TO CONDITION OF HIS DEFRAYING EXPENSES OF, FROM ITS REVENUE.
IDOL.
LAW APPLICABLE TO—USAGE OF INSTITUTION.
MANAGER OF.
MUTT.
PRIVATE CHARITIES—RELIGIOUS CHARITIES.
PROPERTY OF.
SHEBAIT OF.
TEMPLE.
TEMPLE AND MUTT—HEADSHIP OF BOTH VESTED IN SAME PERSON.

Religious Endowment—Asthal.

———(*See also* HINDU LAW—RELIGIOUS ENDOWMENT—MUTT.)

ADMINISTRATION OF—RULE AS TO.

———Administration entirely for and on behalf of and in the interest of institution itself and not for personal end of trustee. *See* HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT OF—PROPERTY OF ENDOWMENT—INCOME OF—SURPLUS INCOME. **(1919) 46 I. A. 204 (226-7) = 43 M. 253 (268-70).**

MOHUNT OF.

———Acquisitions with income of Asthal property by—Ownership of. *See* HINDU LAW—RELIGIOUS ENDOWMENT—ASTHAL—MOHUNT OF—GRANT BY NATIVE RULER TO. **(1918) 35 M. L. J. 5 (9-10).**

———*Agent of—Purchase of property in execution by—Ownership of—Purchase with money borrowed by agent solely on his own security.*

The appeal arose out of a suit brought against the appellant by one *G*, as the mohunt of an asthal, to recover possession of certain parcels of land, described in the schedule to the plaint. The appellant was manager of the properties of the asthal under the former mohunts. Lot No 3, the property in question, did not originally belong to the asthal. It was purchased by the appellant with money borrowed by him solely upon his personal security in execution of a decree obtained against a third party. The estates of the asthal were not charged as security for the money borrowed by the appellant, and there was no sufficient evidence to prove that the money paid for the purchase was the money of the Asthal.

Held, on the evidence, that the appellant was entitled to the property in question (144-5.) (*Sir Barnes Peacock.*) MUNGUL DAS *v.* MOHUNT BAWUN DAS. **(1877) Bald. 140 = 1 I. J. 706.**

———*Alienation of Asthal property by—Validity—Conditions.*

Quaere, whether the property of an Asthal is inalienable, except for the benefit of the Asthal in cases of necessity (65). (*Sir Barnes Peacock.*) MOHESH LAL *v.* MOHUNT BAWAN DAS. **(1883) 10 I. A. 62 = 9 C. 961 (971) = 4 Sar. 424 = 13 C. L. R. 221.**

———*Alienation of asthal property by—Validity—Conditions—Onus on alienee.*

The Mahant of a Math or Asthal holds the property of the institution in trust for the institution itself. In the absence of a necessity which would make debts contracted by him binding on the institution the Mahant has no power to alienate its properties for the purpose of discharging those

HINDU LAW—(*Contd.*)

Religious Endowment—Asthal—(*Contd.*)

MOHUNT OF—(*Contd.*)

debts, and, if the Asthal was not liable for such debts, his successor would be clearly entitled to have the sale set aside. These considerations apply *a fortiori* to transactions in relation to the Asthal property of a person who derives his authority from the *de jure* head of the institution.

J, the Mahant of an Asthal, appointed plaintiff, a minor, his successor, and left a will whereby he appointed *C*, his guardian. *J* had mortgaged the Asthal property. After his death, the mortgagees brought or threatened proceedings on the mortgages. To pay off these liabilities *C* obtained the sanction of the District Judge to sell a portion of the Asthal properties, and, in pursuance of such sanction, executed a deed of sale in favour of the defendants. In a suit by plaintiff to have the sale set aside on the ground that there was no valid necessity for the alienation, and that the debts of *J* were not binding on the property of the asthal, it was contended that the mortgages for the discharge of which the sale sought to be impugned was effected, were executed by *J* for the satisfaction of some older debts. There was, however, no evidence that the defendants (alienees) made any enquiry as to the character of those debts, whether they were incurred for the benefit of the Asthal, or for the benefit of *J*, in his capacity as Mahant, and there was nothing to show that any portion of the monies borrowed in the first instance went for purposes which would make them binding on the Asthal.

Held, that *C*, whether acting as executor to the will of *J* or as guardian of plaintiff, had no larger powers of alienation than the *de jure* head of the institution, and that, as the defendants had wholly failed to establish any justifying necessity for the sale by *C*, the same was rightly set aside. (*Mr. Ameer Ali.*) BASUDEO ROY *v.* MOHANT JUGAL KISHWAR DAS. **(1918) 22 C.W.N. 841 = 28 C.L.J. 476 = 20 Bom.L.R. 1088 = 5 Pat. L. W. 57 = 16 A. L. J. 601 = 8 L. W 130 = (1918) M. W. N. 431 = 24 M. L. T. 305 = 45 I.C. 818 = 35 M. L. J. 5.**

———*Grant by native ruler to—Income of property granted—Acquisitions with—Accretion to asthal.*

An ordinary *birt*, or charitable and religious grant, made by a pious Hindu Rajah to a Hindu gossain, contained, *inter alia*, the following words:—"Mouzah, with boundaries, you will, at ease of mind, make cultivation and settlement of, and, making distribution out of the proceeds that arise among sadhus and saints (holy and religious men) you with your disciples and companions will enjoy (the remainder) without any anxiety. Knowing this to be a grant made for the love of the deity named above, no one will offer any opposition." The grant was subsequently confirmed in 1786 by one of the successors of the original grantor.

By that time an Asthal had sprung up, and the guru or preceptor had become the head of an institution with a seat of honour (the gaddi). The Asthal was thenceforth an institution devoted to the cult of the worshippers who congregated there.

Held, that the property, though granted to an individual, was burdened with an explicit and unambiguous trust, that set out in the grant, and that all acquisitions with the income thereof were subject to the same trust (9-10.) (*Mr. Ameer Ali.*) BASUDEO ROY *v.* MOHANT JUGAL KISHWAR DAS. **(1918) 22 C. W. N. 841 = 28 C. L. J. 476 = 20 Bom. L. R. 1088 = 5 Pat. L. W. 57 = 16 A.L.J. 601 = 8 L. W. 130 = (1918) M. W. N. 431 = 24 M.L.T. 305 = 45 I. C. 818 = 35 M. L. J. 5.**

———*Property of Asthal—Purchase with money borrowed on security of—Ownership of property purchased—Loan paid by mohunt—Credit for, in account with Asthal—Right of.*

HINDU LAW—(*Contd.*)

Religious Endowment—Asthal—(*Contd.*)

MOHUNT OF—(*Contd.*)

The appeal arose out of a suit brought against the appellant by *G*, as the mohunt of an Asthal, to recover possession of parcels of property described in the schedule to the plaint.

The parcels in question were the property of the Asthal, but were seised in execution under a decree which one *P* had obtained against the former mohunt. They were sold in execution for the sum of Rs. 5,849, and purchased by the appellant with money which he had borrowed from one *L*. The appellant was at that time manager of the Asthal under the former mohunt, and he borrowed the purchase money from *L* upon the mortgage, amongst other property, of three items of property belonging to the Asthal.

Held, that the plaintiff was entitled to the parcels so purchased by the appellant (146.)

The appellant, being a trustee, raised moneys upon the estates of his *cestui qui trusts*, and with that money bought the parcels in question. Under these circumstances the plaintiff is entitled to the parcels in question (146).

Held further that in case the appellant paid off the mortgage to *L* and obtained a release of the parcels belonging to the Asthal mortgaged by him to *L* from the charge created thereby, he would be entitled to take credit in account with the plaintiff for the sum of Rs. 5,849 borrowed by him for making the purchase in question (147). (*Sir Barnes Peacock.*) MUNGUL DAS *v.* MOHUNT BAWAN DAS. **(1877) Bald. 140 = 1 I. J. 706.**

———*Sale of property of Asthal by—Fraudutent transaction or* bona fide *transaction—Evidence.*

The appeal arose out of a suit brought against the appellant by one *G*, as the mohunt of an Asthal, for the recovery of possession of certain parcels of land described in the schedule to the plaint. The appellant claimed Lots 1, 2 & 4 under a deed of sale from *B*, who was the former mohunt of the Asthal. The deed which was put in evidence was dated 15—8—1860, and purported to be a conveyance of the property to the appellant in consideration of the payment of Rs. 8,000.

Held, on the evidence, affirming the High Court, that the property was not *bona fide* conveyed to the appellant for his own use, but that it was a mere pretended sale to protect it from creditors (143). (*Sir Barnes Peacock.*) MUNGUL DAS *v.* MOHUNT BAWAN DAS. **(1877) Bald. 140 = 1 I. J. 706.**

———Surplus income—Appropriation of, for personal use—Legality. *See* HINDU LAW — RELIGIOUS ENDOWMENT—SHEBAIT OF—PROPERTY OF ENDOWMENT—INCOME OF—SURPLUS INCOME.

(1919) 46 I. A. 204 (226-7) = 43 M. 253 (268-70).

ORIGIN, NATURE AND CONSTITUTION OF.

———*Mohunt of—Position and powers of.*

An Asthal, commonly known in Northern India as a Math, is an institution of a monastic nature. It is established for the service of a particular cult, the instruction in its tenets, and the observance of its rites. The followers of the cult and disciples in the institution are known as chelas; the chelas are of two classes—celibate and non-celibate. The mahant is the head of the institution. He sits upon the gaddi; he initiates candidates into the mysteries of the cult; he superintends the worship of the idol and the accustomed spiritual rites; he manages the property of the institution; he administers its affairs; and the whole assets are vested in him as the owner thereof in trust for the institution itself. Upon his death or abdication he is succeeded by one of the bairagi chelas. These bairagi chelas are, as stated, celibates; or if they have ever been married they must, prior

HINDU LAW—(*Contd.*)

Religious Endowment—Asthal—(*Contd.*)

ORIGIN, NATURE AND CONSTITUTION OF—(*Contd.*)

to their initiation as bairagi chelas, have renounced their wives and families and have conformed to the practice of the Math. This practice is ascetic; it involves a separation from all worldly wealth and ties, and a self-dedication to the services and rites of the Asthal. Pious persons endow the schools with property, which is vested in the preceptor for the time being, and a home for the school is erected and a Mattam constituted (75-6). The mahant is not only a spiritual preceptor, but also a trustee in respect of the Asthal over which he presides (90). (*Lord Shaw*). RAM PARKASH DAS *v.* ANAND DAS. **(1916) 43 I. A. 73 = 43 C. 707 (713-4) = 33 I. C. 583 = 20 C. W. N. 802 = 14 A. L. J. 621 = (1916) 1 M. W N. 406 = 18 Bom. L. R. 49 = 24 C. L. J. 116 = 20 M. L. T. 267 = 3 L. W. 556 = 31 M. L. J. 1.**

PROPERTY OF.

———[For other cases. *See* UNDER HINDU LAW—RELIGIOUS ENDOWMENT—ASTHAL—MAHANT OF.]

———*Alienation of, by person not mohunt of Asthal—Validity of—Conditions.*

A mortgage of the property of an Asthal executed, not by its mohunt, but by another person, does not bind the property, unless that other person had authority, as agent of the mohunt, or of the Asthal, to execute the bond, or the lender was induced by some act or neglect of the mohunt or of the Asthal, to believe that the mortgagor had such authority, or that he was the actual owner of the property, and acting under the belief so caused, dealt with the mortgagor as such agent or owner (65). (*Sir Barnes Peacock.*) MOHESH LAL *v.* MOHUNT BAWAN DAS. **(1883) 10 I. A. 62 = 9 C. 961 (971) = 13 C. L. R. 221 = 4 Sar. 424.**

———Private property of mohunt or. *See* HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT OF—PROPERTY OF ENDOWMENT—PRIVATE PROPERTY OF SHEBAIT OR.

Religious Endowment—Debutter property of.

———*See* UNDER HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT OF—PROPERTY OF ENDOWMENT.

Religious endowment—Dedication of property to.

ABSOLUTE DEDICATION—CHARGE ON PROPERTY.
ABSOLUTE DEDICATION TO IDOL SUBJECT TO CHARGE IN FAVOUR OF HEIRS—GIFT TO HEIRS SUBJECT TO CHARGE IN FAVOUR OF IDOL.
COLORABLE DEDICATION.
COMMON USE OF DIFFERENT SECTS—DEDICATION FOR.
CORPUS ONLY OR ACCUMULATIONS ALSO.
DIVERSION OF.
EVIDENCE OF.
PROOF OF—ONUS.
VALIDITY OF.
WRITING—NECESSITY.

ABSOLUTE DEDICATION—CHARGE ON PROPERTY.

———*Surplus left in case of—Heirs at law of testator—Right of, to such surplus.*

A Hindu, being at the point of death, made his will in the following terms:—

"I dedicate and give to Annapoorna Thakooranee, the Thakoor established by my deceased father, all the ancestral and self-acquired moveable and immoveable properties, zemindaries, and putnee, etc., whether in my own name or benamee, to which I am entitled and of which I am in possession. I have no sons or daughters of my loins. I have two wives living. Each of the wo Ranees will adopt one son. The two adopted sons of both wives shall remain the

HINDU LAW—(*Contd.*)

Religious endowment—Dedication of property to—(*Contd.*)

ABSOLUTE DEDICATION—CHARGE ON PROPERTY—(*Contd.*)

shebaits of the whole of the moveable and immoveable property dedicated to Annapoorna Thakooranee aforesaid. They will carry out the supervision and the improvement of the said property. But they will do everything according to the advice of all the principal officers appointed by me. They will not be competent to make gift or sale of the different properties. Up to the time that the said two adopted sons do not attain their majority, my aforesaid two wives will exercise the care and control of all the said properties, and in carrying out these duties they shall take the advice of all the principal officers which have been appointed by me. They will not be competent to act otherwise. When the two adopted sons shall have attained their majority, and shall have acquired sufficient knowledge for the preservation of the property, my two wives shall make over to them as shebaits, to their satisfaction, all the property dedicated to the Issur Deb Sheba. Out of the income of the property dedicated to the Deb Sheba, etc., after performing the sheba of the abovementioned Annapoorna Thakooranee, and the Sree Sree Issurs established by my ancestors and myself, and after meeting the prescribed monthly allowances, and after performing the daily and fixed rites and ceremonies, as they are now performed and met, out of the profits which shall remain, each adopted son shall receive at the rate of 1,000 rupees monthly."

Held that, on the true construction of the will, the property thereby given to the Thakoor therein mentioned was given for the purpose of securing the proper performance of the Sheba of the said Thakoor and the other family Thakoors in the will mentioned, and the prescribed monthly allowances, and the proper performance of the daily and fixed rites and ceremonies as they were performed and met in the testator's lifetime (133).

Held further, that the other dispositions of the will were inoperative, and that on the testator's death his two widows were his heirs-at-law, and as such became shebaits of the Thakoor, and entitled for the widows' estate to such interest in the testator's property as remained undisposed of by the will (133).

It is argued that by the will all is given to the Thakoor, the heirs become shebaits, and manage the property in the usual way. But the matter is not quite so simple.

After all the charges prescribed by the will were met there would be a very large surplus, and the testator must have been well aware of that. In fact he directs that out of the surplus each adopted son shall receive Rs. 1,000 monthly; but of the residue after that he says nothing. There is no indication that the testator intended any extension of the worship of the family Thakoors. He merely prescribes that his family worship shall be conducted in the accustomed way, by giving his property to one of the Thakoors. But the effect of that, when the estate is large, is to leave some beneficial interest undisposed of, and that interest must be subject to the legal incidents of property. After performing their prescribed duties as shebaits, the widows of the testator became entitled to the beneficial interest in the surplus for the widow's estate (127-8). (*Lord Hobhouse.*) SURENDRAKESHAW ROY *v.* DOORGASUNDARI DASSEE.

(1892) 19 I. A. 108 = 19 C. 513 (531-2) = 6 Sar. 150.

ABSOLUTE DEDICATION TO IDOL SUBJECT TO CHARGE IN FAVOUR OF HEIRS—GIFT TO HEIRS SUBJECT TO CHARGE IN FAVOUR OF IDOL.

———*Test.*

The question is whether, according to the true intent of the will, the idol for whom the property is granted was intended to take absolutely. A reference to the second, third, and fifth clauses of the will lead us to the conclusion, that although the will purports to begin with an absolute gift in favour of the idol, it is plain that the testator contemplated that there was to be some distribution of the property according as events might turn out; and that he did not intend to give this property absolutely to the idol seems to be clear from the directions which are contained in the third clause that after the expenses of the idol are paid, the surplus shall be accumulated; and still more so from the fifth clause, by which the testator has provided for whatever surplus shall remain out of the interest of the property, the expenses of the idol being first deducted. It is plain that the testator, looking at the expenses of the idol, was not contemplating an absolute and entire gift in favour of the idol (85-6). (*Lord Justice Turner.*) SONATUN BYZACK *v.* SREEMUTTY JUGGUTSOONDREE DOSSEE.

(1859) 8 M. I. A. 66 = 2 Suth. 37 = 1 Sar. 721.

———Where a hibbanamah was as follows;—"Knowing you are the wife of my grandson, and the mother of a son; moreover you are always employed in taking care of me you will be able to take care in a very good way of the service of the gods, and my property will remain intact. For these reasons the worship of the aforesaid gods, their *debutter* pergunnahs (naming them), the ornaments of the gods, and all other property appropriated to the worship of the gods, I make over to you, by having caused your name to be enrolled in the shebaittee, you will take possession of the debutter, etc, and continue to perform the prescribed worship of the gods from generation to generation. You have the power to appoint a shebait for the worship of the gods."

Held, on a construction of the deed, that the intention of the donor was to perpetuate the worship in the family, and not to make an absolute gift of the property to the donee, subject to her making due provision for the worship of the idols (664).

The power to appoint a shebait is consistent with either construction. The words "from generation to generation," may, in some cases, mean no more than to express the absolute character of the gift; but, considering the subject-matter, it seems more probable that in this deed they were used in their natural sense to denote an intention to perpetuate the worship in the family (664). COLLECTOR OF MOORSHEDABAD *v.* RANEE SHEBESSURREE.

(1872) 2 Suther. 661 = 18 W. R. 226.

———A hibbanamah contained no words of succession nor any reference to family or descendants. In it the executant stated that she had in her house the worship of the idol Sree Sree Ishwur, and that her daughter was shebait, and continued:—"I worship now. For the purpose of worship there is turruff, etc., and the ornaments, etc."—"I give it to you as a gift; you will take possession in accordance with the hibba; you will always perform the worship of the gods; you will cause your name to be written as shebait in the Government records, and will always pay the revenue. Therefore I do give this deed of gift."

Held, that the gift was an absolute gift to the grantee, subject to her making due provision for the worship of the idol, and not a gift to the family of the grantee (664). COLLECTOR OF MOORSHEDABAD *v.* RANEE SHEBESSURREE.

(1872) 2 Suther. 661 = 18 W. R. 226.

———Cases may occur where, from the nature of the terms of the gift, the intention of the donor to confer a beneficial

HINDU LAW—(*Contd.*)

Religious endowment—Dedication of property to—(*Contd.*)

ABSOLUTE DEDICATION TO IDOL SUBJECT TO CHARGE IN FAVOUR OF HEIRS—GIFT TO HEIRS SUBJECT TO CHARGE IN FAVOUR OF IDOLS—(*Contd.*)

and a secular interest in property dedicated to the worship of idols may be inferred (663). COLLECTOR OF MOORSHEDABAD *v.* RANEE SHEBESSURREE.

(1872) 2 Suth. 661 = 18 W. R. 226.

———The will of a Hindu lady ran as follows :—"I dedicate Lot *P* to the Thakur Ishwar Raj Rajeswar that is in my house. And the Sarodia Pooja and other ceremonies that are being performed in the house will be performed as hitherto. After all these acts have been observed, from the proceeds of the said property if there be a surplus in the profits then the family will be supported therefrom. This property of mine will not be liable for the debts of any person. None will be able to transfer it. None will have the rights of gift and sale. I appoint my eldest son *D. C.* and the second son *S. C.* to be the executors of this will. When my youngest son *B. C.*, who is now a minor, arrives at majority, he will similarly be an executor. Collecting the proceeds of this property, you will deduct therefrom the rent, revenue, taxes, charges for repairs, and whatever other expenses may be necessary for the preservation of property, and the collection charges ; and will defray from the aforesaid profits the expenses of the daily worship of the said Thakur, the expenses of the parbans, *i.e.*, the Dolejaltra, the Rashjaltra, etc, on his account, (the expenses of) the Doorga Pooja, the Shama Pooja, and the Jagadhatri Pooja, the expenses of the annual Shraddh of my father-in-law, of the first Shraddh of myself and my husband after our death, and the expenses of our ekodista and sapindikaran. I appoint you as the executors of this will. You will pay my debts, and, collecting the sums due to me, you will incorporate them with my estate. And from the proceeds thereof you will meet the expenses described above ; and if there be a surplus after deducting the said expenses, it will also be disbursed in the manner aforesaid. After your death, he who is my heir for the time being will be the executor of this will. Beyond performing the aforesaid worship of the deb and the ceremonies and poojas, none of my heirs shall have any interest in or profit from my property. And they will have no power of gift or sale over it. And it will not be attached or sold on account of their debts."

Held, that on the right construction of the will, its effect was to charge the property in the hands of the executors thereby appointed with the payment of such sums as might be necessary to defray the expenses which might from time to time be incurred in the daily worship of the idol therein mentioned, in the manner in which such service was performed at the time of the death of the testatrix, and with the expenses of the parbans and of the poojas and other religious acts and ceremonies in the said will mentioned ; and that the surplus left, after defraying such expenses, belonged to the members of the joint family, of whom *D. C.* was one (188-9). (*Sir Barnes Peacock.*) ASHUTOSH DUTT *v.* DOORGA CHURN CHATTERJEE. **(1879) 6 I. A. 182 = 5 C. 438 (443-4) = 5 C. L. R. 296 = 4 Sar. 58 = 3 Suth. 694.**

———The question whether, in the case of a gift to an idol with beneficial interests to the settlor's or testator's heirs, the idol itself shall be considered the true beneficiary, subject to a charge in favour of the heirs or specified relatives of the testator for their upkeep, or that, on the other hand, those heirs shall be considered the true beneficiaries of the property, subject to a charge for the upkeep, worship and expenses of the idol, is a question which can only be

HINDU LAW—(*Contd.*)

Religious endowment—Dedication of property to—(*Contd.*)

ABSOLUTE DEDICATION TO IDOL SUBJECT TO CHARGE IN FAVOUR OF HEIRS—GIFT TO HEIRS SUBJECT TO CHARGE IN FAVOUR OF IDOL—(*Contd.*)

settled by a conspectus of the entire provisions of the will. No hard and fast rule can be set up, derived alone from the use of particular terms in one portion of the will.

Held, affirming the court below, that by the will in question the property was not given absolutely to the idol and that the provision for the worship, expenses, and annual charges of the idol, formed a burden upon the estate disposed of by the will, the property itself descending according to the destination in the will subject to that burden. (*Lord Shaw.*) PANDE HAR NARAIN RAM *v.* MUSAMMAT SURJA KUNWARI. **(1921) 48 I. A. 143 = 43 A. 291 = 14 L. W. 633 = 25 C. W. N. 961 = 63 I. C. 34.**

———The will of a Hindu testatrix was addressed to *U*, the grandson of the testatrix by her predeceased son, and it related first to certain property which was referred to as the Company's paper standing in the name of the testatrix. It directed that out of the income "you" (that is *U*) "shall perform the sheba (worship, etc.) of Sri Sri Iswar and the Sheba of the ancestral Sri Sri Iswar, 'you' shall perform the Sheba of the said Iswarjew out of the income of the ancestral garden called Iswar Gopal Lal Ji's garden, purchased in his name. 'You' shall be the person in charge of the Sheba of all the deities." There was then introduced a separate and definite gift with regard to two houses, out of which was directed there should be performed the Sheba of Sri Sri Iswarjew "as it is at present," and that the remainder of the income should be divided between the other members of the surviving branches of her own family, except her second son, who was insane. The testatrix then referred again to the balance of the interest accruing from the Company's paper, and directed how that was to be dealt with in connection with religious services. There was no gift of the residue.

Held, that there was no gift, express or implied, of the property to the idols, and that the gift was to the grandson *U* charged with the maintenance of the idols, but that no heritable Shebaitship was established by the will (104-5).

Held further, that the gift was in effect a private trust to which the provisions of S. 539 of C. P. C. of 1882 would not apply (107). (*Lord Buckmaster.*) GOPAL LAL SETT *v.* PURNA CHANDRA BASAK. **(1921) 49 I. A. 100 = 49 C. 459 (464-5, 468) = 20 A. L. J. 625 = 36 C. L. J. 57 = 24 Bom. L. R. 937 = 16 L. W. 963 = A. I. R. 1922 P.C. 253 = 27 C. W. N. 114 = 67 I. C. 561 = 43 M. L. J. 116.**

COLORABLE DEDICATION.

———Bona fide *and real dedication—Evidence.*

The question was whether certain Government papers for a sum of two lakhs and Rs. 15,000 had been, by an agreement of the members of a joint family then in existence in 1859, devoted to the service of an idol, and, therefore, the plaintiff, the widow of one of the members of the family, could not recover a share of that property, which she sued for, not in her capacity of Shebait, but as part of her husbands' estate. The plaintiff contended that the supposed agreement of dedication, even if actually executed, was colorable and collusive, that it was not intended to have effect, and was merely entered into for the purpose of defeating the possible rights of the widows, and keeping the property in the hands of the male members of the family.

The Sub-Judge held that the agreement had been duly executed, and was a *bona fide* agreement dedicating the property to the idol. On appeal the High Court treated the

HINDU LAW—(*Contd.*)

Religious endowment—Dedication of property to—(*Contd.*)

COLOURABLE DEDICATION—(*Contd.*)

agreement of appropriation as invalid, observing that the real aspect of the transaction appeared to be that the parties, not wishing at that time to divide the whole of the Government notes amongst them, or possibly, in order to prevent a widow from taking any part of it, and to preserve it for the male members of the family, resorted to the contrivance to keep a portion as a joint fund to accumulate, and be afterwards used or divided as they might have occasion.

The document was conclusively established, at all events, as far as its execution was concerned, about which there never was any serious dispute It was substantiated by very strong evidence. It was shown to have been acted upon by all the parties.

Held, reversing the High Court, that, under the circumstances, the court would not be justified in putting the agreement aside and declaring it to be a colorable transaction having no validity, merely upon the suggestion—for it amounted to no more—that the amount set aside was an exorbitant amount, and that there might possibly have been some intention to defraud widows or some other persons (131).

It is not upon mere speculations of this sort that an agreement proved by evidence so strong to have been not merely executed, but acted upon for a number of years, can be properly set aside (131). (*Sir Robert P. Collier.*) RADHA MOHUN MUNDUL *v.* JADOOMONEE DASSEE.

(1875) 3 **Suth. 127=23 W. R. 369=3 Sar. 482.**

———*Dedication may be a mere, for making property inalienable.*

A gift of property to a Thakoor may be a mere scheme for making the family property inalienable (127). (*Lord Hobhouse.*) SURENDRAKESHAV ROY *v.* DOORGASUNDARI DASSEE. (1892) **19 I. A. 108=19 C. 513 (531)=6 Sar. 150.**

———*Setting aside of deed of endowment on ground of dedication being a mere—Grounds—Evidence strong of execution of deed—Actings of parties pursuant to it—Effect.*

An agreement among the members of a joint Hindu family appropriating part of the family property to an idol was substantiated by very strong evidence. It was shown to have been acted upon by all the parties.

Held, that under such circumstances the Court would not be justified in putting it aside and declaring it to be a colorable transaction having no validity, merely upon the suggestion that the amount set aside was an exorbitant amount, and that there might possibly have been some intention to defraud widows or some other persons (131).

It is not upon mere speculations of this sort that an agreement proved by evidence so strong to have been not merely executed, but acted upon for a number of years, can be properly set aside (131). (*Sir Robert P. Collier.*) RADHA MOHUN MUNDUL *v.* JADOOMONEE DASSEE.

(1875) 3 **Suth. 127=23 W. R. 369=3 Sar. 482.**

COMMON USE OF DIFFERENT SECTS—DEDICATION FOR.

———Appropriation of property by one of sects only—Proof of—Effect of. *See* JAINS—RELIGION OF, GENERALLY. (1925) **50 M. L. J. 631** (634-5).

CORPUS ONLY OR ACCUMULATIONS ALSO.

———Dedication of. *See* CHARITY—BEQUEST FOR—CORPUS ONLY. (1920) **24 C. W. N. 1026** (1030).

DIVERSION OF.

———*Family idol—Public temple—Distinction.*

Where the temple is a public temple, the dedication may be such that the family itself could not put an end to it; but in

HINDU LAW—(*Contd.*)

Religious endowment—Dedication of property to—(*Contd.*)

DIVERSION OF—(*Cont.*)

the case of a family idol, the consensus of the whole family might give the estate another direction (58). (*Sir Montague E. Smith.*) KONWAR DOORGANATH ROY *v.* RAM CHUNDER SEN. (1876) **4 I.A. 52=2 C. 341 (347)=3 Sar. 681=3 Suth. 375.**

EVIDENCE OF.

———*Held*, on the evidence, that the property alleged by the plaintiff to be dewutter property, was not dewutter property (62). (*Sir Montague E. Smith.*) KONWAR DOORGANATH ROY *v.* RAM CHUNDER SEN. (1876) **4 I.A. 52=2 C. 341 (349-50)=3 Sar. 681=3 Suth. 375.**

———In a case in which the question was whether the suit property was or was not really debutter, their Lordships, agreeing with the Courts below, found that it was debutter (79). (*Lord Macnaghten.*) ISHWAR SHYAM CHAND JUI. *v.* RAM KANAI GHOSE. (1911) **38 I. A 76=38 C. 526 (535)=15 C. W. N. 417=9 M.L.T. 448=8 A L J 528=13 Bom. L.R. 421=14 C. L. J. 238=(1911) 2 M. W. N. 281=10 I C. 683=21 M. L. J. 1145.**

———*Income of property—Appropriation of, for purposes of endowment.*

Proof of the fact that the rents of certain property were applied to the worship of an idol during a certain period is not by itself sufficient to establish that the property has been inalienably conferred upon the idol to sustain its worship, especially where it appears from the conduct of the parties that the property was not dewutter property (61). (*Sir Montague E. Smith.*) KONWAR DOORGANATH ROY *v.* RAM CHUNDER SEN. (1876) **4 I. A. 52=2 C. 341 (349)=3 Sar. 681=3 Suth. 375.**

———Where the question was whether the karta of a joint Hindu family had dedicated by any act *inter vivos* a usufructuary mortgage belonging to the family to a religious charity and the evidence showed that the profits of the usufructuary mortgage were not all applied to the charity, but merely that they were treated as the purse from which the expenses of the charity were met, *held*, that there was no dedication of the usufructuary mortgage by any act *inter vivos* (144-5). (*Lord Phillimore.*) GANGI REDDI *v.* TAMMI REDDI. (1927) **54 I.A. 136=50 M. 421=45 C. L. J. 512=25 A. L. J. 593=(1927) M. W. N. 502=31 C. W. N. 799=26 L. W. 139=8 Pat. L.T. 681=29 Bom. L. R. 856=4 O. W. N. 482=101 I. C. 79=A. I. R. 1927 P. C. 80=52 M. L. J. 524.**

———*Income of property—Appropriation of, for purposes of endowment—Value of, when deed of endowment ambiguous*—Contemporanea expositio est optima—*Applicability of.*

The mere fact of the proceeds of any land being used for the support of an idol may not be proof that those lands formed an endowment for the purpose, but it is a fact that may well be taken into consideration when the intention of the founder has to be gathered from an ancient document expressed, to say the least, in ambiguous language. *Contemporanea expositio est optima.* (*Sir Andrew Scoble.*) ABHIRAM GOSWAMI *v.* SHYAMA CHARAN NANDI. (1909) **36 I. A. 148 (164)=36 C. 1003 (1012)=10 C. L. J. 284=14 C. W. N. 1=11 Bom. L. R. 1234=6 A. L. J. 857=4 I.C. 449=19 M. L. J. 530.**

———*Performance of worship in accordance with rites of sect for whose benefit it is held.*

Where the question was whether the temple in suit with the appurtenances formed the private property of a person descendible according to the ordinary rule of Hindu law, or

HINDU LAW—(*Contd.*)

Religious endowment—Dedication of property to—(*Contd.*)

EVIDENCE OF—(*Contd.*)

was debuttur, *held* that, apart from positive testimony directly bearing on the point, the performance of the worship in accordance with the rites of the sect for whose benefit it was held might be treated as good evidence of dedication. (*Mr. Ameer Ali.*) MOHAN LALJI *v.* GORDHAN LALJI MAHARAJ. **(1913) 40 I. A. 97 (103) = 35 A. 283 (288) = 17 C. W. N. 741 = 11 A. L. J. 548 = 17 C. L. J. 612 = 15 Bom. L. R. 606 = (1913) M. W. N. 536 = 14 M. L. T. 27 = 19 I. C. 337.**

———*Purchase of property in name of idol—Dealings with property by purchaser on his own account—Effect.*

Is there any evidence of an endowment properly so called? What is the evidence of an endowment? This was clearly not an endowment for the benefit of the public. The idol was not set up for the benefit of the public worship. There are no priests appointed, no Brahmins who have any legal interest whatever in the fund. It is not like a temple endowed for the support of Brahmins, for the purpose of performing religious service for the benefit of any Hindoo who might please to go there. It is simply an idol set up by the Maharajah apparently in his own house, and for what purpose? Why, for his own worship. We constantly have suits claiming terms, but here there is no turn or right of worship established. There is nothing stated in any way to show that the Maharajah intended that the idol should be kept up for the benefit of his heirs in perpetuity; and before it can be established that lands have been endowed in perpetuity, so that they can never be sold and must be tied up in perpetuity some clear evidence of an endowment must be given. What are the objects of the endowment? None of the essentials of an endowment are stated. The Maharajah appears to have purchased the property in the name of the idol and that is all. Then he deals with the fund of the idol as if it were his own property. There is no evidence at all of any of the essentials of an endowment in favour of the idol. In the case reported in 5 Suther Dewanny Adawlut Reports 268, it was held that when an endowment is merely nominal, and indications of personal appropriation and exercise of proprietary right are found, a sale of the property is valid under the Hindu law. It appears, therefore, upon the authority of that case, and upon the principle of endowments, that this was not an endowment by the Maharajah in perpetuity for the benefit of the idol, so as to establish that the property so conveyed to the idol was to be the property of the idol for ever and that nobody could alienate it. Here there was no endowment, no priest, no public, no one legally interested in the worship of this idol, except the Maharajah himself, and nothing to show that the Maharajah intended to establish it for the benefit of his sons, or heirs, or anybody else, in perpetuity (871). MAHARANEE BROJOSOONDERY DEBIA *v.* RANEE LUCHMEE KOONWAREE.

(1873) 2 Suth. 869 = 20 W. R. 95 = 4 Sar. 810.

———Sale-deed by Shebait—Recital in, that property conveyed was debutter—Effect—Evidence—Admission operating as estoppel. *See* ADMISSION—DEED—ADMISSION IN—MUST BE TAKEN AS A WHOLE. **(1876) 4 I.A. 52 (62) = 2 C. 341 (350).**

PROOF OF—ONUS.

———*Quantum.*

The onus of proving that property has been inalienably conferred upon the idol to sustain its worship lies upon the party who sets up such a case. Very strong and clear evidence of such an endowment ought to exist (61). (*Sir Montague E. Smith.*) KONWUR DOORGANATH ROY *v.* RAM CHUNDER SEN. **(1876) 4 I.A. 52 = 2 C. 341 (349) = 3 Sar. 681 = 3 Suth. 375.**

HINDU LAW—(*Contd.*)

Religious endowment—Dedication of property to—(*Contd.*)

VALIDITY OF.

———*Donor's family—Benefits to—Effect.*

A Hindu by a deed which he registered dedicated the whole of his property to a temple. The deed provided, *inter alia*, that after the death of the settlor, certain female members of his family should succeed him as manager, that half the income should be applied to the temple purposes and the other half enjoyed by the managers, without power of alienation; that upon the death of the named managers the Government should become manager, and that the whole net income should then be applied to the expenses of the temple.

Held, that the deed was a valid endowment of the whole property to the temple and that the donor's heirs had no rights in it against either the idol or the manager. (*Viscount Haldane.*) JADU NATH SINGH v. THAKUR SITA RAMJI. **(1917) 44 I. A. 187 = 39 A. 553 = 26 C. L. J. 309 = (1917) M. W. N. 605 = 20 O. C. 200 = 21 C. W. N. 953 = 19 Bom. L. R. 687 = 42 I. C. 225 = 22 M. L. T. 52.**

———Government notes indorsed to *A*—Trust upon, subsequent to indorsement—Affixing by donor of—What amounts to—Effect. *See* HINDU LAW—GIFT — TRUST UPON PROPERTY SUBJECT OF. **(1875) 3 Suth. 210 (211-2.)**

———*Residence of shebait—Condition of—Effect.*

In respect of a house the income of which was by a will bequeathed for religious purposes, the will provided that the shebait for the time being should be entitled to reside with his family in the said house, the same being specially set apart by the will for the family idols.

Held, that there was a valid dedication of the house for religious purposes.

The gift is only a perfectly reasonable arrangement to secure that the man in whose hands the supervision of the whole estate is vested should have associated with his duties the right to reside in the said dwelling-house (1030). (*Lord Buckmaster.*) GNANENDRA NATH DAS *v.* SURENDRA NATH DAS. **(1920) 24 C. W. N. 1026 = 61 I C. 323 = (1921) M. W. N. 550 = 28 M. L. T. 453.**

WRITING—NECESSITY

———Landed property—Dedication of. *See* HINDU LAW—RELIGIOUS CHARITY. **(1927) 54 I. A. 136 (140) = 50 M. 421.**

Religious Endowment—Deed creating.

———*What amounts to a.*

An anumati-patra executed by a Hindu in favour of his wife ran as follows:—"You are my wife. You have no children born. I am now very ill in body. I have no hope of life. On my death there will be no one to perform the ancestral deb-kirti (worship of the gods), etc., and offer the jolpinda (funeral cake and libations of water) of my ancestors. For the observance of all these rites, and of the jolpinda to the ancestors, as well as the preservation of the Zemindaries, lakhiraj, dewutter, etc., I..give you permission on my death to keep possession of my Zemindaries, dewutter, etc., recording your own name in the Collectorate Sherishta, to remain in enjoyment of the profits, and to defray the expenses of the deb-kirti during your lifetime, and to adopt one or two sons born in the family of true Brahmins. On your death, the adopted son will succeed to all properties; and on the said adopted son attaining his majority you will, if you should desire it, get his name registered in the Zemindary tahoot, and surrender the entire management to him. Now I am a debtor to mahajans (creditors). Some mehals of the Zemindary are in mortgage on account of

HINDU LAW—(*Contd.*)

Religious endowment—Deed creating—(*Contd.*)

those debts. If there should be no other means of liquidating the debts, you will either sell a small portion of the Zemindary or make conditional sale of it, as appears necessary, and liquidate the debts."

Held that, though there was a reference to dewutter property in the document, the document itself created no endowment (56). (*Sir Montague E. Smith.*) KONWUR DOORGANATH ROY *v.* RAMCHUNDER SEN.

(1876) 4 I. A. 52 = 2 C. 341 (344-5) = 3 Sar. 681 = 3 Suth. 373.

Religious Endowment—Family endowment.

———Dedication to—Assent of State to—Necessity—Revocability of, in absence of such assent. *See* TRUST—FAMILY TRUST. (1871) 14 M. I. A. 289 (302).

———*Joint shebaits of—Suit by some of—Dismissal of, on ground of non-joinder—Propriety.*

Three out of four joint shebaits of a certain family endowment sued to set aside an alienation of the endowed property made by the fourth shebait, and to recover possession of the same as debutter. Notwithstanding objection by the defendants to the competency of the plaintiffs to maintain the suit, without joining the fourth shebait either as a plaintiff or as a defendant, they kept him out of the suit altogether from motives of their own. The High Court upheld the defendant's objection, and dismissed the suit.

Held, that the suit was rightly dismissed by the High Court on the ground of non-joinder (141).

The case is certainly not one in which the Court should make an exception to the general rule which would require the fourth shebait to be a party (141). (*Sir Richard Couch.*) RAJENDRONATH DUTT *v.* SHAIK MAHOMED LAL.

(1881) 8 I. A. 135 = 8 C. 42 (48-9) = 4 Sar. 254.

———*Joint shebaits of—Suit by some of—Other shebaits if also parties to—Suit not purporting to be on their behalf also.*

Where three out of four joint shebaits of certain family endowment sued to set aside an alenation of the endowed property made by the fourth shebait, without professing to sue on behalf of the fourth shebait who did not join in the suit, *held* that the fourth shebait was not a party to the suit at all, and that no decree could be made in it which would bind him (140).

Although the fourth shebait might indirectly gain benefit from the suit, the fact that the other shebaits were suing did not make him also a plaintiff (140). (*Sir Richard Couch.*) RAJENDRONATH DUTT *v.* SHAIK MAHOMED LAL. (1881) 8 I. A. 135 = 8 C. 42 (47-8) = 4 Sar. 254.

Religious Endowment—Grant personal to a person subject to condition of his defraying expenses of, from its revenue.

———*Non-observance of condition—Effect.*

Where a grant of villages made by a Hindu ruler to his royal physician was found to be a personal grant subject to the condition of his defraying the expenses of a religious endowment from its revenue, *held* that in such a case the interests of the religious endowment were paramount and that no administration by the persons claiming either under the title of grantee, or of mutawallee or of manager could be legally sanctioned which was in violation or betrayal of the interest of the endowment as safeguarded by the imposition of the condition which attached throughout to the grant. (*Lord Shaw.*) MUHAMMAD RAZA *v.* YAGAR HUSSAIN.

(1924) 51 I. A. 192 (197-8) = 51 C. 446 (452-3) = L. R. P.C. 76 = 7 N. L. J. 116 = 20 L. W. 3 = 28 C. W. N. 937 = = 21 N. L. R. 1 = = 80 I. C. 645 = (1924) M. W. N. 447 = A. I. R. 1924 P.C. 109 = 34 M. L. T. 83.

HINDU LAW—(*Contd.*)

Religious Endowment—Idol.

———(*See also* HINDU LAW—RELIGIOUS ENDOWMENT—TEMPLE.)

DEDICATION OF PROPERTY TO.
FAMILY IDOL.
GENERAL AND SPECIAL TRUSTEES OF.
GIFT DIRECTLY TO—SHEBAIT'S POSITION IN CASE OF.
JEWELS DEVOTED TO — ASSIGNEE FROM TRUSTEES OF.
JURIDICAL ENTITY—SHEBAIT ONLY MANAGER.
KATTALAI PROPERTIES OF—POSSESSION OF.
MOHUNT OF.
PROPERTY CHARGED WITH EXPENSES OF WORSHIP OF—SURPLUS BEQUEATHED TO MEMBERS OF TESTATOR'S FAMILY.
PROPERTY OF.
PURCHASE IN NAME OF ONE'S OWN—BENAMI PURCHASE.
SHEBAIT OF.
WORSHIP IN.

DEDICATION OF PROPERTY TO.

———*See* UNDER HINDU LAW—RELIGIOUS ENDOWMENT—DEDICATION OF PROPERTY TO.

FAMILY IDOL.

———Dedication to—Division of—Family's power as to—Public temple—Distinction in case of. *See* HINDU LAW—RELIGIOUS ENDOWMENT—DEDICATION TO—DIVERSION OF. (1876) 4 I. A. 52 (58) = 2 C. 341 (347.)

———*Destruction or degradation of, or injury to—Shebait's power of.*

A family idol is not in the position of a mere moveable chattel. Hindu family idols are not property in the crude sense of the term, and their destruction, degradation or injury are not within the power of their custodian for the time being. Such ideas appear to be in violation of the sanctity attached to the idol, whose legal entity and rights as such the law of India has long recognised (256, 257.) (*Lord Shaw.*) PRAMATHA NATH MULLICK *v.* PRADYUMNA KUMAR MULLICK. (1925) 52 I. A. 245 = 52 C. 809 = 23 A. L. J. 537 = 41 C. L. J. 551 = 22 L. W. 492 = (1925) M. W. N. 431 = 2 O. W. N. 557 = 27 Bom. L. R. 1064 = 30 C. W. N. 25 = 3 Pat. L. R. 315 = A. I. R. 1925 P. C. 139 = 87 I. C. 305 = 49 M. L. J. 30.

———*Endowment for the support of—Management of—Right of heirs of original grantee—Modes of exercise of, before and after partition—Distinction—Applicability of that rule to lands given to guru for conducting food chatram and constructing agroharam round tomb of holy man.*

With regard to private charities, such as, endowments for the support of the family idol, the law is that if there is no contrary provision in the original grant, the right of management passes to the natural heirs of the original grantee, and, if there be no other arrangement or usage and no scheme settled by the court, will be exercised by the managing member of the family before partition, or in turn by the several heirs after partition (7).

The scheme settled by the court on a partition between the heirs will provide for equal rights of management by them and their heirs, either by giving the management to each in rotation, or possibly by dividing the charities and assigning the management of some to one and of the others to the others. This will be the nearest approach that can be made to the ordinary partition which is granted at the request of any one of the coparceners of Hindu family property (7).

Quoere whether the law as accepted by the Board in 33 I. A. 139 applies to lands given to a guru or spirtual precep-

HINDU LAW—(*Contd.*)

Religious endowment—Idol—(*Contd.*)

FAMILY IDOL—(*Contd.*)

tor for the purpose of perpetually conducting a food chathram near the tomb of a holy man, and in one case for the purpose of making an agraharam by building houses round about the holy place (7). (*Sir Robert Phillimore.*) SETHURAMASWAMIAR *v.* MERUSWAMIAR.

(1917) 45 I. A. 1 (6-7) = 41 M. 296 (304) = 20 Bom. L. R. 414 = 7 L. W. 22 = 23 M. L. T. 94 = 4 Pat. L. W. 91 = 16 A. L. J. 113 = 27 C. L. J. 231 = 22 C. W. N. 457 = 43 I. C. 806 = 34 M. L. J. 130.

———*Location of—Shebait's desire as to—Duty to give effect to.*

If, in the course of a proper and unassailable administration of the worship of the idol by the Shebait, it be thought that a family idol should change its location the will of the idol itself, expressed through his guardian, must be given effect to. *A fortiori* it is open to an idol acting through his guardian the shebait to conduct its worship in its own way at its own place always on the assumption that the acts of the shebait expressing its will are not inconsistent with the reverent and proper conduct of its worship by those members of the family who render service and pay homage to it (259). (*Lord Shaw.*) PRAMATHA NATH MULLICK *v.* PRADYUMNA KUMAR MULLICK. **(1925) 52 I. A. 245 = 52 C. 809 = 23 A. L. J. 557 = 41 C. L. J. 551 = 22 L. W. 492 = (1925) M. W. N. 431 = 2 O. W. N. 557 = 27 Bom. L. R. 1064 = 30 C. W. N. 25 = 3 Pat. L. R. 315 = A. I. R. 1925 P. C. 139 = 87 I. C. 305 = 49 M. L. J. 30.**

———Moveable chattel—Not a mere. *See* HINDU LAW—RELIGIOUS ENDOWMENT—IDOL—FAMILY IDOL—DESTRUCTION OF, ETC. **(1925) 52 I. A. 245 (256-7) = 52 C. 809.**

———*Next friend for—Appointment of—Necessity—Litigation between Shebaits affecting interests of idol.*

The litigation was between contesting shebaits as regards the location of a family idol. Though in one sense the contest related to the establishment of the individual rights of shebaits, yet it appeared that the interests of the idol might be vitally affected as also those of the female members of the family entitled to worship the idol. *Held* that, under the circumstances, it would be in the interests of all concerned that the idol should appear by a disinterested next friend appointed by the court, that the female members of the family should also be joined, and that a scheme should be framed for the regulation of the worship of the idol (261). (*Lord Shaw.*) PRAMATHA NATH MULLICK *v.* PRADYUMNA KUMAR MULLICK. **(1925) 52 I. A. 245 = 52 C. 809 = 23 A. L. J. 557 = 41 C. L. J. 551 = 22 L. W. 492 = (1925) M. W. N. 431 = 2 O. W. N. 557 = 27 Bom. L. R. 1064 = 30 C. W. N. 25 = 3 Pat. L. R. 315 = A. I. R. 1925 P. C. 139 = 87 I. C. 305 = 49 M. L. J. 30.**

———*Property of—Partition of—Suit for, by widow entitled to joint shebaitship—Decree allowing—Provision in, against waste by widow—Necessity.*

A Hindu widow sued to recover the share which she was entitled to as heiress of her husband in certain family property, and she claimed a portion of that property as one of the joint Shebaits of certain idols, that property being debutter property. Part of the debutter property consisted of Government notes for 2 lakhs and Rs. 57,000.

Their Lordships passed a decree declaring that the plaintiff was entitled as joint Shebait to a fifth share (the share sued for) of the Government notes and was competent by furnishing security against waste to keep in her own possession the said fifth share and to hold the same subject to the trusts

HINDU LAW—(*Contd.*)

Religious endowment—Idol—(*Contd.*)

FAMILY IDOL—(*Contd.*)

for the worship of the said idols (132). (*Sir Robert P. Collier.*) RADHA MOHUN MUNDUL *v.* JALOOMONEE DASSEE. **(1875) 3 Suth. 127 = 23 W. R. 369 = 3 Sar. 482.**

———*Property of—Partition of—Suit for, by widow entitled to joint Shebaitship—Maintainability.*

The plaintiff, a Hindu widow, sued to recover her share, as heiress to her husband, in certain family and she claimed a portion of that property in her absolute right, and a portion as one of the joint Shebaits of certain idols, that latter property being debutter property. A decree was passed declaring her right as joint shebait to a fifth share of the properties proved to be debutter properties (132). (*Sir Robert P. Collier.*) RADHA MOHUN MUNDUL *v.* JADOOMONEE DASSEE. **(1875) 3 Suth. 127 = 23 W. R. 369 = 3 Sar. 482.**

———*Suit by, for declaration that certain property is debutter—Maintainability—Prior suit between members of family as shebaits for scheme—Decision in, that property was not debutter—No* res judicata *by reason of.*

Suit brought by two family idols represented by a Shebait, a member of a Hindu family, against the appellant and other members of that family, for a declaration that certain property was owned by the idols as debutter. The question for decision was whether the suit was barred under S. 11 of C. P. C. by reason of the decision in a prior suit No. 206 of 1915 to the effect that there was no valid dedication of the property in question to the said idols.

Suit No. 206 of 1915 was instituted by two of the defendants in the subsequent suit against the Shebait representing the idols in the subsequent suit, the appellant, and the other members of the said family. In the plaint in 206 of 1915 both the plaintiffs and the defendants were described as Thakur's Shebaits. The first prayer in the plaint was that all the properties being debutter properties of the Thakur, a Scheme might be framed for the preservation, management and improvement of the said properties, and for the efficient performance of the daily and periodical Shebas of the Thakur and the festivals, etc. There was a further prayer that a manager or trustee should be appointed.

Held that the two gods were not parties to suit No. 206 of 1915 and that the decision therein did not constitute *res judicata* in the subsequent suit (245).

In the plaint in the prior suit both the plaintiffs and the defendants were described as the Shebaits of the god, so that if the god were regarded as the plaintiff he must also be regarded as the defendant. Further the allegations in the plaint in that suit show that that suit was based upon the assumption that the properties were debutter properties, and that the suit was brought for the purpose of having a scheme framed by the Court for the preservation and management of the properties and for the performance of the daily and periodical shebas. The suit, it was alleged, had become necessary by reason of the disputes as to the management of the properties between the plaintiffs and some of the defendants, all of whom were alleged to be shebaits of the god, and it was apparently not thought necessary to make the two gods, the plaintiffs in the present suit, parties to the 1915 suit. (*Sir Lancelot Sanderson.*) RADHA BENODE MANDAL *v.* GOPAL JIN THAKUR.

(1927) 54 I. A. 238 = 54 C. 770 = (1927) M. W. N. 448 = 45 C. L. J. 605 = 26 L. W. 85 = 25 A. L. J. 681 = 31 C. W. N. 1063 = 29 Bom. L. R. 961 = 101 I. C. 873 = A. I. R. 1927 P. C. 128 = 53 M. L. J. 123.

———Suit on behalf of—Suit between members of family as shebaits—Test—Cause-title in plaint—Insufficiency of.

HINDU LAW—(*Contd.*)

Religious endowment—Idol—(*Contd.*)

FAMILY IDOL—(*Contd.*)

See C. P. C. OF 1908, S. 11—CASES UNDER—REAL PARTY —PLAINTIFF IN SUIT. **(1927) 54 I. A. 238 (245-6)= 54 C. 770.**

GENERAL AND SPECIAL TRUSTEES OF.

———Rights of. *See* HINDU LAW—RELIGIOUS ENDOWMENT—IDOL—SHEBAIT OF—GENERAL AND SPECIAL TRUSTEES.

GIFT DIRECTLY TO—SHEBAIT'S POSITION IN CASE OF.

———*Enjoyment of usufruct—Shebait's right to—Extent of—Usage and custom basis of.*

When the gift is directly to an idol or a temple, the seisin to complete the gift is necessarily effected by human agency called by whatever name, he is only the manager and custodian of the idol or the institution. In almost every case he is given the right to a part of the usufruct, the mode of enjoyment and the amount of the usufruct depending again on usage and custom (311). (*Mr. Ameer Ali.*) VIDYA VARUTHI THIRTHA *v.* BALUSAMI AIYAR.

(1921) 48 I. A. 302 = 44 M. 831 (840) = (1921) M. W. N. 449 = A. I. R. (1922) P.C. 123 = 15 L. W. 78 = 30 M. L. T. 66 = 26 C. W. N. 537 = 3 P.L.T. 245 = 20 A. L. J. 497 = 24 Bom. L. R. 629 = 65 I.C. 161 = 41 M. L. J. 346.

JEWELS DEVOTED TO—ASSIGNEE FROM TRUSTEES OF.

———*Suit by, to recover jewels from third parties*—Res extra commercium—*Defence plea in—Maintainability.*

The plaintiff obtained an assignment of the urima right, or right of management, of a pagoda, and all the rights of the existing trustees, including the right to the custody of certain jewels devoted to the service of the idol. The defendants, strangers to the contract, disputed his right under his assignment to take possession of the jewels, part of the property assigned, and the plaintiff thereupon instituted a suit against them to establish his right to the custody of the said jewels.

Held that, if it was conceded that the assignment had legally transferred all the rights of the urallers to the plaintiff, and that the urallers (assignors) had an unqualified right to the custody of those jewels, it would hardly be an answer to the suit to say that the jewels, being devoted to an idol, were *extra commercium* (79). (*Sir James W. Colvile.*) RAJAH VURMAH VALIA *v.* RAVI VURMAH VALIA. **(1876) 4 I. A. 76 = 1 M. 235 (246) = 3 Sar. 687 = 3 Suth. 382.**

JURIDICAL ENTITY—SHEBAIT ONLY MANAGER.

———The Talook itself, with which these jummas were connected by tenure, was dedicated to the religious services of the idol. The rents constituted, therefore, in legal contemplation, its property. The shebait had not the legal property, but only the title of manager of a religious endowment (273). (*Lord Chelmsford.*) MAHARANEE SHIBESSOUREE DEBIA *v.* MOTHOORANATH ACHARJO.

(1869) 13 M. I. A. 270 = 13 W. R. (P. C.) 18 = 2 Suth. 300 = 2 Sar. 528 = 15 B. L. R. 178 (Note).

———It is only in an ideal sense that property can be said to belong to an idol, and the possession and management of it must in the nature of things be entrusted to some person as shebait, or manager (152). (*Sir Montague E. Smith.*) PROSUNNO KUMARI DEBYA *v.* GOLAB CHAND BABOO.

(1875) 2 I. A. 145 = 14 B. L. R. 450 = 23 W. R. 253 = 3 Sar. 449 = 3 Suth. 102.

———*Complete and partial dedications — Distinction between cases of.*

An idol may be regarded as a juridical person capable as such of holding property, though it is only in an ideal sense

HINDU LAW—(*Contd.*)

Religious endowment—Idol—(*Contd.*)

JURIDICAL ENTITY—SHEBAIT ONLY MANAGER—(*Contd.*)

that property is so held. Probably this is the true legal view when the dedication is of the completest kind known to law But there may be religious dedications of a less complete character, in which, notwithstanding a religious dedication, property descends (and descends beneficially) to heirs subject to a trust or charge for the purposes of religion. It is possible that there may be other cases of partial or qualified dedication not quite so simple as those to which reference has been made (209-10). (*Sir Arthur Wilson.*) MAHARAJA JAGADINDRA NATH ROY BAHADUR *v.* RANI HEMANTA KUMARI DEBI. **(1904) 31 I. A. 203 = 32 C. 129 (141-2) = 8 C. W. N. 809 = 6 Bom. L. R. 765 = 1 A. L. J. 585 = 8 Sar. 698.**

———In point of law, debutter property is vested in the legal entity, the idol, and not in the mohant, the mohant being only his representative and manager. (*Sir Arthur Wilson.*) DAMODAR DAS *v.* LAKHAN DAS.

(1910) 37 I. A. 147 (151) = 37 C. 885 (894) = 8 M. L. T. 145 = 12 C. L. J. 110 = 14 C. W. N 889 = 12 Bom. L.R. 632 = 7 A. L. J 791 = 7 I.C. 240 = 20 M. L. J. 624.

———After all the general trustee is only a representative of the idol who is a juridical personage, and who is the true owner (198). (*Lord Moulton.*) AMBALAVANA PANDARA SANNIDHI *v.* MEENAKSHI SUNDARESWARAL DEVASTANAM. **(1920) 47 I. A. 191 = 43 M. 665 (673) = 28 M. L. T. 83 = (1921) M. W. N. 11 = 12 L. W. 212 = 18 A.L.J. 594 = 56 I. C. 730 = 39 M. L. J. 50.**

———*Gifts* eo nomine *to.*

Religious institutions, known under different names, are regarded as possessing the same "juristic" capacity of receiving gifts and holding property, and gifts are made to them *eo nomine.* (*Mr. Ameer Ali.*) VIDYA VARUTHI THIRTHA *v.* BALUSAMI AIYAR. **(1921) 48 I. A. 302 (311) = 44 M. 831 (839-40) = (1921) M. W. N. 449 = A.I.R. (1922) P.C. 123 = 15 L.W. 78 = 30 M. L. T. 66 = 26 C. W. N. 537 = 3 P.L.T. 245 = 20 A. L. J. 497 = 24 Bom. L. R. 629 = 65 I. C. 161 = 41 M. L. J. 346.**

———Under the Hindu law the image of a deity of the Hindu pantheon is a "juristic entity", vested with the capacity of receiving gifts and holding property (311). (*Mr. Ameer Ali.*) VIDYA VARUTHI THIRTHA *v.* BALUSAMI AIYAR. **(1921) 48 I. A. 302 = 44 M. 831 (839) = (1921) M. W. N. 449 = A.I.R. 1922 P.C. 123 = 15 L. W. 78 = 30 M. L. T. 66 = 26 C.W. N. 537 = 20 A. L. J. 497 = 24 Bom. L. R. 629 = 65 I. C. 161 = 3 P.L.T. 245 = 41 M. L. J. 346.**

———*Acting by, through manager.*

A public temple is a religious institution, and is recognized in law as a juridical person, but it can only act through persons who have authority to act for it, and they can act for the temple only within the scope of their authority. (*Sir John Edge.*) NAINAPILLAI MARKAYAR *v.* RAMANATHAN CHETTIAR. **(1923) 51 I. A. 83 (96) = 47 M. 337 = A. I. R. 1924 P. C. 65 = 22 A. L. J. 130 = 19 L. W. 259 = 34 M. L. T. 10 = (1924) M. W. N. 293 = 10 O. & A. L.R. 464 = 28 C. W. N. 809 = 82 I. C. 226 = 46 M. L. J. 546.**

———*Shebait—Position of.*

A Hindu idol is a "juristic entity". It has a juridicial status with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would, in such circumstances, on analogy, be given to the manager of the estate of an infant heir (250).

HINDU LAW—(*Contd.*)

Religious endowment—Idol—(*Contd.*)

JURIDICAL ENTITY—SHEBAIT ONLY MANAGER—(*Contd.*)

The duties of piety from the time of the consecration of the idol are duties to something existing which, though symbolising the divinity, has in the eye of the law a status as a separate *persona*. The position and rights of the deity must, in order to work this out both in regard to its preservation, its maintenance and the services to be performed, be in the charge of a human being. Accordingly he is the shebait custodian of the idol and manager of its estate (251-2). (*Lord Shaw.*) PRAMATHA NATH MULLICK *v.* PRADYUMNA KUMAR MULLICK.

(1925) 52 I. A. 245 = 52 C. 809 = 23 A. L. J. 537 = 41 C. L. J. 551 = 22 L. W. 492 = (1925) M.W.N. 431 = 2 OW.N. 557 = 27 Bom. L. R. 1064 = 30 C.W.N. 25 = 3 Pat. L.R. 315 = A. I. R. 1925 P. C. 139 = 87 I.C. 305 = 49 M.L.J. 30.

———(*Lord Phillimore.*) RAM CHARAN RAMANUJ DAS *v.* GOBINDA RAMANUJ DAS. **(1928) 56 I.A. 104 (109) = 49 C.L.J. 321 = 29 L.W. 428 = 27 A. L. J. 414 = 114 I.C. 571 = 31 Bom. L. R. 715 = 33 C. W. N. 346 = A. I. R. (1929) P. C. 65 = 56 M. L. J. 636.**

KATTALAI PROPERTIES OF—POSSESSION OF.

———General and special trustees—Rights of. *See* UNDER HINDU LAW—RELIGIOUS ENDOWMENT—IDOL—SHEBAIT OF—GENERAL AND SPECIAL TRUSTEES.

MOHUNT OF.

———*See* HINDU LAW—RELIGIOUS ENDOWMENT—IDOL——SHEBAIT OF.

PROPERTY CHARGED WITH EXPENSES OF WORSHIP OF —SURPLUS BEQUEATHED TO MEMBERS OF TESTATOR'S FAMILY.

———*Interest of one of such members in—Attachment of —Validity.*

In execution of a decree obtained by the appellant against one *D. C.*, he attached a one-third share of the latter in a talook called Lot *P*. It appeared that the said talook belonged to the deceased mother of *D. C.*, that she had by her will created a charge upon the said property for the expenses of the daily worship of the idol therein mentioned, as it was performed at the time of her death, and of the pujas, shradhs, and religious ceremonies for which provision was made by the will, and bequeathed the surplus, left after defraying such expenses, to the members of the joint family of whom *D. C.*, was one for their own use and benefit. From the materials before their Lordships it was not possible to specify what *D. C*'s share in the said property was, and the interest acquired by a purchaser at a sale held in execution of a decree obtained against *D. C.*, had necessarily to be ascertained and realised in a separate proceeding.

Held, that nevertheless *D. C's* interest in the talook under the will of his mother was liable to be attached and sold in execution of the decree obtained by the appellant, and that the appellant was at liberty to proceed to a sale in execution of the right, title, and interest of *D. C.*, in the said talook under the said will (188-9). (*Sir Barnes Peacock.*) ASHUTOSH DUTT *v.* DOORGA CHURN CHATTERJEE.

(1879) 6 I. A. 182 = 5 C. 438 (444) = 5 C. L. R. 296 = 4 Sar. 58 = 3 Suth. 694.

PROPERTY OF.

———(For cases relating to alienation of property by shebait of idol and to liability of property for debts contracted by him. *See* UNDER HINDU LAW—RALIGIOUS ENDOWMENT—IDOL—SHEBAIT OF).

HINDU LAW—(*Contd.*)

Religious endowment—Idol—(*Contd.*)

PROPERTY OF—(*Contd.*)

———*Adverse possession of—Mohunt of head mutt—Ekrarnama by, assigning subordinate mutt and property to another—Possession held by latter under—Effect.*

The plaintiff, as Mohant of the Mutt or Temple of a Hindu Deity at Bhadark, sued, on the 17th July 1901, to recover possession of certain properties situate at Habisarai, alleging that the properties were debuttar property, dedicated to the worship and service of the plaintiff's Thakur, and held by the defendant as an Adhikari in charge of a subordinate Mutt at Bibisarai. A controversy, which arose on the death of a former Mohant, who died leaving two Chelas, as to the right of succession to the two Mutts and the property annexed to them, was settled by an arrangement embodied in an Ekrarnama, dated the 3rd November, 1874, executed by the senior Chela in favour of the junior Chela, described as Adhikari, by which the Mutt at Bhadark, was allotted in perpetuity to the elder Chela and his successors, while the Mutt at Bibisarai and the properties annexed to it, were allotted to the younger Chela and his successors for the purposes connected with his Mutt, subject to a small annual payment towards the expenses of the Bhadrak Mutt. The parties to the suit stood in the place of the elder and younger Chelas respectively :

Held, (affirming the decision of the High Court) that in point of law, the property dealt with by the Ekrarnama was, prior to its date, to be regarded as vested not in the Mohant but in the legal entity, the Idol, the Mohant being only his representative and manager ; that from the date of the Ekrarnama the possession of the junior Chela, by virtue of the terms of that Ekrarnama, was adverse to the right of the Idol and of the senior Chela, as representing that Idol ; and that the suit was barred by limitation. (*Sir Arthur Wilson.*) DAMODAR DAS *v.* LAKHAN DAS.

(1910) 37 I. A. 147 = 37 C. 885 = 8 M. L. T. 145 = 12 C. L. J. 110 = 14 C. W. N. 889 = 12 Bom. L. R. 632 = 7 A. L. J. 791 = 7 I. C. 240 = 20 M. L. J. 624.

———*Alienability of—Property given to a person for keeping up worship of idol—Succession to donee's heirs—Beneficial interest to donee—Absence of.*

In the case of a bare trust leaving no beneficial enjoyment to the donee, there would be strong ground for the implication that the property was not alienable, and was to descend to the donee's heirs as trustees in succession (663). COLLECTOR OF MOORSHEDABAD *v.* RANEE SHEBESSUREE. **(1872) 2 Suth. 661 = 18 W. R. 226.**

———*Execution sale of* corpus *of, under decree against shebait for debt binding on asthal—Validity.*

Quaere whether under decrees obtained against the shebait of an idol in respect of debts properly and necessarily incurred by him for the service and benefit of the idol the corpus of the dewutter property, the dewutter lands themselves, could be sold (150). (*Sir Montague E. Smith.*) PROSUNNO KUMARI DEBYA *v.* GOLAB CHAND BABOO.

(1875) 2 I. A. 145 = 14 B. L. R. 450 = 23 W. R. 253 = 3 Sar. 449 = 3 Suth. 102.

———*Execution sale of rents and profits of, under decree against shebait for binding debts—Worship of idol—Provision in decree for—Necessity.*

A decree was obtained against the shebait of an idol in respect of a debt incurred by him for the service and benefit of the idol. The decree directed that the decree amount should be realised out of the rents and profits of the dewutter lands.

Quaere whether in executing the decree against the rents and profits of the dewutter lands some provision ought not to be made out of such profits, during the pendency of the attachment, for the continuance of the worship of the idol

HINDU LAW—(*Contd.*)

Religious endowment—Idol—(*Contd.*)

PROPERTY OF—(*Contd.*)

(153). (*Sir Montague E. Smith.*) PROSUNNO KUMARI DEBYA *v.* GOLAB CHAND BABOO. (1875) **2 I. A. 145 = 14 B. L. R. 450 = 23 W. R. 253 = 3 Sar. 449 = 3 Suth. 102.**

———Private property of mohunt or. *See* HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT OF—PROPERTY OF ENDOWMENT—PRIVATE PROPERTY OF SHEBAIT OR.

PURCHASE IN NAME OF ONE'S OWN—BENAMI PURCHASE.

———*6 M. I. A.—Principle of—Applicability.*

In the case of Gossain *v.* Gossain, 6 M. I.A., it was held that, if a Hindu purchase property in the name of his son, the property is not vested in the son, but remains vested in the father who purchased ; and so with regard to an idol. If a man merely purchases property in the name of his own idol, whom no one except himself has the power or right to worship, the property is not the property of the idol, but the property of the person who purchased it (872). MAHARANEE BROJOSOONDERY DEBYA *v.* RANEE LUCHMEE KONWUREE. (1873) **2 Suth. 869 = 20 W. R. 95 = 4 Sar. 810.**

SHEBAIT OF.

———*Decree against — Construction—Personal decree against him—Rents and profits of debutter property—Decree against—Test.*

The decree in a suit brought for the recovery of money borrowed by the shebait of an idol for the service and benefit of the idol provided that the decree amount should be paid by the shebait, or else realised from the profits of the dewutter property. It was contended that the decree was *ex facie* intended to bind that shebait alone, and not succeeding shebaits.

Held, overruling the contention, that the plain meaning of the decree was that the entire debt should be realised out of the profits of dewutter lands (150). (*Sir Montaague E. Smith.*) PROSUNNO KUMARI DEBYA *v.* GOLAB CHAND BABOO. (1875) **2 I. A. 145 = 14 B. L. R. 450 = 23 W. R. 253 = 3 Sar. 449 = 3 Suth. 102.**

———Decree against, for binding debts—Sale of corpus of debutter estate in execution of—Validity. *See* HINDU LAW—RELIGIOUS ENDOWMENT—IDOL — PROPERTY—EXECUTION SALE OF CORPUS OF, ETC.

(1875) 2 I. A. 145 (150).

———Decree against, for binding debts—Sale of rents and profits of debutter estate in execution of—Worship of idol—Provision in decree for—Necessity. *See* HINDU LAW—RELIGIOUS ENDOWMENT—IDOL—PROPERTY OF—EXECUTION SALE OF RENTS AND, ETC.

(1875) 2 I.A. 145 (153).

———Estoppel against—Getting rid of, by suit brought formally in name of idol—Permissibility. *See* HINDU LAW—RELIGIOUS ENDOWMENT — MUTT — MOHUNT OF — OFFICE OF—SUCCESSION TO—DISPUTES AS TO, ETC.

(1928) 56 I.A. 104 (109-10.)

———*General and special trustees—Kattalai properties—Possession of—Right to.*

The property of an endowment may consist partly or wholly in the right to enjoy the revenues of property which is in the possession of persons who have the right and the duty to manage the property, collect the revenue and hand it over when collected to be used in the proper manner for the purposes of the endowment. Such persons may even have certain rights of apportionment of the revenue so handed over by them among the several purposes of the endowment.

HINDU LAW—(*Contd.*)

Religious endowment—Idol—(*Contd.*)

SHEBAIT OF—(*Contd.*)

All this is compatible with there being a general trustee of the whole endowment including the revenues when so collected and handed over. But in such a case the general trustee would not be entitled to the possession of the properties out of which this portion of the revenue comes. His rights do not commence until after the collection of the revenue by and under the management of those who hold possession. The general trustee is, after all, only a representative of the idol who is a juridical personage, and who is the true owner, and there is nothing legally incongruous in that personage having other subordinate representatives who have the right to manage certain special portions of his property, and pay over the income so collected to the endowment, and even to some degree to control its use. Such rights would not be inconsistent with the existence of a general trustee, but they would be fatal to his claim to possession of the properties from which these revenues are derived. Possession would be in the hands of those entitled to manage these special properties, and their possession would be adverse to his (197-8). (*Lord Moulton.*) AMBALAVANA PANDARA SANNIDHI *v.* MEENAKSHI SUNDARESWARAL DEVASTHANAM.

(1920) 47 I. A. 191 = 43 M. 665 (672-3) = 18 A. L. J. 594 = 28 M, L. T. 83 = 12 L. W. 212 = 56 I. C. 730 = 39 M. L. J. 50.

———*General and special trustees—Rights of.*

The worship of the Thakoor Dowjee was founded by the plaintiff's grandfather, Dowjee, in the year 1825. The Thakoor was originally placed in a house which had fallen into disrepair. In 1866, *M*, a devout lady, gave a house and land to Thakoor Dowjee and her own family Thakoor Beharjee, but with the condition attached that, *P*, the principal defendant, should be shebait. The Thakoors Dowjee and Beharjee were then removed to the house so granted, and in the course of a few years Dowjee's worshippers desired still further to exalt his worship by building a new temple on the site of the house. A large sum of money, about Rs. 16,000, was collected for that purpose; the temple was built, other accommodation being got for the Thakoors in the meantime ; and in the year 1878 they were brought back and installed in the temple.

In a suit brought by the plaintiff, claiming, as the founder's heir, to be the rightful shebait of the Thakoor Dowjee, for possession of the temple in which the idol had been located, *held*, that the claim to the temple must be governed entirely by the terms of *M's* dedication, and that the plaintiff was not entitled to recover possession of the temple from *P*, the principal defendant (147).

M, gave the house and land to the two Thakoors, but with the condition attached that *P* should be shebait. The Thakoor Dowjee, or those who speak for him on earth, need not take advantage of this gift. *M* could not of her own authority alter the shebaitship of the Thakoor. But if the gift is taken and the condition insisted on, it must be observed. It has now been insisted on, and Dowjee must elect whether to change his habitation or to change his shebait (147).

It is true that money was raised to build the temple, and was raised mainly from the worshippers, and in the name of the Thakoor Dowjee. But the facts of this case are not such as to raise an equity of the kind suggested at the Bar. There is no reason to suppose that the subscribers did not know of *M's* deed ; and there is no evidence that the subscriptions, though given to the Thakoor Dowjee, were given with any reference to the question who should be his shebait (147). (*Lord Hobhouse.*) GOSSAMEE SREE GREEDHARREEJEE *v.* RUMANLOLLJEE GOSSAMEE.

(1889) 16 I. A. 137 = 17 C. 3 (22-3) = 5 Sar. 350.

HINDU LAW—(*Contd.*)

Religious endowment—Idol—(*Contd.*)

SHEBAIT OF—(*Contd.*)

———*Gift to—Gift to him personally—Gift to idol of which he was mohunt—Test — Deed—Construction—Evidence.*

In 1787, *B* was the mohant of a shrine of two Hindu idols. On 23-12 1787, a sanad, called deed of pottah of debutter property, was executed in his favour to the following effect:—

"I do grant to you by way of lakheraj debutter the entire mouzah *G*, together with all that exists thereon. By bestowing your blessing on us, you do enjoy and possess the same with fresh felicity. If I or any of my heirs ever dispossess you, the dispossession shall be ineffectual:"

It appeared from the evidence that the donee received the gift as a gift for the service of the particular idols whose shebait he was, and that the income of the mouzah had ever since been entirely appropriated to that service. In 1860, the succeeding Mohunt, describing himself as "Brittibhogi-holder of *debutter*," granted a *mokurrari pottah*, or permanent lease, of the entire mouzah, with the exception of 5 bighas, which were reserved as "set apart as the place of repose for the deity." In that document the mouzah was described as "my long-standing ancestral lakheraj *debutter* property endowed for the services of the deity."

Held, that the mouzah was the debutter property of the idols, the gift being a gift to the idols of which *B*, was the then Mohunt, and not one to the Mohunt personally, and descendible to his heirs, in return for blessings bestowed on the donor and his family. (*Sir Andrew Scoble.*) ABHIRAM GOSWAMI *v.* SHYAMA CHARAN NANDI.

(1909) 36 I. A. 148 (163 5) = 36 C. 1003 (1011-2) = 10 C. L. J. 284 = 14 C. W. N. 1 = 11 Bom. L. R. 1234 = 6 A. L. J. 857 = 4 I. C. 449 = 19 M. L. J. 530.

———Office of—Founder's heirs—Right of. *See* HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT OF—OFFICE OF—FOUNDER'S HEIRS.

———*Office of—Right to—Recognition of—Evidence—Collections made by priest of temple in name and right of a person—Admissibility of such conduct on issue as to that person's right—Value thereof.*

The plaintiff claimed to be the rightful shebait of a consecrated picture or idol, to which peculiar sanctity was attached by the Bullav Acharjee sect or community of Vaishnavites; and as incident thereto he claimed the things which had been offered to the idol, and the possession of a temple in Calcutta in which the idol had for some years been located. His claim was disputed by *P*, the principal defendant.

The plaintiff was the representative by primogeniture of the founder of the Bullav Acharjee community. All the male members of the family were in their lifetime esteemed by their community as partaking of the Divine essence, and as entitled to veneration and worship; but the head of the family had the precedence, and was styled the Tickut. The plaintiff was the Tickut at the date of suit. The plaintiff's grand-father, named Dowjee, was Tickut in his day. In the year 1825 he paid a visit to Calcutta and presented to his disciples there a consecrated portrait of himself, which had ever since been worshipped, and which was the subject of contention in the suit. It was known as the Thakoor Dowjee. The plaintiff, as the founder's heir, would presumably be entitled to the shebaitship of the Thakoor, and the question was whether the plaintiffs' family had ever intervened in the affairs of the Thakoor since the year 1825.

It appeared that one *G* was ordinary officiating priest of the Thakoor from 1860 or 1861 to 1877, that when, during

HINDU LAW—(*Contd.*)

Religious endowment—Idol—(*Contd.*)

SHEBAIT OF—(*Contd.*)

his tenure of office, *G*, made the monthly collections, he pressed for them on the plaintiff's account, and that he urged that offerings should be made at his Mundir because it was the Tickut's (that is, the plaintiff's).

Held, that such conduct was clearly admissible, and was good evidence to show that in *G*'s time the plaintiff's position was acknowledged (146). (*Lord Hobhouse*). GOSSAMEE SREE GREEDHARREEJEE *v.* RUMANLOLLJEE GOSSAMEE. **(1889) 16 I. A. 137 = 17 C. 3 (21-9) = 5 Sar. 350.**

———Office of—Succession to—Illegitimate son—Right of. *See* HINDU LAW—ILLEGITIMATE SON—INHERITANCE BY—IDOL. **(1880) 3 Suth. 802.**

———Office of—Succession to—Law applicable to. *See* HINDU LAW—RELIGIOUS ENDOWMENT—LAW APPLICABLE TO—SUCCESSION TO, ETC.

———Position of. *See* HINDU LAW—RELIGIOUS ENDOWMENT—IDOL—JURIDICAL ENTITY.

———Property of idol—Alienation of—Power of—Manager of infant heir—Power analogous to that of. *See* HINDU LAW—RELIGIOUS ENDOWMENT — SHEBAIT OF—PROPERTY OF ENDOWMENT—ALIENATION OF—POWER OF.

———*Property of idol—Alienation of, for keeping up temple and worship of idol—Validity of.*

The manager of a dewutter estate dedicated to an idol has power to alienate so much of it as is necessary to keep up the temple and worship of the idol (56). (*Sir Montague E. Smith.*) KONWAR DOORGANATH ROY *v.* RAMCHUNDER SEN. **(1876) 4 I. A. 52 = 2 C. 341 (346) = 3 Sar. 681 = 3 Suth. 375.**

———Property of idol—Debt of shebait—Liability for—Conditions. *See* HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT OF—PROPERTY OF ENDOWMENT—DEBT OF SHEBAIT—LIABILITY FOR. **(1875) 2 I. A. 145 (151-2).**

———Property of idol — Mortgage of—Validity. *See* HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT OF—PROPERTY OF ENDOWMENT—MORTGAGE OF. **(1875) 2 I. A. 145 (149-50).**

———Property of idol—Permanent lease of—Validity. *See* HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT OF—PROPERTY OF ENDOWMENT—PERMANENT LEASE OF.

———Property of idol—Private property of shebait or *See* HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT OF—PROPERTY OF ENDOWMENT—PRIVATE PROPERTY OF SHEBAIT OR.

———Property of idol—Sale of. *See* UNDER HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT OF—PROPERTY OF ENDOWMENT—SALE OF.

———*Suit by, in regard to property of idol—Limitation—Shebait a minor at time of accrual of cause of action—Limitation Act of* 1877—*S.* 7—*If applicable to such a case.*

Where the right to sue in ejectment in regard to property dedicated to an idol accrues to a Shebait when he is under age, the case falls within S. 7 of the Limitation Act of 1877, and he may institute the suit after coming of age within a period of three years (209-10). (*Sir Arthur Wilson.*) MAHARAJA JAGADINDRA NATH ROY BAHADUR *v.* RANI HEMANTA KUMARI DEBI. **(1904) 31 I. A. 203 = 32 C. 129 (141-2) = 8 C. W. N. 809 = 6 Bom. L. R 765 = 1 A. L. J. 585 = 8 Sar. 698.**

———*Suit for protection of property of idol—Right of—Dedication of stricktest character.*

Even in cases in which the religious dedication is of the strictest character, it still remains that the possession and

HINDU LAW—(*Contd.*)

Religious Endowment—Idol—(*Contd*).

SHEBAIT OF—(*Contd.*)

management of the dedicated property belongs to the shebait. And this carries with it the right to bring whatever suits are necessary for the protection of the property. Every such right of suit is vested in the Shebait, not in the idol (209-10). (*Sir Arthur Wilson.*) MAHARAJA JAGADINDRA NATH ROY BAHADUR *v.* RANI HEMANTA KUMARI DEBI. **(1904) 31 I. A. 203 = 32 C. 129 (141-2) = 8 C. W. N. 809 : 6 Bom. L. R. 765 = 1 A. L. J. 585 = 8 Sar. 698.**

———*Trustee—If and to what extent a.*

In no case was the property gifted to an idol or temple conveyed to or vested in its manager, nor is he a "trustee" in the English sense of the term, although in view of the obligations and duties resting on him, he is answerable as a trustee. in the general sense, for maladministration (311). (*Mr. Ameer Ali.*) VIDYA VARUTHI THIRTHA *v.* BALUSAMI AIYAR. **(1921) 48 I A 302 = 44 M 831 (840) = (1921) M. W. N. 449 = (1922) P. C. 123 = 15 L. W. 78 = 30 M. L. T. 66 = 26 C. W. N. 537 = 3 P. L. T. 245 = 20 A. L. J. 497 = 24 Bom. L. R. 629 = 65 I. C. 161 = 41 M. L. J. 346.**

———Usufruct of debutter property—Enjoyment of—Right of—Extent of—Gift directly to idol—Case of. *See* HINDU LAW—RELIGIOUS ENDOWMENT—IDOL—GIFT DIRECTLY TO. **(1921) 48 I. A. 302 (311) = 44 M. 831 (840).**

WORSHIP IN.

———*Founder of—Who is—Evidence.*

The plaintiff claimed to be the rightful Shebait of a consecrated picture or idol, to which peculiar sanctity was attached by the Bullav Acharjee sect or community of Vaishnavites; and as incident thereto he claimed the things which had been offered to the idol, and the possession of a temple in Calcutta in which the idol had for some years been located.

The plaintiff was the representative by primogeniture of the founder of the Bullav Acharjee community. All the male members of the family were in their lifetime esteemed by their community as partaking of the Divine essence, and as entitled to veneration and worship; but the head of the family had the precedence, and, was styled the Tickut. The plaintiff was the Tickut at the date of suit. His grandfather was named Doujee, and he was Tickut in his day. In 1825 he paid a visit to Calcutta and presented to his disciples there a conscerated portrait of himself, which had ever since been worshipped. and which was the subject of contention in the suit. It was known as the Thakoor Dowjee, was one of the very numerous presentments of Krishna, and was shown by the evidence to have attracted many worshippers.

On a question arising as to whether or not Dowiee was the founder of the Calcutta worshio, *held*, on the evidence, that the mortal Dowjee was the founder (144). (*Lord Hobhouse.*) GOSSAMEE SREE GREEDHARREERJEE *v.* RUMANLOLLJEE GOSSAMEE. **(1889) 16 I. A. 137 = 17 C. 3 (20) = 5 Sar. 350.**

———*Joint right of performing—Partition of—Mode of.*

The reasons for which one of several joint owners is entitled to a partition of the joint property apply also to the case of a joint right of performing the worship of an idol The joint owners of such a right are entitled to perform their worship by turns (260). (*Lord Shaw*). PRAMATHA NATH MULLICK *v.* PRADYUMNA KUMAR MULLICK. **(1925) 52 I.A. 245 = 52 C. 809 = 23 A.L.J. 557 = 41 C.L.J. 551 = 22 L.W. 492 = (1925) M.W.N. 431 = 2 O.W.N. 557 = 27 Bom. L.R. 1064 =**

HINDU LAW—(*Contd.*)

Religious Endowment—Idol—(*Contd.*)

WORSHIP IN—(*Contd.*)

30 C.W.N. 25 = 3 Pat. L.R. 315 = A.I.R. (1925) P.C. 139 = 87 I.C. 305 = 49 M.L.J. 30.

———*Preservation of, in families—Presumption as to.*

It would unquestionably be more consonant with the genius and spirit of Hindu law and usages, that endowments in the nature of religious endowments should be made to a family, by whose members in succession the worship might be performed, than to an individual who might sell or give them to a stranger (663) COLLECTOR OF MOORSHEDABAD *v.* RANEE SHEBESSURREE. **(1872) 2 Suth. 661 = 18 W.R. 226.**

Religious Endowment—Law applicable to—Usage of institution.

———*English or other foreign legal conceptions—Importation of—Permissibility.*

There are two systems of law in force in India, both self contained and both wholly independent of each other, and wholly independent of foreign and outside legal conceptions. In each there are well-recognized rules relating to their religious and charitable institutions. From the year 1774 the Legislature, British and Indian, has affirmed time after time the absolute enjoyment of their laws and customs so far as they are not in conflict with the statutory laws, by Hindus and Mahomedans. It would be a serious inroad into their rights if the rules of the Hindu and Mahomedan laws were to be construed with the light of legal conceptions borrowed from abroad, unless perhaps where they are absolutely, so to speak, *in pari materia*. The vice of this method of construction by analogy is well illustra ed in the case in I.L.R. 27 M. 435, where a mahant's position was attempted to be explained by comparing it with that of a bishop and of a beneficed elergyman in England under the Ecclesiastical law (310). (*Mr. Ameer Ali*). VIDYA VARUTHI THIRTHA *v.* BALUSAMI AIZAR. **(1921) 48 I.A. 302 = 44 M. 831 (839) = (1921) M.W N. 449 = (1922) P.C. 123 = 15 L.W. 78 = 30 M.L.T. 66 = 26 C.W.N. 537 = 3 P. L. T. 245 = 20 A.L J. 497 = 24 Bom. L R. 629 = 65 I.C. 161 = 41 M.L.J. 346.**

———*Office of Mohunt—Functions and duties of—Law as to.*

The only law as to these Mohunts and their offices, functions and duties, is to be found in custom and practice, which is to be proved by testimony. (1) (*Lord Romilly*). GREEDHAREE D SS *v.* NUNDKISHORE DOSS. **(1867) 11 M.I.A. 405 (428) = 8 W.R.P.C. 25 = 2 Suth. 86 = 2 Sar. 306**

———(2) (*Mr. Ameer Ali*). VIDYA VARUTHI THIRTHA *v.* BALUSAMI AIYAR. **(1921) 48 I A. 302 (310) = 44 M. 831 (838) = (1921) M.W.N. 449 = (1922) P.C. 123 = 15 L W. 78 = 30 M L T 66 = 26 C.W N. 537 = 3 P. L. T. 245 = 20 A L.J. 497 = 24 Bom. L.R. 629 = 65 I.C. 161 = 41 M.L.J. 346.**

———(3) (*Lord Phillimore*). RAM CHARAN RAMANUJ DAS *v* GOBINDA RAMANUJ DAS. **(1923) 56 I.A. 104 (110-1) = 49 C.L.J. 321 = 29 L.W. 428 = 27 A.L J. 414 = 114 I.C. 571 = 31 Bom. L.R. 715 = 33 C.W.N. 346 = A.I.R 1929 P. C. 65 = 56 M.L.J. 636 (642).**

———The constitution and rules of religious brotherhoods attached to Hindu temples are by no means uniform in their character, and the important principle to be observed by the Courts is to ascertain, if that be possible, the special laws and usages governing the particular community whose affairs become the subject of litigation, and to be guided by them (228).

HINDU LAW—(*Contd.*)

Religious Endowment—Law applicable to—Usage of institution—(*Contd.*)

That principle was laid down by this Committee in an appeal involving the succession to the office of Mohunt of a richly endowed mutt in these terms :—"It is to be observed that the only law as to these Mohunts and their office, functions. and duties, is to be found in custom and practice which are to be proved by testimony" (228). (*Sir Montague E. Smith*). RAJAH MUTTU RAMALINGA SETUPATI *v.* PERIYANAYAGUM PILLAI. (1874) **1 I. A. 209 = 3 Sar. 344.**

———*Property of endowment—Ownership and incidents of —Law as to.*

While it may no doubt be true that the ownership in the general case is with the spiritual head of the institution, still the property may in some cases be held on different conditions and subject to different incidents. There are varieties of circumstances and tenure, and in respect to these the usage and custom of the math fall to be determined. Once that usage and custom are clear they form the law of the math (223-4). (*Lord Shaw.*) ARUNACHALLAM CHETTY *v.* VENKATACHALAPATI GURUSWAMIGAL.

(1919) **46 I. A. 204 = 43 M. 253 (268) = 24 C. W. N. 249 = 26 M. L. T. 479 = 10 L. W. 642 = (1919) M. W. N. 850 = 17 A. L. J. 1097 = 53 I. C. 288 = 37 M. L. J. 460.**

———*Property of endowment and its income—Application of—Law as to.*

Where there is no deed of endowment containing directions as to the mode in which the property, the subject of the endowment, is to be used and its income applied for the particular religious or charitbale purposes mentioned in the instrument, the rules according to which the property and the income are to be dealt with in order to carry out the intention of the original endower can only be ascertained by inference from the practice proved by evidence to have been followed in the particular case.

But these rules, so to be inferred, must not be in consistent with or repugnant to the very nature and purpose of the endowment. (*Lord Atkinson.*) PALANIAPPA CHETTY *v.* DEIVASIKAMANY PANDARA.

(1917) **44 I. A. 147 (149 50) = 40 M. 709 = 21 C. W. N. 729 = 26 C. L. J. 153 = 1 Pat. L. W. 697 = 15 A. L. J. 485 = 19 Bom. L. R. 567 = 22 M. L. T. 1 = 6 L. W. 222 = (1917) M. W. N. 507 = 39 I. C. 722 = 33 M. L. J. 1.**

———*Succession to officer of head of institution—Law governing.*

When, owing to the absence of documentary or other direct evidence, it does not appear what rule of succession has been laid down by the endower of a religious institution, it must be proved by evidence what is the usage (37). (*Sir Richard Couch.*) SRIMATI JANOKI DEBI *v.* SRI GOPAL ACHARJIA. (1882) **10 I. A. 32 = 9 C. 766 (771) = 13 C. L. R. 30 = 4 Sar. 411 = 7 I. J. 218.**

———In a case in which the plaintiff claimed to succeed to the Shebaitship in question alleging that, according to the usage of the institution, the right to the office of Shebait had devolved from one person to another, following the rule which governed the succession of an ordinary heritable property, *held*, on the evidence, that the usage had not been according to the ordinary rules of inheritance under Hindu law (38). (*Sir Richard Couch.*) SRIMATI JANOKI DEBI *v.* SRI GOPAL ACHARJIA. (1882) **10 I. A. 32 = 9 C. 766 (772) = 13 C. L. R. 30 = 4 Sar. 411 = 7 I. J. 218.**

———In determining who is entitled to succeed as mohunt to the deceased head of a religious institution, the only law to be observed is to be found in custom and practice, which must be proved by testimony, and the claimant must show that he is entitled according to the custom to recover the office and the land and property belonging to it (105.) (*Sir Richard Couch*) GENDA PURI *v.* CHHATER PURI.

(1886) **13 I. A. 100 = 9 A. 1 (8) = 4 Sar. 726.**

———In a case in which the question was whether the appellant was the lawful dhurmakartah or trustee of the ancient temple at Rameswaram, in other words, whether he had been validly appointed as such by his predecessor in office, *held* that the only law applicable to such an appointment was to be found in custom and practice which were to be proved by testimony (154). (*Sir Richard Couch.*) RAMALINGAM PILLAI *v.* VITHILINGAM PILLAI.

(1893) **20 I. A. 150 = 16 M. 490 (497-8) = 6 Sar. 351.**

———In a suit relating to the succession to the mohantship of a Hindu math, it did not appear that the founder, in founding the math, prescribed any rules or practice to be followed in the selection and appointment of the future mohants. *Held* that, consequently, the selection and appointment of a person to be the mahant of the math on a vacancy occuring in the mahantship must depend on the custom or usage and the practices which had prevailed in the appointment of mahants of that math (118). (*Sir John Edge.*) LAHAR PURI *v.* PURAN NATH.

(1915) **42 I. A. 115 = 37 A. 298 (303) = 19 C. W. N. 718 = 21 C. L. J. 499 = 18 M. L. T. 39 = (1915) M. W. N. 526 = 2 L. W. 589 = 29 I. C. 724 = 17 Bom. L. R. 475 = 29 M. L J. 75.**

———In I.L.R. 2 M. 179, Sir Charles Turner observed : "The preceptor, the head of the institution, selects among the affiliated disciples him whom he deems the most competent, and in his owu lifetime instals the disciple so selected as his successor, not uncommonly with some ceremonies. After the death of the preceptor the disciple so chosen is installed in the gaddi, and takes by succession the property which has been held by his predecessor." The language last quoted cannot be taken in any sense as a statement of the general law of India. Any contention to that effect would not be in accordance with Sir Charles Turner's own views, he having made this plain in the succeeding passage of his judgment : " We do not, of course, mean to lay down that the property may not in some cases be held on different conditions and subject to different incidents." It in short may rank as one of the varieties of circumstance and tenure whose adoption or rejection will fall to be determined by the usage and custom of the math (77-8). (*Lord Shaw.*) RAM PARKASH DAS *v.* ANAND DAS.

(1916) **43 1. A. 73 = 43 C. 707 = 33 I. C. 583 = 20 C. W. N 802 = 14 A. L. J. 621 = (1916) 1 M. W. N. 406 = 18 Bom. L. R. 49 = 24 C. L. J. 116 = 20 M. L. T. 267 = 3 L. W. 556 = 31 M L. J. 1.**

———The question as to who has the right and office of mahant is one which, according to the well-known rule in India, must depend upon the custom and usage of the particular math or asthal. Such questions in India are not settled by an appeal to general customary law ; the usage of the particular math stands as the law therefor (76). Where, however, the endower has laid down the rule of succession, that has to be followed ; but where no such rule has been laid down, it must be proved by evidence what is the usage, in order to carry out the intention of the original endower. Each case must be governed by the usage of the particular mahantee (78). (*Lord Shaw.*) RAM PARKASH DAS *v.* ANAND DAS. (1916) **43 I. A. 73 = 43 C. 707 (714) = 33 I.C. 583 = 20 C. W. N. 802 = 14 A. L. J. 621 = (1916) 1 M. W. N. 406 = 18 Bom. L. R. 49 = 24 C. L. J. 116 = 20 M. L. T. 267 = 3 L. W. 556 = 31 M. L. J. 1.**

HINDU LAW—(*Contd.*)

Religious Endowment—Manager of.

———*See* UNDER HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT OF.

Religious Endowment—Mutt.

——— (*See also* HINDU LAW—RELIGIOUS ENDOWMENT—ASTHAL).

ADMINISTRATION OF—RULE AS TO.

CHARACTERISTICS OF, IN SOUTHERN AND NORTHERN INDIA AND BOMBAY.

DEDICATION TO—PURPOSE OF—ENTRY IN INAM REGISTER AS TO.

DESCRIPTIONS OF.

HEAD OF.

LAW APPLICABLE TO.

MOHUNT OF—ADOPTION OF CHELA BY.

MOHUNT OF—BREACH OF DUTY BY.

MOHUNT OF—CELIBACY — MARRIAGE — PRACTICE OF.

MOHUNT OF—DEBTS OF.

MOHUNT OF—DESIGNATIONS OF.

MOHUNT OF—ESTOPPEL AGAINST—GETTING RID OF, BY SUIT BROUGHT BY HIM FORMALLY IN NAME OF IDOL.

MOHUNT OF—GRANT TO.

MOHUNT OF—OBSEQUIES OF PREDECESSOR — RELIGIOUS RITES ATTENDING—PERFORMANCE OF, BY REIGNING MOHUNT.

MOHUNT OF—OFFICE OF.

MOHUNT OF—PROPERTY OF MUTT.

MOHUNT OF — SEPARATE ASTHALS ALL HELD BY USAGE BY ONE MAN—DIVISION OF, BETWEEN SUCCESSORS.

ORIGIN AND NATURE OF.

PARENT AND SUBORDINATE MUTTS.

PROPERTY OF.

ADMINISTRATION OF—RULE AS TO

———Administration entirely for and on behalf of and in interest of institution itself and not for personal benefit of trustee. *See* HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT OF—PROPERTY OF ENDOWMENT—INCOME OF—SURPLUS INCOME. **(1919) 46 I. A. 204 (226-7) = 43 M. 253 (268-70).**

CHARACTERISTICS OF, IN SOUTHERN AND NORTHERN INDIA AND BOMBAY.

———*Identity as regards.*

In their general characteristics maths in Southern India are almost identical with similar institutions in Northern India and in the Bombay Presidency (305-6). (*Mr. Ameer Ali.*) VIDYA VARUTHI THIRTHA *v.* BALUSAMI AIYAR. **(1921) 48 I. A. 302 = 44 M. 831 (834) = (1921) M. W. N. 449 = A.I.R. 1922 P. C. 123 = 15 L. W. 78 = 30 M. L. T. 66 = 26 C. W. N. 537 = 3 P. L. T. 245 = 20 A. L. J. 497 = 24 Bom. L.R. 629 = 65 I. C. 161 = 41 M. L. J. 346.**

DEDICATION TO—PURPOSE OF—ENTRY IN INAM REGISTER AS TO.

———*Value of—Usage and practice—Purpose disclosed by stablished—Entry opposed to—Effect.*

The Inam proceedings did not create any dedication. They were instituted simply with the object of investigating titles to hold lands revenue-free as belonging to valid endowments. In the case of gifts made long before the inam proceedings, the purposes of the dedication must be gathered from established usage and practice.

Where, therefore, the established usage and practice showed that the endowment was held by the mattadhipati for the general purposes of the institution, *held*, that an

HINDU LAW—(*Contd.*)

Religious Endowment—Mutt—(*Contd.*)

DEDICATION TO—PURPOSE OF—ENTRY IN INAM REGISTER AS TO—(*Contd.*)

entry in the inam register that the dedication was for a specific purpose—namely, the worship of the idol was of no avail (326-7). (*Mr. Ameer Ali.*) VIDYA VARUTHI THIRTHA *v* BALUSAMI AIYAR. **(1921) 48 I.A. 302 = 44 M. 831 (854) = (1921) M. W. N, 449 = (1922) P.C. 123 = 15 L. W. 78 = 30 M. L. T. 66 = 26 C. W.N. 537 = 3 P. L. T. 245 = 20 A. L. J. 497 = 24 Bom. L.R. 629 = 65 I.C. 161 = 41 M. L. J. 346.**

DESCRIPTIONS OF.

———*Mouroosi, punchaiti, and hakimi—Office of mohunt in—Appointment to—Modes of.*

It appears that the maths are of three descriptions, namely, mouroosi. punchaiti, and hakimi, that in the first the office of chief mohant was hereditary, and devolved upon the chief disciple of the existing mahant, who, moreover, usually nominated him as his successor ; that in the second the office was elective, the presiding mahant being selected by an assembly of mahants ; and that in the third the appointment of presiding mohunt was vested in the ruling power (presumably the civil power), or in the party who endowed the temple (77). (*Lord Shaw.*) RAM PARKASH DAS *v.* ANAND DAS. **(1916) 43 I. A. 73 = 43 C. 707 = 33 I. C. 583 = 20 C. W. N. 802 = 14 A. L. J. 621 = (1916) 1 M. W. N. 406 = 18 Bom. L. R. 49 = 24 C. L. J. 116 = 20 M. L. T. 267 = 3 L. W. 556 = 31 M. L. J. 1.**

HEAD OF.

———*See* UNDER HINDU LAW—RELIGIOUS ENDOWMENT—MUTT—MOHUNT OF.

LAW APPLICABLE TO.

———*See* HINDU LAW—RELIGIOUS ENDOWMENT—LAW APPLICABLE TO.

MOHUNT OF—ADOPTION OF CHELA BY.

———*Custom of—Proof of.*

The question in the appeal related to the right to succeed as mohunt of a muth, situated in Puri, near the temple of Juggernath. The rule of succession to the muth was proved to be that the mohunt for the time being had a power to select his successor from amongst his chelas ; that, in the absence of appointment, a chela succeeded, and, if there were more chelas than one, the eldest succeeded ; and that, in the absence of a chela, the mohunt's gurbhai or co-chela succeeded. The appellant claimed to have been validly adopted as his chela by the late Mohunt of the muth, and the question was whether he had been so adopted.

Held, on the evidence, reversing the High Court and restoring the Sub-Judge, that the appellant had been validly adopted by the deceased mohunt as his chela. (*Sir Richard Couch.*) MOHUNT BHUGABAN RAMANUJ DAS *v.* MOHUNT ROGHUNUNDUN RAMANUJ DAS. **(1895) 22 I. A. 94 = 22 C. 843 = 6 Sar. 536.**

———*Leprosy disqualifying — Evidence — Ceremonies—Performance by him of, without protest—Effect.*

The question was whether the mohunt of a math was, at the time he adopted the appellant as his chela, suffering from leprosy of a virulent form, and the adoption was therefore bad.

Held, on the evidence, that the mohunt was not disqualified by leprosy from making an adoption (106).

It is improbable that the mohunts and adhikaris would have taken part in the ceremonies of adoption—religious ceremonies—if it were known or there was reason for thinking that the mohunt who made the adoption was afflicted with leprosy, which disqualified him from performing those

HINDU LAW—(*Contd.*)

Religious Endowment—Mutt—(*Contd.*)

MOHUNT OF—ADOPTION OF CHELA BY—(*Contd.*)

ceremonies. In this case there is no medical evidence, and there is evidence that the mohunt who made the adoption till a few days before his death performed ceremonies which, if he was suffering from leprosy, he was incapable of performing. It was argued that no one would like to interfere; but it may reasonably be thought that there would have been some remonstrance or attempt to persuade him not to perform the ceremonies by some of the persons around him, or by mohunts or adhikaris of other muths (105-6.) (*Sir Richard Couch.*) MOHUNT BHAGABAN RAMANUJ DAS *v.* MOHUNT ROGHUNUNDUN RAMANUJ DAS.

(1895) 22 I.A. 94 (105-6) = 22 C. 843 (858) = 6 Sar. 536.

———*Leprosy disqualifying—Nature of, necessary.*

Leprosy, in order to disqualify the mohunt of a math from adopting a chela, according to the custom of the institution, must be of a virulent form (105). (*Sir Richard Couch.*) MOHUNT BHAGABAN RAMANUJ DAS *v.* MOHUNT ROGHUNUNDUN RAMANUJ DAS. **(1895) 22 I. A. 94 = 22 C. 843 (858) = 6 Sar. 536.**

MOHUNT OF—BREACH OF DUTY BY.

———*Transfer of office to relation and disqualified person and abdication in his favour if a.*

The Mahant of a mutt is not only a spiritual preceptor, but also a trustee in respect of the mutt or asthal over which he presides. To confer the mahantships upon a relation who was a married man and the father of children would be to consent to a violation in the person of the highest and most responsible officer, namely, the mahant, of those vows and practices of asceticism and celibacy which it is his duty as a trustee to maintain and protect (90). (*Lord Shaw.*) RAM PARKASH DAS *v.* ANAND DAS. **(1916) 43 I. A. 73 = 43 C. 707 = 33 I. C. 583 = 20 C. W. N. 802 = 14 A. L. J. 621 = (1916) 1 M. W. N. 406 = 18 Bom. L. R. 49 = 24 C. L. J. 116 = 20 M. L. T. 267 = 3 L. W. 556 = 31 M. L. J. 1.**

MOHUNT OF—CELIBARY—MARRIAGE—PRACTICE OF.

———*Southern and Northin India—Distinction.*

Neither in this particular institution nor among the sect Sahajanand established, is celibacy the rule applicable to the religious head or to the disciples; excepting the founder, his successors were all what is called *ghirist*, that is, family men. So apparently are the bulk of the followers. This circumstance undoubtedly differentiates the present foundation from other endowments in Southerin India which appertain to celibate mohants or constitute celibate institutions (158). (*Mr. Ameer Ali.*) MUSAMMAT KAMLA LACHHMI *v.* BASDEO PRASAD. **(1920) 13 L. W. 156 = 25 C. W. N. 217 = 23 O. C. 171 = (1920) M. W. N. 553 = 58 I. C. 900 = 28 M. L. T. 404 = 7 O. L. J. 434 = 2 U. P. L R. (P. C.) 130.**

MOHUNT OF—DEBTS OF.

———*Necessity for—Successor's liability for—Worship—Performance of—Dining hall for feeding pilgrims—Construction of—Debts contracted for.*

Suit to recover from the head of a math money borrowed by his predecessor in office towards the expenses of a periodic festival, which by ancient usage included the feeding of all Brahmin pilgrims at a temple connected with the math, and for rebuilding the dining hall.

Held, that what had to be seen in such a case was, first, whether debts were contracted by the deceased Swami for his own purposes or for the purposes of the temple and in discharge of the duties under which he lay in the performance of the worship and the feeding of pilgrims; and, secondly, wh ther the moneys so borrowed were legitimately applied for those purposes (*Mr. Ameer Ali.*) VIBHUDAPRIYA *v.* LAKSHMINDRA.

(1927) 54 I. A. 228 (236) = 50 M. 497 = (1927) M. W. N. 507 = 45 C. L. J. 613 = 25 A.L.J. 697 = 31 C. W. N. 1021 = 39 M. L. T. 45 = 26 L. W 829 = 29 Bom. L. R. 955 = 101 I. C. 545 = A. I. R. 1927 P. C. 131 = 53 M. L. J. 196.

HINDU LAW—(*Contd.*)

Religious Endowment—Mutt—(*Contd.*)

MOHUNT OF—DEBTS OF—(*Contd.*)

———*Suit against successor for binding—Decree in—Form of—Receiver of mutt income—Appointment of.*

In a suit against the succeeding mahant of a math for the recovery of a debt contracted by his predecessor in office for purposes binding on the math, *held* that the Court should appoint a receiver for the rents and issues of the math property and the proceedings from offerings, etc., and after payment of all expenses connected with the math and the performance of the ceremonies and festivals and a reasonable provision for the maintenance of the mattadhipati the balance should be applied in discharge of the plaintiff's debt until such debt has been paid off (237). (*Mr. Ameer Ali.*) VIBHUDAPRIYA *v.* LAKSHMINDRA.

(1927) 54 I A. 228 = 50 M. 497 = (1927) M. W. N 507 = 45 C. L. J. 613 = 25 A. L. J. 697 = 31 C. W. N. 1021 = 39 M. L. T. 45 = 26 L. W. 829 = 29 Bom L. R. 955 = 101 I. C. 545 = A. I. R. 1927 P. C. 131 = 53 M. L. J. 196.

MOHUNT OF—DESIGNATIONS OF.

———*Difference in various provinces as to, in respect of rights and incidents attached to office.*

The heads of the Muths in the various provinces bear different designations in respect of the rights and incidents attached to the office; the difference arises from the customs and usages of each institution. The superior of some of the maths is called mattadhipati and sometimes pandara sannadhi (305-6). (*Mr. Ameer Ali.*) VIDYA VARUTHI THIRTHA *v.* BALUSWAMI AIYAR. **(1921) 48 I. A. 302 = 44 M. 831 (834) = (1921) M. W. N 449 = (1922) P. C. 123 = 15 L. W. 78 = 30 M. L T. 66 = 26 C. W. N. 537 = 3 P. L. T 245 = 20 A. L. J. 497 = 24 Bom. L. R. 629 = 65 I. C. 161 = 41 M.L.J. 346.**

MOHUNT OF—ESTOPPEL AGAINST—GETTING RID OF, BY SUIT BROUGHT BY HIM FORMALLY IN NAME OF IDOL.

———Permissibility. *See* HINDU LAW—RELIGIOUS ENDOWMENT—MUTT—MOHUNT OF—OFFICE OF—SUCCESSION TO—DISPUTES AS TO, ETC.,

(1928) 56 I. A.104 (109-10.).

MOHUNT OF—GRANT TO.

———*Native ruler—Grant by—Nature of—Evidence—Confirmatory grant by British Government—Value of.*

Where the question was whether a grant of lands made in 1739 by the then Rajah of Tanjore to the then head of a mutt was a grant made to the person or to the office, *held* that deeds of confirmation of such grant made by the British Government after the escheat of the Tanjore Raj afforded good evidence as to the nature of the tenure as it was commonly understood at the time (8). (*Sir Robert Phillimore.*) SETHURAMASWAMIAR *v.* MERUSWAMIAR.

(1917) 45 I. A. 1 = 41 M. 296 (304-5) = 20 Bom. L. R. 414 = 7 L. W. 22 = 23 M. L. T. 94 = 4 Pat. L. W. 91 = 16 A. L. J. 113 = 27 C. L. J. 231 = 22 C. W. N. 457 = 43 I. C. 806 = 34 M, L. J. 130.

———Non-religious lands—Grant of—Nature of—Appanage or endowment of office—Personal inam—Divisibility among heirs of grantee. *See* GRANT—NATIVE RULER SPIRITUAL PRECEPTOR. **(1917) 45 I. A. 1 (6) = 41 M. 296 (302-3).**

HINDU LAW—(*Contd.*)

Religious Endowment—Mutt—(*Contd.*)

MOHUNT OF—GRANT TO—(*Contd.*)

———*Religious and non-religious properties subject of—Management of—Right of—Heir of grantee entitled to and holding office of mohunt—Other heirs of grantee—Rights of.*

About the year 1793, a holy man, *S*, was brought by the then Raja of Tanjore from a mutt or religious institution at a neighbouring place, and was constituted by the Raja his guru or spiritual preceptor. Properties, both non-religious and religious, were granted at various times to *S* by the Raja. The objects for which the properties were given to *S* were described in the deeds as being for the purpose of perpetually conducting a food chathram near the tomb of another holy man, and in one case for the purpose of making an agraharam by building houses round about the holy place. The grants of the religious or charitable lands made to *S* described them as being for the purpose of inam and for the purpose of perpetually conducting or establishing the defined charity.

S and his descendants in regular succession became gurus to the Raja as long as the Raj remained, and were installed by the Rajah for the time being with certain ceremonies, one of the most important being the placing of the new guru on the gaddi. After the escheat of the Tanjore Raj, the adopted son of the last Rajah installed the first defendant, the eldest son of the last holder of the office as his guru.

The confirmation grants issued by the Government, as the result of inquiries made as to the nature of the grants of the religious lands, were in a different form from that used in the confirmation grants of the non-religious lands. Each was described as a title-deed granted to the manager for the the time being of the charity, which was then described. By the deed the title of the manager was acknowledged, and the inam was confirmed to him and his successors. There was no personal inam.

In a suit by one of the younger sons of *R* against the 1st defendant, his eldest son, and the 2nd defendant, another son of *R*, for the settlement of a scheme for the management of the religious and charitable properties, *held* that there was sufficient indication in the documents and in the surrounding circumstances of the case that a devolution of the management to the heirs of the original donee was inconsistent with the purposes of the founder when he created the endowments (7-8); that the intention of the founder must be deemed to have been that his religious charities should be administered by the man who was the head of the mutt, to which of course the eldest son of the previous holder would naturally succeed, the office being indivisible among the members of the family; that the 1st defendant, as the head of the mutt, was pointed out as the natural head and administrator of religious charity; and that there was no jurisdiction in the Indian Court to settle a scheme, the only object of which would be to take away the sole power of management from the eldest son (9).

Quaere whether the rules laid down in some of the cases for the devolution of the management of private charities such as the support of a family idol would be applicable to charities of the class in question (7). (*Sir Robert Phillimore.*) SETHURAMASWAMIAR *v.* MERUSWAMIAR.

(1917) 45 I. A. 1 = 41 M. 296 (304-5) = 20 Bom. L. R. 414 = 7 L. W. 22 = 23 M. L. T. 94 = 4 P. L. W. 91 = 16 A. L. J. 113 = 27 C. L J. 231 = 22 C. W. N. 457 = 43 I. C. 806 = 34 M. L. J. 130.

MOHUNT OF—OBSEQUIES OF PREDECESSOR—RELIGIOUS RITES ATTENDING—PERFORMANCE OF, BY REIGNING MOHUNT.

———*Custom as to—Delegation of that duty to another—Arrangement for appointment of successor sanctioning—Validity of.*

HINDU LAW—(*Contd.*)

Religious Endowment—Mutt—(*Contd.*)

MOHUNT OF—OBSEQUIES OF PREDECESSOR—RELIGIOUS RITES ATTENDING—PERFORMANCE OF, BY REIGNING MOHUNT—(*Contd.*)

In a case in which according to law and custom the successor in the mahantship of a muth performed the religious rites attending the obsequies of his predecessor, the reigning mahant appointed a successor in pursuance of an arrangement by which that was avoided, and that vital rite was, so to speak, handed on past the said successor and confided to his brother. *Quaere* whether such a transaction with regard to a mahantship in India was competent and possible (84). (*Lord Shaw.*) RAM PARKASH DAS *v.* ANAND DAS,

(1916) 43 I. A. 73 = 43 C. 707 (724) = 33 I. C. 583 = 20 C W. N. 802 = 14 A. L. J. 621 = (1916) 1 M. W. N. 406 = 18 Bom. L. R. 49 = 24 C. L. J. 116 = 20 M. L. T. 267 = 3 L. W 556 = 31 M. L. J. 1.

MOHUNT OF—OFFICE OF.

———Adoption of chela as successor—Custom of—Proof of. *See* HINDU LAW—RELIGIOUS ENDOWMENT—MUTT—MOHUNT OF—ADOPTION OF CHELA BY—CUSTOM OF.

(1895) 22 I. A. 94 = 22 C. 843.

———*Appointment of successor by reigning mohunt—Custom of—Appointment by him of person not competent to hold office—Invalidity of.*

Even in cases where the reigning mahant of a muth has a right of selecting his successor, the nomination must fall upon one who is competent to hold the office. For instance, the person chosen may be disqualified by reason of bodily deformity or bodily disease such as leprosy, of disease of the mind, or of the leading of a life which is immoral or is inconsistent with the religious vows of the brotherhood. In all such cases, the nomination would be void. The contracting of marriage and the begetting of children is a ground of disqualification, where, by the custom of the muth, the mahant must be a religious chela and celibate (80). (*Lord Shaw.*) RAM PARKASH DAS *v.* ANAND DAS.

(1916) 43 I. A. 73 = 43 C. 707 (718-9) = 33 I. C. 583 = 20 C. W. N. 802 = 14 A. L. J. 621 = (1916) 1 M. W. N. 406 = 18 Bom. L. R 49 = 24 C. L. J. 116 = 20 M. L. T. 267 = 3 L. W. 556 = 31 M. L J. 1.

———*Appointment of successor by reigning mohunt—Practice of, among Pandarams in Madras Presidency.*

It appears to be the common practice in the Madras Presidency for pandarams to appoint their successors (228). (*Sir Montague E. Smith.*) RAJAH MUTHU RAMALINGA SETUPATI *v.* PERIANAYAGUM PILLAI. **(1874) 1 I. A. 209 = 3 Sar. 344.**

———*Appointment of successor by reigning Shebait—Custom of—Shebait who had been removed from office—Appointment by—Validity of.*

The question was whether the appellant was the lawful dhurmakartah or trustee of the ancient temple at Rameswaram, According to the established usage of the religious foundation in question each dhurmakartah initiated a vellala layman and made him an ascetic and thereupon appointed him as his successor, whilst in office and shortly before his death. The question for decision was whether the appointment of the appellant was in accordance with that usage.

The last lawful dhurmakartah was one *S*. A suit was brought against him, and three other persons who were said to be agents and managers under him, alleging an embezzlement of money belonging to the temple by him and his agents. By the judgment of the District Judge given in that suit on 2—3—1883, it was found that *S* was responsi-

HINDU LAW—(*Contd.*)

Religious Endowment—Mutt—(*Contd.*)

MOHUNT OF—OFFICE OF—(*Contd.*)

ble for the whole sum found to be embezzled, and a decree was given against him for that sum with interest. He was also directed to be removed from the trusteeship of the temple. On the same day an order was made by the District Court appointing a manager to be in charge of the temple until a new Pandaram was appointed according to law. The judgment of the District Judge was confirmed on appeal by the High Court on 30—1—1884. Subsequently to 2—3—1883, and before January 1884, *S* was charged with criminal breach of trust, and was afterwards convicted of it and sentenced to suffer imprisonment.

On 30—1—1884, the day on which the High Court confirmed the order of romoval, and whilst he was under the charge of criminal breach of trust, *S* executed a deed of appointment appointing the appellant his successor in the office of dhurmakartah of the said devastanam, muth, etc.

Held, affirming the courts below, that the appointment was not in accordance with the usage, and was invalid (154).

The appointment was made by a person who had ceased to be the dhurmakartah (154). (*Sir Richard Couch.*) RAMALINGAM PILLAI *v.* VYTHILINGAM PILLAI.

(1893) 20 I. A. 150 = 16 M. 490 (497-8) = 6 Sar. 351.

———Appointment to—Hereditary right of—If may vest in a family. *See* SPIRITUAL MINISTER—OFFICE OF—APPOINTMENT TO—HEREDITARY RIGHT OF—VESTING IN A FAMILY OF. **(1928) 56 M. L. J. 121 (125).**

———Appointment to—Hereditary right of, vested in a family—Exercise of, in favour of non-member of family—Validity. *See* SPIRITUAL MINISTER—OFFICE OF—APPOINTMENT TO—HEREDITARY RIGHT OF, ETC.

(1928) 56 M. L. J 121 (125.)

———Appointment to—Last holder of office—Right of—Family of last holder—Right of, in default of appointment by him—Evidence. *See* SPIRITUAL MINISTER—OFFICE OF—APPOINTMENT TO—LAST HOLDER OF OFFICE.

(1928) 56 M. L. J. 121.

———Appointment to—Law applicable to. *See* HINDU LAW—RELIGIOUS ENDOWMENT—LAW APPLICABLE TO—USAGE OF INSTITUTION.

———*Appointment to—Power of—Fraudulent exercise of—What amounts to—Invalidity of appointment in case of.*

In a case in which the question was whether the appellant who had been appointed by the last lawful dhurmakarta of the Rameswaram temple as his successor, was validly appointed dhurmakarta of the temple, both the courts below found that the appointment had not been made *bona fide*, and was invaiid. The Sub-judge, referring to the circumstances which had been proved, stated, " All these convince me that the appointment of the plaintiff " (appellant) " was not made *bona fide* in the interests of the institution, but was for the personal interests of the late trustee." The High Court, also referring to the proved facts, stated, "with these facts before us, we cannot say that the Sub-Judge was not warranted in finding that the appellant's appointment was made by the former Pandaram in furtherance of his own interests, and that it was not a *bona fide* exercise of his power, if any."

Held that the finding of the courts below invalidated the whole appointment (154-5.) (*Sir Richard Couch.*) RAMALINGAM PILLAI *v.* VYTHILINGAM PILLAI.

(1893) 20 I. A. 150 = 16 M. 490 (498) = 6 Sar. 351.

———Where the motive which influenced *T*, the head of a mutt, in appointing *N* as his successor appeared to be *T*'s desire to avoid the risk of being prosecuted on a charge of murder and a charge of forgery of a will, charges which *N* was making, and to avoid the question raised by *N* that *T* himself had not been appointed the head of the mutt, *held* that the appointment of *N* was not made by *T* in the interests of the mutt, but was made by him solely in his own interests, and was invalid (12). (*Sir John Edge.*) NATARAJA THAMBIRAN *v.* KAILASAM PILLAI.

(1920) 48 I. A. 1 = 44 M 283 (292-3) = (1920) M. W. N. 371 = 13 L. W. 301 = L. R. 2 P. C. 5 = 18 A. L. J. 1041 = 25 C. W. N. 145 = 57 I. C. 564 = 39 M. L. J. 98.

———The appointment of a successor by the head of a mutt, made, not *bona fide* in the interests of the mutt, but in furtherance of his (the head's) own interests is not an appointment made in the *bona fide* exercise of the powers of the head of the mutt, and is invalid (8). (*Sir John Edge.*) NATARAJA THAMBIRAN *v.* KAILASAM PILLAI.

(1920) 48 I.A. 1 = 44 M.283 (292-3) = (1920) M.W.N. 371 = 13 L. W. 301 = L. R. 2 P. C. 5 = 18 A. L. J. 1041 = 25 C. W. N. 145 = 57 I. C. 564 = 39 M. L. J. 98.

———*Appointment to—Right of—Nomination or election by others—Confirmation of—Right of—Distinction—Evidence required in two cases.*

The Zemindars at one time asserted a right to be chief managers of the pagoda, and directly to appoint the pandarams of the pagoda as sub-managers, but that claim was not strongly urged at their Lordships' 'bar by counsel for the Zemindars. He mainly contended for the right to have the pandarams presented to the Zemindars for confirmation when nominated or elected by others. It is obvious, however, that there is a great distinction between a right to appoint and one to confirm ; and if the latter only is insisted on, it still might be expected that some definite information would be given as to the manner of electing the candidate to be presented for confirmation (228). (*Sir Montague E. Smith.*) RAJAH MUTTU RAMALINGA SETUPATI *v.* PERIANAYAGAM PILLAI. **(1874) 1 I.A. 209 = 3 Sar. 344.**

———Appointment to—Validity of—Headship of mutt and trusteeship of temple vested in same person—Appointment to, invalid as to latter if invalid also as to former. *See* HINDU LAW—REIGIOUS ENDOWMENT—TEMPLE AND MUTT—HEADSHIP OF ETC.

(1893) 20 I. A. 150 (154-5) = 16 M. 490 (498).

———*Deed by reigning mohunt relating to—Effect of—Abdication entire by executant or only appointment of deputy for a time—Relinquishment of right to office and to property merely or transfer thereof to and appointment of, another also—Deed—Effect of, depending largely on facts—Plea as to—Privy Council appeal—Permissibility for first time in.*

G, the then properly appointed and duly installed mahant of a math, purported to appoint as mahant one *N*. Within a few months of his appointment, *N*, by a formal deed, purported to relinquish h s office, and *G* took his place again as mohant. Shorty after, that is, in August of 1918, *G*, as mahant, appointed one *S* as his successor. In October of 1918, *S* executed a document which, after reciting that he (*S*) was not conversant with the customs and had no insight into the management of the ilaqas appertaining to the *gaddi*, and that there might be ill consequences to the math in consequence, and also that, on account of the affairs of the *gaddi*, he could not prosecute his studies well, went on to say :—

" It is also my intention that I should sever my connection with it and pass my days for some time out-station and prosecute my studies and acquire the qualifications of a *gaddi-nashin* mahant. Therefore I return to my *guru G* all the powers which I had acquired under the document

HINDU LAW--(*Contd.*)

Religious Endowment—Mutt—(*Contd.*)

MOHUNT OF--OFFICE OF—(*Contd*).

mentioned above, dated the 3rd of August, 1918"—that is, the document of appointment—" for good management of the *gaddi* and the ilaqas appeartaining thereto. My *guru G* shall have right (haq) to exercise at present and also in future all the powers which he used to exercise before as mahant *gaddi-nashin*. I shall have no objection till I acquire full literary qualifications and the qualifications to make management and those of a *faqir* (ascetic) as required for the *gaddi*."

Held that, on the right construction of the deed of October 1918, *S* did not thereby abdicate entirely from the position of mahant, but merely appointed *G* to act as his deputy.

Every phrase in the deed, if full effect be given to it, seems to indicate that *S* desired to remain Mahant, that he was absenting himself for a time, and that he was for the time appointing a delegate to act for him in his duties during his absence. That intention seems to be made plain by all the words, which seem to point to a mere temporary absence and to his intention to remain as Mahant.

Semble. the deed by which *N* purported to relinquish his office was effective to transfer to *G* the mahantship and the property, and *N* in executing it meant, before he resigned, to transfer the spiritual rights and temporal right to *G* and effectively did so.

Their Lordships, however, declined to allow the point as to the true effect of the deed executed by *N* to be raised for the first time before them on the ground that it would depend, or might depend, very largely upon questions of fact. (*Lord Atkin.*) BASDEVA NAND GIR *v.* SHANTANAND GIR. **(1929) 50 C L J. 513=30 L. W. 1032= A. I. R. 1929 P. C. 266=57 M. L. J. 771.**

———Functions and duties appertaining to—Law applicable to. *See* HINDU LAW—RELIGIOUS ENDOWMENT—LAW APPLICABLE TO.

———*Mutt with minor asthals---Office of mohunt of, held by usage by one man—Division of, between chelas—Wills of reigning mohunt effecting—What amount to—Validity of.*

The Mohunt of a Mutt with a number of minor asthals, the Mohuntship of all of which had by usage been held by one man, executed a will in 1908, appointing the 1st respondent chief chela and malik and Gaddinishin Mohunt like himself. In 1918, he executed two new wills on the same day. By the 1st, he named the 1st respondent as his successor in regard to one of the minor asthals, and bequeathed to him the income thereof, and some lands appurtenant to another minor asthal. The second will recited the effect of the first, and bequeathed to *R* all the rest of the property of which the executant was possessed, and appointed him Gaddinishin Mohunt. Both the wills provided that, in the event of the death of either appointee without appointing a successor, the other Mohunt should succeed.

Shortly after the death of the executant, disputes arose between *R* and the 1st respondent. They were, however, settled by an arrangement embodied in two ekrarnamas whereby the provisions of the two wills were recognised and each of the parties entered into possession of their respective offices as conferred by the two wills. *R* died soon after, having appointed the appellant his successor. Thereupon, the 1st respondent instituted a suit disputing the title of the appellant and making a claim to be the sole Mohunt. In form the suit was not brought by the 1st respondent but by the two idols acting through him as their alleged shebait.

Held that the wills of 1918 were separate documents, and that in one of them there was an effectual appointment of the appellant's predecessor (*R*) as Gaddinishin Mohunt with some reservations added which might or might not be

HINDU LAW—(*Contd.*)

Religious Endowment—Mutt—(*Contd.*)

MOHUNT OF—OFFICE OF—(*Contd.*)

valid but the existence of which and their appearance as a positive bequest in the other will did not detract from the definite appointment so effectually made. (*Lord Phillimore.*) RAM CHARAN RAMANUJ DAS *v.* GOBIND RAMANUJ DAS. **(1928) 56 I. A. 104 (110-1)= 49 C. L. J. 321=29 L. W. 428=27 A. L. J. 414= 114 I. C. 571=31 Bom. L. R. 715=33 C. W. N. 346= A. I. R. 1929 P.C. 65=56 M. L. J. 636.**

———-Partibility of. *See* HINDU LAW—JOINT FAMILY—PARTITION--PARTIBLE PROPERTY— MUTT—HEADSHIP OF. **(1917) 45 I. A. 1 (9)=41 M. 296 (305).**

———Principal or subordinate—Headship of Mutt and Temple vested in same person—Principal of the two offices—Which is the. *See* HINDU LAW—RELIGIOUS ENDOWMENT—TEMPLE AND MUTT— HEADSHIP OF BOTH VESTED IN SAME PERSON—PRINCIPAL OF THE TWO OFFICES. **(1893) 20 I. A. 150 (154)=16 M. 490 (498).**

———*Right to—Will conferring—Will by reigning Mohunt appointing* A *his successor with request to appoint* B *his* (A's) *successor when* A *found himself incapable and if he found* B *then capable—No right conferred on* B *by.*

D, a Mohunt, appointed *L* by will to be his successor and representative in the shebaitship, and as such representative to perform the religious duties in the usual manner. The will proceeded: Of my chelas *G* is a little intelligent, but he is of immature age. If he studies the shastras for a short time he may become a fit person, therefore you shall keep him under you, and instruct him in the shastras. When you will find yourself incapable of fulfilling the duties aforesaid, you will appoint the said *G* in your place as mohunt. You shall not be able to act otherwise.

Held that the will, in its true construction, did not give *G* an absolute, positive, unqualified right at any time to the mohuntship, even on the incapacity of *L* to perform the duties of mohunt.

Their Lordships think, until *L* becomes incapable, no trust or duty is suggested, and that even when *L* becomes incapable, it cannot be put higher than as a gift in the nature of a precatory trust—that is, one requesting *L* to perform the wishes of the Testator, and to appoint *G* his successor, provided he found that the incapacity which then existed in *G* (who was not then of sufficient age to be appointed mohunt) should cease to exist at the time when *L* was unable to perform those duties (427-8). (*Lord Romilly.*) GREEDHAREE DOSS *v.* NUNDOKISHORE DOSS. **(1867) 11 M. I. A. 405=8 W. R. P. C. 25= 2 Suth. 86=2 Sar. 306.**

———*Succession to—Dispute as to—Compromise settling—Binding nature of, on parties and privies—Claim inconsistent with—Maintainability — Suit to enforce claim brought formally in name of idol—Effect.*

The mohunt of a mutt with a number of minor asthals, the mohuntship of all of which had by usage been held by one man, executed two wills on the same day. The first named the 1st respondent as the executant's successor in regard to one of the minor asthals, and bequeathed to him the income thereof, and some lands appurtenant to another minor asthal. It also provided for the annual payment by the 1st respondent and his successors of a sum specified to the mohunt of the principal asthal. The second recited the effect of the first, bequeathed to *R* all the rest of his property of which the executant was possessed, and appointed him Gaddinishin Mahant (*i.e.* chief mahant). Both the wills provided that, in the event of the death of either the 1st respondent or *R* without appointing a successor, the other mahant should succeed.

HINDU LAW—(*Contd.*)

Religious Endowment—Mutt—(*Contd.*)

MOHUNT OF—OFFICE OF—(*Contd.*)

Shortly after the death of the executant of the two wills disputes arose between the 1st respondent and *R*. They were, however, settled by an arrangement embodied in two ekrarnamas whereby the provisions of the two wills were recognised and each of the parties entered into possession of their respective offices,. as conferred by the two wills. *R* died soon after, having appointed the appellant his successor. Thereupon the 1st respondent instituted a suit disputing the title of the appellant and making a claim to be the sole mahant. In form the suit wae not brought by the 1st respondent but by the two idols acting through him as their alleged shebait.

Held that. as far as the two parties to the ekrarnamas were concerned. each obtained for himself the benefit of an unquestioned title, and prevented himself from questioning the other's title to his respective office, and that the appellant as privy in estate with *R* was equally entitled to take advantage of the agreement (109).

Quœre, whether the 1st respondent could by claiming to use the name of the idols as plaintiffs preclude the operation of the ekrars as a bar to his claim to be Gaddinishin mahant inconsistent therewith (109-110). (*Lord Phillimore*). RAM CHARAN RAMANUJ DAS *v.* GOBINDA RAMANUJ DAS. **(1928) 56 I. A. 104 = 49 C. L. J. 321 = 29 L. W. 428 = 27 A. L. J. 414 = 114 I. C. 571 = 31 Bom. L. R. 715 = 33 C. W. N. 346 = A. I. R. 1929 P. C. 65 = 56 M. L. J. 636.**

———Succession to—Law applicable to. *See* HINDU LAW—RELIGIOUS ENDOWMENT—LAW APPLICABLE TO.

———*Title to, dependent upon nomination by predecessor and installation by sect—Custom of—Failure to prove latter—Effect.*

In a suit to recover the office of mohunt of a religious institution and the land and property belonging to it, the plaintiff alleged that, according to the custom and practice of the institution, the mohunt for the time being had power to nominate or appoint his successor, and the sect to which the mohunt belonged installed the person so nominated or appointed, and that the plaintiff had been so appointed by the deceased mohunt of the suit institution and installed by the sect to which the deceased belonged.

Held that, if the evidence had proved that the title to succeed depended solely upon the nomination or appointment by the deceased mohunt, and the installation was only the giving effect to it, the failure to prove that averment in the plaint would not have been considered as fatal to the plaintiff's case (105). (*Sir Richard Couch.*) GENDA PURI *v.* CHHATRA PURI.

(1886) 13 I. A. 100 = 9 A. 1 (7) = 4 Sar. 726.

———*Title to, dependent upon nomination by predecessor and installation by sect—Custom of—Proof of—Quantum.*

The appeal arose out of a suit brought by the first of the appellants for a declaration of right in respect of the moveable property and for possession of the immoveable property of one *K*, Goshain, the deceased mohunt of a religious establishment. The plaintiff claimed the office of mohunt and the land and property belonging to it as the disciple of *K* appointed by the latter to succeed him. The plaintiff also alleged that the sect to which the deceased *K* belonged installed him to the gaddi after *K*'s demise.

Held, affirming the High Court, that the evidence failed in proving that the deceased mohunt (*K*) had power to appoint his successor, and that the Goshains (the sect to which *K* belonged) were bound to instal the disciple that he appointed (106).

What was done by *K*, which is called his will, was not according to the custom proved sufficient to entitle the plaintiff to recover the property (106). (*Sir Richard Couch.*) GENDA PUR *v.* CHHATRA PURI.

(1886) 13 I. A. 100 = 9 A. 1 (8) = 4 Sar. 726.

HINDU LAW—(*Contd.*)

Religious Endowment—Mutt—(*Contd.*)

MOHUNT OF—OFFICE OF—(*Contd.*)

———Transfer by reigning mohunt of, to relation and disqualified person and abdication in his favour—Breach of duty on part of reigning mohunt. *See* HINDU LAW—RELIGIOUS ENDOWMENT — MUTT — MOHUNT OF—BREACH OF DUTY BY. **(1916) 43 I. A. 73 (90) = 43 C. 707.**

———*Vacancy in—Transfer invalid of office and of properties by reigning Mohunt and abdication by him in pursuance thereof if creates—Appointment of successor in case of though transferor alive.*

In a case in which, according to the custom of an asthal, the mahant should be a celibate, the 1st defendant, the then mahant, made a will in 1890 nominating his nephew, defendant No. 2, to succeed him. In 1897, he (defendant No. 1) executed a deed purporting to constitute defendant No. 2 mahant in his place, and made over to him the properties of the asthal subject to certain conditions. By an ekrarnamah entered into by the defendants in 1904 it was agreed that the third defendant, the brother of the 2nd defendant, should succeed the latter as mahant. In a suit instituted in 1906 by the appellant, who claimed to be senior bairagi chela of the 1st defendant and to be entitled as such to succeed him as mahant, it was found that defendant No. 2 was a married man who had children and was as such disqualified to be mahant of the suit asthal and that the deeds executed by the 1st defendant in his favour purporting to be a transfer of the mahantship were invalid and ineffectual for the purpose. The 3rd defendant had died in the course of the litigation.

Before their Lordships the question arose whether, in the circumstances of the case, the 1st defendant being alive, the mahantship ought not to be held to revert to him.

It appeared that the 1st defendant had for years relinquished the mahantship. Since at least 1897 he had retired from office, and had made over to defendant No. 2 all his duties together with the properties of the asthal. He had a mutation of names effected in the Collector's register in respect of the villages belonging to the math. He had thus abdicated all his functions, and, as he admitted himself, his position was no more than that of any other worshipper.

Held that the 1st defendant's installation of defendant No. 2 on the gaddi and his own retirement from the mahantship created a vacancy in the office (90).

Held further, that, as the 1st defendant's having been a party to deeds, and especially to the ekrarnama of 1904, which were of a nature inconsistent with his duty and position as guardian of the suit religious institution, his abdication must be accepted as a governing fact in the case, and that the plaintiff, on whom even according to the defendant's case the succession would have devolved in the absence of an appointment, and who was not alleged to be disqualified from holding the office, was entitled to the same (90-1). (*Lord Shaw*). RAM PARKASH DAS *v.* ANAND DAS. **(1916) 43 I. A. 73 = 43 C. 707 = 33 I. C. 583 = 20 C. W. N. 802 = 14 A. L. J. 621 = (1916) 1 M. W. N. 406 = 18 Bom. L. R. 49 = 24 C. L. J. 116 = 20 M. L. T. 267 = 3 L. W. 556 = 31 M. L. J. 1.**

MOHUNT OF—PROPERTY OF MUTT.

———(*See also* UNDER HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT OF—PROPERTY OF ENDOWMENT).

———Alienation of—Recognition of, by successive mohunts—Effect of—Presumption from. *See* HINDU LAW—RELI-

HINDU LAW—(*Contd.*)

Religious Endowment—Mutt—(*Contd.*)

MOHUNT OF—PROPERTY OF MUTT—(*Contd.*)

GIOUS ENDOWMENT—MUTT—MOHUNT OF—PROPERTY OF MUTT—MORTGAGE OF.

———Alienation of, by way of mortgage, sale or permanent lease—Validity—Conditions—Onus of Proof of. *See* HINDU LAW—RELIGIOUS ENDOWMENT—TEMPLE — SHEBAIT OF—PROPERTY OF TEMPLE—ALIENATION OF, ETC.

(1923) 51 I. A. 83 (96-7) = 47 M. 337.

———Income of—Surplus income—Appropriation to personal use of Mohunt—Permissibility. *See* HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT OF—PROPERTY OF ENDOWMENT—INCOME OF—SURPLUS INCOME.

(1919) 46 I. A. 204 (226 7) = 43 M. 253 (268-70.)

———*Application of—Discretion as to—Limits on.*

The mohunts of mutts had and have ample discretion in the application of the funds of the institution, but always subject to certain obligations and duties, equally governed by custom and usage (311). (*Mr. Ameer Ali.*) VIDYA VARUTHI THIRTHA *v.* BALUSAMI AIYAR.

(1921) 48 I. A. 302 = 44 M. 831 (840) = (1921) M. W. N. 449 = 15 L. W. 78 = 30 M. L. T. 66 = 26 C. W. N. 537 = 3 P L.T. 245 = 20 A. L. J. 497 = 24 Bom. L. R. 629 = 65 I. C. 161 = A. I. R. 1922 P. C. 123 = 41 M. L. J. 346.

———*Mortgage of—Necessity for — Proof of — Onus — Quantum—Recent transaction—Ancient transaction recognised by successive heads—Distinction.*

Although, in the case of mortgages granted over the security of an adhinam or mutt by the head thereof the onus lies upon the mortgagee, or those in his right, to prove that the debt was a necessary expense of the institution itself, it is a circumstance of great weight when holder after holder of the headship recognises and deals with the debt on that basis ; and as time goes on this may itself come to be a not unimportant element of probation upon the issue. Where,therefore, in such a case, the transaction is challenged after a lapse of time and when the parties to it have died or disappeared and the material evidence is not forthcoming, a court is much more easily satisfied that the debt was properly incurred than where the transaction was itself recent and could therefore be the subject of more exact evidence, or where the transaction, although remote, has been the subject of challenge or dispute by those charged with the interests of the institution (*Lord Shaw.*) MURUGESAM PILLAI *v.* MANICKA VASAGAR PANDARA.

(1917) 44 I. A. 98 (102) = 40 M. 402 (408) = (1917) M. W. N. 487 = 21 M. L. T. 288 = 15 A. L. J. 281 = 1 Pat. L. W. 457 = 5 P. L. W. 759 = 21 C.W.N. 761 = 19 Bom. L. R. 456 = 25 C. L. J. 589 = 39 I. C. 659 = 32 M. L. J. 369.

———*Ownership of, in trust for institution itself.*

The nature of the ownership of the property of a religious institution such as a math or an asthal is an ownership in trust for the institution itself (223-4.) (*Lord Shaw.*) ARUNACHALLAM CHETTY *v.* VENKATACHALAPATHI GURUSWAMIGAL. **(1919) 46 I. A. 204 = 43 M. 253 (268) = 24 C. W. N. 249 = 26 M. L. T. 479 = 10 L. W. 642 = (1919) M. W. N. 850 = 17 A. L. J. 1097 = 53 I. C. 288 = 37 M. L. J. 460.**

———*Ownership of, vesting in person not mohunt—Custom of—Proof of.*

In a suit by the respondent (the head of a math) against the appellants (Nagara Chetties) for a declaration that the appellants had no right to the village of Patharkudi, and that the respondent, as head of the math, was entitled *inter alia* to the possession of the village which was admittedly part of the math, the respondent claimed in

HINDU LAW—(*Contd.*)

Religious Endowment—Mutt—(*Contd.*)

MOHUNT OF—PROPERTY OF MUTT—(*Contd.*)

virtue of his office to be entitled to the management and possession of the entire property of the math, while the appellants claimed that they were entitled as trustees or managers of the part of the property of the institution which was in suit to be continued in the possession and management thereof. The suit was one in ejectment. The plaint did not even allege a case of misappropriation by the appellants and the appellants admitted they were trustees.

The evidence showed that for a period of 80 years trustees represented by the appellants had had possession and management of the village and had applied the income to the purposes of the institution and that they were recorded as trustees in the Inam Register of 1864, which mentioned the assent of the Zemindar, from whose predecessors the original title to the land had flowed. *Held* that the respondent had no title to the village (p. 224.)

It would be a contravention of the usage and custom of the math, as disclosed by the evidence. to hold that the ownership of the suit village was in the respondent. It was in the appellants whose title had been officially and apparently quite properly recognised as the "holders". (*Lord Shaw.*) ARUNACHALAM CHETTY *v.* VENKATACHALAPATI GURUSWAMIGAL. **(1919) 46 I. A. 204 = 43 M. 253 (268-9) = 24 C. W. N. 249 = 26 M. L. T. 479 = (1919) M. W.N. 850 = 10 L. W. 642 = 17 A.L. J. 1097 = 53 I. C. 288 = 37 M. L. J. 460.**

———*Permanent lease of—Duration of—Lease for necessity and not for necessity—Distinction.*

According to the well-settled law of India, the mahant of a math is, apart from necessity, incompetent to create any interest in respect of the math property to enure beyond his lifetime. A permanent lease granted by him in the absence of such necessity could endure only for the grantor's lifetime (327). (*Mr. Ameer Ali.*) VIDYA VARUTHI THIRTHA *v.* BALUSAMI AIYAR. **(1921) 48 I. A. 302 = 44 M 831 (855) = (1921) M. W. N. 449 = 15 L. W. 78 = 30 M. L. T. 66 = 26 C. W. N. 537 = 3 P. L. T. 245 = 20 A. L. J. 497 = 24 Bom. L. R. 629 = 65 I. C. 161 = A.I.R. 1922 P. C. 123 = 41 M. L. J. 346.**

———*Permanent lease of—Rent due under — Succeeding mohunt's receipt of—Effect of—Lessee's possession if adverse during lifetime of succeeding mahant.*

Where a succeeding mahant permitted the lessee under a a permanent lease granted hy his predecessor to continue in possession and received the rent during his life, *held* that the receipt of rent would be deemed to be with the knowledge that the tenancy created by his predecessor ended with his predecessor's iife, and that such receipt could. therefore, only be properly referable to a new tenancy created by the successor. The possession of the lessee would not under such circumstances, become adverse until the succeeding mahant's death (327 8). (*Mir. Ameer Ali.*) VIDYA VARUTHI THIRTHA *v.* BALUSAMI AIYAR.

(1921) 48 I. A. 302 = 44 M. 831 (855) = 15 L. W. 78 = (1921) M. W. N. 449 = 30 M. L. T. 66 = 26 C. W. N. 537 = 3 P.L.T. 245 = 20 A. L. J. 497 = 24 Bom. L. R. 629 = 65 I. C. 161 = A I.R. 1922 P.C. 123 = 41 M. L. J. 346.

———*Permanent lease of—Succeeding mahant's continuance of tenancy under, during his life—Power of.*

It is within the power of the mahant of a mutt to continue during his life the tenancy under a permanent lease of math property granted by his predecessor in office (327-8). (*Mr. Ameer Ali.*) VIDYA VARUTHI THIRTHA *v.* BALUSAMI AIYAR. **(1921) 48 I. A. 302 = 44 M. 831 (855) = (1921) M.W.N. 449 = A.I.R. 1922 P.C. 123 =**

HINDU LAW—(*Contd.*)

Religious Endowment—Mutt—(*Contd.*)

MOHUNT OF—PROPERTY OF MUTT—(*Contd.*)

15 L. W. 78 = 30 M. L. T. 66 = 26 C. W. N. 537 = 3 P.L.T. 245 = 20 AL.J. 497 = 24 Bom. L. R. 629 = 65 I. C. 161 = 41 M. L. J. 346.

———Private property of mohunt or. *See* HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT OF — PROPERTY OF ENDOWMENT—PRIVATE PROPERTY OF SHEBAIT OR.

———*Position with regard to—Trustee with large administrative powers.*

The property of a math or asthal is held by the mahant as its owner, and the succession to him in such property follaws with the succession to the office. The nature of the ownership is an ownership in trust for the math or institution itself, and it must not be forgotten that, although large administrative powers are undoubtedly vested in the reigning mahant, this trust does exist and must be respected (76). The mahant is not only a spiritual teacher but also a trustee in respect of the asthal over which he presides. (*Lord Shaw.*) RAM PARKASH DAS *v.* ANAND DAS.

(1916) 43 I. A. 73 = 43 C. 707 (714) = 33 I. C. 583 = 20 C. W. N. 802 = 14 A. L. J. 621 = 18 Bom. L. R. 49 = (1916) 1 M. W.N. 406 = 24 C. L. J. 116 = 3 L. W. 556 = 20 M. L. T. 267 = 31 M. L. J. 1.

MOHUNT OF—SEPARATE ASTHALS ALL HELD BY USAGE BY ONE MAN—DIVISION OF, BETWEEN SUCCESSORS.

———*Saddling of property of one or more component asthals with reservation in favour of others—Power of.*

There is no direct authority as to the power of a Mohunt who has a number of separate asthals, which by usage have all been held by one man, to provide for their division between his successors, or to saddle property of one or more of the component *asthals* with a reservation in favour of the others. All that can be safely said is that as the essence of the law governing these mutts lies in the following of custom or usage, *prima facie* such a separation would be improper, unless there were special circumstances justifying it. But their Lordships desire to be understood as expressing no determination upon this point. (*Lord Phillimore.*) RAM CHARAN RAMANUJ DAS *v.* GOBINDA RAMANUJ DAS.

(1928) 56 I. A. 104 (111) = 49 C. L. J. 321 = 29 L. W. 428 = 27 A.L.J. 414 = 114 I. C. 571 = 31 Bom. L. R. 715 = 33 C. W. N. 346 = A. I. R. 1929 P. C. 65 = 56 M. L. J. 636.

ORIGIN AND NATURE OF.

———Northern India—Asthals or mutts in. *See* HINDU LAW—RELIGIOUS ENDOWMENT—ASTHAL—ORIGIN, NATURE, ETC. **(1916) 43 I. A. 73 (75-6) = 43 C. 707 (713-4).**

———*Southern India—Mutts in.*

In many cases in Southern India, especially where the diffusion of Aryan Brahminism was essential for bringing the Dravidian peoples under the religious rule of the Hindu system, colleges and monasteries under the names of mutt were founded under spiritual teachers of recognised sanctity. These men had and have ample discretion in the application of the funds of the institution, but always subject to certain obligations and duties, equally governed by custom and usage (311). (*Mr. Ameer Ali.*) VIDYA VARUTHI THIRTHA *v.* BALUSAMI AIYAR. **(1921) 48 I. A. 302 = 44 M. 831 (840) = (1921) M. W. N. 449 = A.I.R. 1922 P. C. 123 = 15 L. W. 78 = 30 M. L. T. 66 = 26 C. W. N. 537 = 3 P. L. T. 245 = 20 A.L.J. 497 = 24 Bom. L. R. 629 = 65 I. C. 161 = 41 M. L. J. 346.**

PARENT AND SUBORDINATE MUTTS.

———*Relation of — Evidence—Tirupantal and Benares Mutts.*

HINDU LAW—(*Contd.*)

Religious Endowment—Mutt—(*Contd.*)

PARENT AND SUBORDINATE MUTTS—(*Contd.*).

The appellant, being the mohunt of the matt at Tirpuntal, sued the mohunt of the mutt at Benares to establish the plaintiff's right to manage and superintend as proprietor the mutt and Chutter affairs at Benares and the temple of Sri Kedareshur, and to recover property belonging thereto, and to have an account of receipts and disbursements relative to the same. The plaintiff's case was that the mutt at Tirpuntal was what might be called the parent mutt, that the mutt at Benares was subordinate thereto, that the mohunt of the Tirpuntal mutt had jurisdiction and power over the subordinate mutt at Benares and as incident thereto the right of appointing and removing the mohunt of the Benares mutt, who was merely agent of the mohunt of the parent mutt; and that the defendant acted illegally in setting up an independent title in himself and in disobeying the orders of the plaintiff. The defendant's case was that the mutt at Benares of which he was the mohunt was not subordinate to the mutt at Tirpuntal and that he was in no sense the agent of the plaintiff but was the real proprietor in possession and occupation by right of succession to his ancestors.

Held, on the evidence affirming the High Court, that the original foundation was the mutt at Benares and that the establishment at Tirpuntal was only subordinate thereto, and that the plaintiff had therefore failed to establish either that he was the proprietor of the property at Benares, or that the defendant was merely his agent.

KASHI VASHI RAMLING SWAMEE *v.* CHITUMBERNATH KOOMAR SWAMEE.

(1873) 2 Suth. 886 = 20 W. R. 217.

PROPERTY OF.

———Mohunt's alienation of, or powers over. *See* HINDU LAW—RELIGIOUS ENDOWMENT—MUTT—MOHUNT OF—PROPERTY OF MUTT.

———*Mortgage of—Suit to enforce—Title of mortgagor—Onus of proof of.*

In a suit to enforce a mortgage bond purporting to charge property appertaining to a mutt, it appeared that the original mortgagee represented by the plaintiff was aware that the mortgaged property belonged to the mutt, and that the mortgagor was one of the claimants to the mahantship and had not succeeded in establishing his title. *Held*, that it was for the plaintiff to make out the title of the mortgagor to mortgage the properties, and that he had not done so. (*Lord Macnaghten.*) MADHO PRASAD *v.* RAMRATTAN GIR. **(1911) 15 C.W.N 838 = (1911) 2 M.W.N. 66 = 14 C.L.J. 264 = 13 Bom. L.R. 780 = 10 M. L. T. 481 = 11 I. C. 507 = 21 M.L.J. 938.**

———Private property of mohunt or. *See* HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT OF—PROPERTY OF ENDOWMENT—PRIVATE PROPERTY OF SHEBAIT OR.

Religious Endowment—Private charities—Religious charities.

———Management of—Right of—Heir of original grantee entitled to and holding office of guru—Other heirs of such grantee—Rights of. *See* HINDU LAW—RELIGIOUS ENDOWMENT (1) IDOL—FAMILY IDOL—ENDOWMENT FOR THE SUPPORT OF AND (2) MUTT—MOHUNT OF—GRANT TO—RELIGIOUS, ETC.

(1917) 45 I. A. 1 = 41 M. 296.

Religious endowment—Property of.

———*See* HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT OF—PROPERTY OF ENDOWMENT.

Religious endowment—Shebait of.—

BREACH OF DUTY BY.

DEBT BINDING OF.

HINDU LAW—(*Contd.*)

Religious Endowment—Shebait of—(*Contd.*)

DECREE GAINST.
ESTOPPEL AGAINST.
MONEY SPENT FOR PUPPOSES OF ENDOWMENT BY.
OFFICE OF.
PROPERTY OF.

Religious Endowment—Shebait of—Breach of duty by.

———Application of debutter property or of income thereof to alien charity if amounts to. *See* HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT OF—PROPERTY OF ENDOWMENT—APPLICATION OF, ETC.
(1917) 44 I.A. 147 (150)=40 M. 709.

———*Presumption of—Propriety.*

A breach of duty in a Shebait ought not to be presumed. (*Lord Chelmsford.*) MAHARANEE SHIBESSOUREE DEBIA *v.* MOTHOORANATH ACHARJO.
(1869) 13 M. I. A. 270 (275)=13 W. R. P. C. 18=2 Suth. 300=2 Sar. 528=15 B.L.R. 176 (Note).

Religious Endowment—Shebait of—Debt binding of.

———Decree for—Realization of amount of, from rents and profits of debutter property—Provision in decree for—Receiver—Appointment of. *See* HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT OF—PROPERTY OF ENDOWMENT—MORTGAGE OF—NECESSITY.
(1926) 53 I. A. 253 (267-8.)

———Decree for—Sale of rents and profits of debutter property in execution of—Expenses connected with institution—Provision in decree for—Necessity. *See* HINDU LAW—RELIGIOUS ENDOWMENT—IDOL—PROPERTY OF—EXECUTION SALE OF RENTS AND PROFITS, ETC.
(1875) 2 I.A. 145 (153).

———Decree against succeeding shebait for—Form of—Expenses connected with institution—Provision in decree for—Receiver—Appointment of. *See* HINDU LAW—RELIGIOUS ENDOWMENT—MUTT—MOHUNT OF—DEBT OF—DECREE AGAINST SUCCESSOR FOR.
(1927) 54 I. A. 228 (237)=50 M. 497.

Religious Endowment—Shebait of—Decree against.

———Binding debts—Decree for—Realization of amount of, from rents and profits of debutter property—Provision in decree for—Receiver—Appointment of. *See* HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT OF—PROPERTY OF ENDOWMENT—MORTGAGE OF—NECESSITY—MORTGAGE FOR. **(1926) 53 I. A. 253 (267-8.)**

———Debt binding on endowment—Decree for—Sale in execution of, of *corpus* of debutter property—Validity of. *See* HINDU LAW—RELIGIUS ENDOWMENT—IDOL—PROPERTY OF—EXECUTION SALE OF *corpus* OF ETC.
(1875) 2 I. A. 145 (150.)

———Debts binding on endowment—Decree for—Sale in execution of, of rents and profits of debutter property—Expenses connected with institution—Provision in decree for—Necessity. *See* HINDU LAW—RELIGIOUS ENDOWMENT—IDOL—PROPERTY OF—EXECUTION SALE OF RENTS AND PROFITS, ETC. **(1875) 2 I.A. 145 (153.)**

———*Fraud and oollusion in obtaining—Proof of—Quantum.*

The appellants sued as shebaits of an idol to set aside two decrees obtained by the respondent against their immediate predecessor, and to have the dewutter property of the idol released from the attachment issued in execution of those decrees. The plaint alleged that the said decrees had been obtained by fraud and collusion.

HINDU LAW—(*Contd.*)

Religious Endowment—Shebait of—Decree against —(*Contd.*)

The Sub-Judge considered the charge of fraud had been sustained. The High Court, however, on appeal, came to the distinct conclusion that the charge was unsupported by any evidence.

Their Lordships affirmed the finding of the High Court (148). (*Sir Montague E. Smith.*) PROSUNNO KUMARI DEBYA *v.* GOLAB CHAND BABOO
(1875) 2 I. A. 145=14 B. L. R. 450=23 W. R. 253=3 Sar. 449=3 Suth. 102.

———Personal decree—Attachment and sale of *corpus* of debutter property in execution of—Validity—Beneficial interest in surplus income—Shebait having—Effect. *See* TRUST—RELIGIOUS TRUSTS—PROPERTY DEVISED UPON TRUST FOR. **(1887) 15 I. A. 1 (9 10)=15 C. 329 (339-40).**

———Personal decree—Decree against endowment and therefore binding on succeeding shebaits—Test—Construction of decree. *See* HINDU LAW—RELIGIOUS ENDOWMENT—IDOL—SHEBAIT OF—DECREE AGAINST—CONSTRUCTION. **(1875) 2 I. A. 145 (150).**

———*Rents and profits of debutter property—Realization of decree amount from—Direction in decree for—Execution of decree against successor in case of—Scope of.*

Held that, in a case in which the decree in a suit brought to recover money borrowed by the Shebait of an idol for the service and benefit of the idol, provided that the decree amount should be realised from the rents of the dewutter lands, execution of the judgment against the succeeding shebait was rightly decreed only against the rents and profits of the debutter lands (153). (*Sir Moutague E. Smith.*) PROSUNNO KUMARI DEBYA *v.* GOLAB CHAND BABOO.
(1875) 2 I. A. 145=14 B. L. R. 450=23 W. R. 253=3 Sar. 449=3 Suth. 102.

———Res judicata *against succeeding shebait—Conditions*

It is right and reasonable that judgments obtained against a former shebait of an idol in respect of debts properly and necessarily incurred by him for the service and benefit of the idol should be binding upon succeeding Shebaits, who, in fact, form a continuing representation of the idol's property. Before, however, applying the principle of *res judicata* to judgments of this character, the courts should take care to be satisfied that the decrees, relied upon are untainted by fraud or collusion, and that the necessary and proper issues were raised, tried, and decided in the suits which led to them (152-3).

If such debts, and the judgments founded on them, were not held to be thus binding on successors, the consequence would be that no Shebait would be able to obtain assistance in times of need ; for, on an opposite view of the law, he might defeat the creditors who had afforded it, by at once transferring the property to other Shebaits (152-3) (*Sir Montague E. Smith.*) PROSUNNO KUMARI DEBYA *v.* GOLAB CHAND BABOO. **(1875) 2 I. A. 145=14 B. L. R. 450=23 W. R. 253=3 Sar. 449=3 Suth. 102.**

———*Suit by succeeding Shebait to set aside—Maintainability—Fraud and collusion in regard to decree in question—Absence of proof of—Effect.*

The respondent obtained a decree for money against the then Shebait of an idol, the decree directing the realization of the amount thereof from the rents of the debutter lands. Another decree obtained by the respondent against the same Shebait directed that the decree amount should be paid by the Shebait, or else realised from the profits of the debutter mahal.

In a suit brought by the succeeding shebait of the idol to set aside those decrees, and to have the debutter property of

HINDU LAW—(*Contd.*)

Religious Endowment—Shebait of—Decree against—(*Contd.*)

the idol released from the attachment issued in execution of those decrees, *held* that the decrees were entitled to the force due to judgments of competent courts, and the determination of the issues was *res judicata* ; and that, in the absence of proof of fraud and collusion, the judgments founded upon the decrees could not be re-opened and reviewed in the subsequent suit (149-50). (*Sir Montague E. Smith.*) PROSUNNO KUMARI DEBYA *v.* GOLAB CHAND BABOO.

(1875) 2 I. A. 145 = 14 B. L. R. 450 = 23 W. R. 253 = 3 Sar. 449 = 3 Suth. 102.

Religious Endowment—Shebait of—Estoppel against.

———Getting rid of, by suit brought formally in name of endowment — Permissibility. *See* HINDU LAW—RELIGIOUS ENDOWMENT— MUTT— MOHUNT OF—OFFICE OF—SUCCESSION TO—DISPUTE AS TO ETC.

(1928) 56 I. A. 104 (109-10).

———Grant or alienation of debutter property by Shebait —Validity of—Right to dispute. *See* HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT OF — PROPERTY OF ENDOWMENT—GRANT OF.

(1923) 51 I. A 83 (97) = 47 M. 337.

Religious Endowment—Shebait of—Money spent for purposes of endowment by.

———*Reimbursement of—Right of—Extent and nature of—Expenditure in excess of actual receipts—Right in case of.*

The estate of a deceased shebait is entitled to be reimbursed all sums properly expended by him in the preservation of the trust estate, as for instance, all moneys paid in respect of Government revenue and the like. It is also entitled to be reimbursed all moneys properly expended by him in defending his position as shebait against an unsuccessful claimant.

The estate of a deceased shebait is similarly entitled to be reimbursed all moneys properly expended in performing the obligations imposed upon him by the founder.

The right of indemnity is incident to the position of a trustee. The liability in respect of that indemnity is the first charge on the trust estate.

Where the income of a debutter estate suffered diminution owing to the wrongful acts of a rival claimant to the office of the shebait, but it was not unreasonable to expect that, on the cessation of those acts, or, on the interposition of the court, whose aid had been invoked, the income would be sufficient to defray the expenditure incurred in the meantime by the shebait and paid out of his own personal estate, *held* that in the absence of any provision by the founder directing that the shebait must not spend more than what he at any time actually received, and create no outstanding claim against the estate the shebait was entitled to be reimbursed the moneys so spent by him out of his personal estate. (*Lord Macnaghten.*) PEARY MOHAN MUKERJI *v.* NORENDRA NATH MUKERJI.

(1909) 37 I. A. 27 (38 9) = 37 C. 229 (234 5) = 7 M. L. T. 63 = 7 A. L. J 125 = 11 C. L. J. 229 = 14 C. W.N. 261 = 12 Bom. L. R. 257 = 5 I. C. 404 = 20 M. L.J. 171.

———Suit by his representatives for recovery of, from debutter estate—Limitation. *See* LIMITATION ACT OF 1908—ART 120—RELIGIOUS ENDOWMENT.

(1909) 37 I. A. 27 (37 8) = 37 C. 229 (234).

Religious Endowment—Shebait of—Office of.

ADOPTED SON—JOINT RIGHT OF, ALONG WITH SUBSEQUENTLY BORN NATURAL-BORN SON.

HINDU LAW—(*Contd.*)

Religious Endowment—Shebait of—Office of—(*Contd.*)

ADVERSE POSSESSION OF.
ELECTION TO—VALIDITY.
EMOLUMENTS ATTACHED TO.
FOUNDER'S HEIRS.
FUNCTIONS AND DUTIES OF.
GRANT OF, WITH OBLIGATION TO APPOINT NAMED PERSON AS SUCCESSOR.
HEREDITARY OFFICE AND EMOLUMENTS ATTACHED THERETO.
INSOLVENT—APPOINTMENT OF.
REMOVAL FROM—GROUNDS.
SUCCESSION TO.
SUIT FOR RECOVERY OF, AND OF PROPERTY OF ENDOWMENT—ONUS OF PROOF IN.
WIDOW IF CAN HOLD.
WILL BEQUEATHING.
WOMAN IF CAN HOLD.

ADOPTED SON—JOINT RIGHT OF, ALONG WITH SUBSEQUENTLY BORN NATURAL BORN SON.

———Agreement by adoptive father conferring—Construction. *See* HINDU LAW—ADOPTION—ADOPTED SON—SHEBAITSHIP OF DEBUTTER PROPERTIES.

(1920) 47 I. A. 140.

ADVERSE POSSESSION OF.

———Effect of, on right to emoluments attached to office. *See* HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT—OFFICE OF—EMOLUMENTS OF LANDS FORMING.

(1899) 27 I. A. 69 (76-7) = 23 M. 271 (279).

ELECTION TO—VALIDITY.

———*Election by majority of qualified persons required—Election separate by faction of qualified peasons not enough.*

An election of the mahant of a math by persons, who according to the custom of the math are qualified to elect such a mahant, must, to be valid and effectual be by a majority of the qualified persons assembled for that purpose. A separate election by a faction of the qualified persons is not a valid and effectual election (124). (*Sir John Edge.*) LAHAR PURI *v.* PURAN NATH. **(1915) 42 I. A. 115 = 37 A. 298 (309) = 19 C. W. N. 718 = 21 C. L. J. 499 = 18 M. L. T. 39 = (1915) M. W. N. 526 = 2 L. W. 589 = 17 Bom. L. R. 475 = 29 I. C. 724 = 29 M. L.J. 75.**

EMOLUMENTS ATTACHED TO.

———Hereditary office—Emoluments attached to. *See* UNDER HINDU LAW — RELIGIOUS ENDOWMENT—SHEBAIT—OFFICE OF—HEREDITARY OFFICE AND EMOLUMENTS ATTACHED THERETO.

———*Lands forming—Right to—Adverse possession of office—Effect of.*

Semble : The property of a religious endowment is attached to the office of manager of the endowment, and, as regards adverse possession, there is no distinction between the office and the property of the endowment, so that if the right to the office is barred by adverse possession, the right to the property is also barred (76-7). (*Sir Richard Couch.*) GNANASAMBANDA PANDARA SANNADHI *v.* VELU PANDARAM. **(1899) 27 I. A. 69 = 23 M. 271 (279) = 2 Bom. L. R. 597 = 4 C. W. N. 329 = 7 Sar. 671 = 10 M. L. J. 29.**

———Right to—Attached to and dependent upon right to office. *See* HINDU LAW—RELIGIOUS ENDOWMENT—TEMPLE—SHEBAIT OF—OFFICE OF—EMOLUMENTS OF —RIGHT TO.

(1914) 41 I. A. 267 (274) = 42 C. 244 (252).

HINDU LAW—(*Contd.*)

Religious Endowment—Shebait of—Office of—(*Contd.*)

FOUNDER'S HEIRS.

——*Right of.*

According to Hindu law, when the worship of a thakoor has been founded, the shebaitship is held to be vested in the heirs of the founder, in default of evidence that he has disposed of it otherwise, or there has been some usage, course of dealing, or some circumstances to shew a different mode of devolution (1). (*Lord Hobhouse.*) GOSSAMEE SREE GREEDHAREEJEE *v.* RUMANLOLLJEE GOSSAMEE.

(1889) 16 I. A. 137 (144) = 17 C. 3 (20) = 5 Sar. 350.

——(2) (*Lord Shaw.*) PRAMATHA NATH MULLICK *v.* PRADYUMNA KUMAR MULLICK.

(1925) 52 I. A. 245 (257) = 52 C. 809 = 23 A. L. J. 557 = 41 C. L. J. 551 = 22 L. W. 492 = (1925) M. W. N. 431 = 2 O. W. N. 557 = 27 Bom. L. R. 1064 = 30 C.W.N. 25 = 87 I.C. 305 = 3 Pat. L. R. 315 = A. I. R. 1925 P.C. 139 = 49 M. L. J. 30.

——Where there is no reliable evidence as to who founded a religious endowment, or as to the terms or conditions of the foundation, the legal inference is that the title to the property, or to the management and control of the property, as the case may be, follows the line of inheritance from the founder. (*Sir Arthur Wilson.*) MAHARAJA JAGADINDRANATH ROY BAHADUR *v.* RANI HEMANTA KUMARI DEBI. **(1904) 31 I. A. 203 (208) = 32 C. 129 (139) = 8 C. W. N. 809 = 6 Bom. L. R. 765 = 1 A. L. J. 585 = 8 Sar. 698.**

——*Right of—Claim by them inconsistent with or opposed to purpose which founder had in view in establishing worship—Effect.*

The rule laid down in 16 I. A. 137 that "According to Hindu Law, when the worship of a thakoor has been founded, the shebaitship is held to be vested in the heirs of the founder, in default of evidence that he has disposed of it otherwise, or there has been some usage, course of dealing, or some circumstances to shew a different mode of devolution," must from the very nature of the right, be subject to the condition that the devolution in the ordinary line of descent is not inconsistent with or opposed to the purpose the founder had in view in establishing the worship.

In a suit brought by the plaintiffs claiming the shebaitship of a Hindu temple belonging to the Ballavacharya Gossains on the ground of their being the heirs-at-law of the founder, it appeared that, being Bhats, and not belonging to the Gossain Kul, the plaintiffs were not competent to be shebaits of a Ballav temple where the rites were performed according to the Ballav ritual, which they could not perform. *Held*, that to allow the plaintiff's claim would defeat the purpose for which the worship was established. (*Mr. Ameer Ali.*) MOHAN LALJI *v.* GORDHAN LALJI MAHORAJ. **(1913) 40 I. A. 97 (103-4) = 35 A. 283 (288-9) = 17 C. W. N. 741 = 11 A. L. J. 548 = 17 C. L. J. 612 = 15 Bom. L. R. 606 = (1913) M. W. N. 536 = 14 M. L. T. 27 = 19 I. C. 337.**

FUNCTIONS AND DUTIES OF.

——Law governing. *See* HINDU LAW—RELIGIOUS ENDOWMENT — LAW APPLICABLE TO — OFFICE OF MOHUNT.

GRANT OF, WITH OBLIGATION TO APPOINT NAMED PERSON AS SUCCESSOR.

——*Validity of.*

Quaere : whether, in point of law, a grant of Mohantship can he made by any holder of the office with the superadded obligation imposing on the grantee the necessity of following the wishes of the grantor as to the person whom he is to appoint to be his successor in that office (428). (*Lord Romilly.*) GREEDHAREE DOSS *v.* NUNDKISSORE DOSS. **(1867) 11 M. I. A. 405 = 8 W. R. P. C. 25 = 2 Suth. 86 = 2 Sar. 306.**

HINDU LAW—(*Contd.*)

Religious Endowment—Shebait of—Office of—(*Contd.*)

GRANT OF, WITH OBLIGATION TO APPOINT NAMED PERSON AS SUCCESSOR—(*Contd.*)

HEREDITARY OFFICE AND EMOLUMENTS ATTACHED THERETO.

——Adverse enjoyment of emoluments by person not entitled to hold office—Effect of, against person entitled to office—Right to emoluments depending upon right to possession of office. *See* LIMITATION ACT, OF 1908—ART. 124. **(1914) 41 I. A. 267 (273-4) = 42 C. 244 (251-2).**

——Adverse possession of, against father — Effect against son. *See* LIMITATION ACT OF 1908—ART 124—HINDU LAW—RELIGIOUS ENDOWMENT—MANAGER—HEREDITARY OFFICE AND EMOLUMENT. **(1899) 27 I. A. 69 = 23 M. 271.**

——*Life estates in succession in—Ruling in Tagore case.—Applicability of.*

The Hindu law of inheritance does not permit the creation of successive life estates in a religious endowment. The ruling in the Tagore case that all estates of inheritance created by gift or will so far as they are inconsistent with the general law of inheritance are void as such and that by general Hindu law no person can succeed thereunder as heir to estates described in the terms which in English law would designate estates tail, is applicable to an hereditary office and endowment as well as to other immoveable property (78). (*Sir Richard Couch.*) GNASAMBANDA PANDARA SANNADHI *v.* VELU PANDARAM. **(1899) 27 I. A. 69 = 23 M. 271 (281) = 2 Bom. L. R. 597 = 4 C. W. N. 329 = 7 Sar. 671 = 10 M. L. J. 29.**

——*Sale of—Validity.*

Held, that in the absence of proof of any custom, a sale by a hereditary trustee of his hereditary right to manage a religious endowment and to enjoy the lands forming the endowment was void and gave no title to the purchaser (76). (*Sir Richard Couch.*) GNANASAMBANDA PANDARA SANNADHI *v.* VELU PANDARAM. **(1899) 27 I. A. 69 = 23 M. 271 (279) = 2 Bom. L. R. 597 = 4 C. W. N. 329 = 7 Sar. 671 = 10 M. L. J. 29.**

——*Sale invalid of—Possession of purchaser under, adverse to shebait.*

An invalid sale by a hereditary trustee of his hereditary right to manage a religious endowment and to enjoy the lands forming the endowment is void and gives no title to the purchaser. The title remains in the vendor and the possession which is taken by the purchaser is adverse to him (76). (*Sir Richard Couch.*) GNANASAMBANDA PANDARA SANNADHI *v.* VELU PANDARAM. **(1899 27 I. A. 69 = 23 M. 271 (279) = 2 Bom. L. R. 597 = 4 C. W. N. 329 = 7 Sar. 671 = 10 M. L. J. 29.**

INSOLVENT—APPOINTMENT OF.

——*Impropriety and improbability of.*

The second deed of partition does afford ground for suspicion. It appoints as a shebait one whom no prudent person would appoint a trustee, one an actual insolvent. Such an appointment, independently of its obvious impropriety, would be little likely to be made by a Hindu family having several and more competent members, from the fear of the scrutiny to which it might lead if the creditors of the shebait traced the property to his possession (303-4) (*Sir*

HINDU LAW—(*Contd.*)

Religious Endowment—Shebait of—Office of—(*Contd.*)

INSOLVENT—APPOINTMENT OF—(*Contd.*)

Robert Phillimore.) JAGGAT MOHINI DOSSEE *v.* MUSSUMAT SOOKHEEMONEY DOSSEE. **(1871) 14 M. I. A. 289 = 10 B. L. R. 19 P. C. = 17 W. R. P. C. 41 = 2 Suth. 512 = 3 Sar. 23.**

REMOVAL FROM—GROUNDS.

———*Trustee—Removal of—English rules as to — Applicability.*

The grounds for removing a shebait from his office may not be identical with those upon which a trustee would be removed in this country (England). The close intermingling of duties and personal interests which together make up the office of shebait may well prevent the closeness of the analogy, but as part of the office it is indisputable that there are duties which must be performed, that the estate does need to be safeguarded and kept in proper custody, and if it be found that a man in the exercise of his duties has put himself in a position in which a court thinks that the obligations of his office can no longer be faithfully discharged that is sufficient ground for his removal.

Where the High Court held that the protracted litigations, due to the unwise acts of a hereditary shebait, by which the debutter estate had become heavily burdened with debts, and the circumstances associated with the claims which the shebait was seeking to establish against the estate for litigation expenses, were such as to render it undesirable that he should continue in the office, and the High Court accordingly made a decree directing his removal from the office, their Lordships affirmed the judgment of the High Court. (*Lord Buckmaster.*) PEARY MOHAN MUKERJI *v.* MONOHAR MUKERJI. **(1921) 48 I.A. 258 (264 5) = 48 C. 1019 (1026 7) = 23 Bom. L. R. 913 = 14 L.W. 104 = (1921) M.W.N. 554 = 19 A. L. J. 773 = 26 C.W.N. 133 = 2 P. L. T. 725 = 62 I. C. 76 = 30 M. L. T. 24 = (1922) P. C. 235 = 41 M. L. J. 68.**

———*See also* MAHOMEDAN LAW—WAKF—GADDINASHIN OF— REMOVAL FROM OFFICE OF. **54 M.L.J. 692.**

SUCCESSION TO.

———Law governing. *See* HINDU LAW — RELIGIOUS ENDOWMENT—LAW APPLICABLE TO —SUCCESSION TO, ETC.

SUIT FOR RECOVERY OF, AND OF PROPERTY OF ENDOWMENT—ONUS OF PROOF IN.

———Defendant himself claiming to be validly appointed shebait—Validity of his appointment — Consideration of—Propriety. *See* EJECTMENT SUIT—ONUS ON PLAINTIFF —DEFENDANT'S TITLE—INFIRMITY IN, IMMATERIAL—RELIGIOUS ENDOWMENT.

(1867) 11 M. I. A. 405 (430-1.)

WIDOW IF CAN HOLD.

Quære, whether a widow can hold the office of a shebait (59.) (*Lord Buckmaster.*) BAWA MAGNIRAM SITARAM *v.* KASTURBHAI MANIBHAI. **(1921) 49 I. A. 54 = 46 B. 481 (487) = 26 C W.N. 473 = 20 A L. J. 371 = 35 C.L J. 421 = 24 Bom. L. R. 584 = 30 M.L.T. 268 = (1922) M.W. N. 319 = A.I.R. 1922 P. C. 163 = 66 I. C. 162 = 42 M. L. J. 501.**

WILL BEQUEATHING.

———*See* HINDU LAW—WILL — RELIGIOUS ENDOWMENT.

WOMAN IF CAN HOLD.

———*Appointment as shebait by will of husband — Right to be shebait in case of.*

In some cases doubts have been expressed whether women ought to be shebaits; but whatever may be the force of those doubts, they can hardly apply to a case in which a Hindu by his will appoints nobody but his wives to perform the duties which his sons cannot perform by reason of nonage (128) (*Lord Hobhouse.*) SURENDRAKESHAV ROY *v.* DOORGASUNDARI DASSEE. **(1892) 19 I. A. 108 = 19 C. 513 (531-2) = 6 Sar. 150.**

HINDU LAW—(*Contd.*)

Religious Endowment—Shebait of—Office of—(*Contd.*)

WOMAN IF CAN HOLD—(*Contd.*)

Religious Endowment—Shebait of—Property of Endowment.

ALIENATION OF.
APPLICATION OF, AND OF INCOME OF.
CORPUS OF.
DEBT OF SHEBAIT.
DERIVATIVE TENURES AS REGARDS.
GRANT OF—VALIDITY OF.
INCOME OF.
MORTGAGE IN FAVOUR OF SHEBAIT WITH INCOME OF—SUIT ON.
MORTGAGE OF.
OWNERSHIP OF—INCIDENTS OF.
PERMANENT LEASE OF.
PRIVATE PROPERTY OF SHEBAIT OR.
PURCHASE BY SHEBAIT OF.
PURCHASE BY SHEBAIT WITH MONEY BORROWED ON SECURITY OF.
RENTS AND RROFITS OF.
SALE OF.

ALIENATION OF.

———Benefit of estate—Alienation for—Meaning of. *See* HINDU LAW—EXPRESSIONS—BENEFIT OF ESTATE.

(1917) 44 I.A. 147 = 40 M. 709.

———Deed of—Recital in, that property was debutter and that alienation was for binding purposes—Reliance on, as admission that property was debutter, ignoring latter part of recital—Permissibility. *See* ADMISSION—DEED—ADMISSION IN—MUST BE TAKEN AS A WHOLE—(2).

(1876) 4 I. A. 52 (62) = 2 C. 341 (350-1.)

———*Power of—Manager of infant heir — Power analogous to that of.*

The position of the shebait of an idol in regard to the alienation of the dewutter property of the idol is analogous to that of a manager of an infant, and he has the same authority, which in both cases arises from the necessity of the case, to raise money for the benefit of the estate (64.) (*Sir Montague E. Smith.*) KONWER DOORGANATH ROY *v.* RAM CHUNDER SEN. **(1876) 4 I. A. 52 - 3 Suth. 375 = 2 C. 341 (352) = 3 Sar. 681.**

The power of the mohunt to alienate *debutter* property is like the power of the manager for an infant heir, limited to cases of unavoidable necessity (165.) (*Sir Andrew Scoble.*) **(1909) 36 I. A. 148 = 36 C. 1003 (1013) = 10 C.L.J. 284 = 14 C. W. N. 1 = 11 Bom. L. R. 1234 = 6 A. L. J. 857 = 4 I. C. 449 = 19 M. L. J. 530.**

———*Representation of necessity—Purchaser* bona fide *believing in, and taking purchase on faith of — Misapplication of purchase-money by shebait—Purchaser affected by.*

If the temples were out of repair, and if *R* (the shebait) offered this mokurruri pottah to raise money for the purpose of doing the repairs that the temple required, the purchaser who *bona fide* took it upon that representation would clearly be entitled to keep his purchase. It may be that *R* did not intend to apply the money to the purpose for which she professed to require it. It may be that she always intended to apply it to the payment of the Government revenue, as it appears that in point of fact she did. But unless the purchaser was aware at the time he made the purchase that that

HINDU LAW—(*Contd.*)

Religious Endowment—Shebait of—Property of—Endowment—(*Contd.*)

ALIENATION OF—(*Contd.*)

was her intention, and that the statement in the deed was a clorable one, he could not be injured by her concealment of the true object. or by her having subsequently applied the money to a different purpose. She, as the manager of this estate, had the same right, or an analogous right to that of the manager of an infant heir (63.) (*Sir Montague E. Smith.*) KONWUR DOORGANATH ROY *v.* RAM CHUNDER SEN. (1876) 4 I. A. 52 = 2 C. 341 (351-2) = 3 Sar. 681 = 3 Suth. 375.

———Validity of—Conditions—Asthal—Property of. *See* HINDU LAW — RELIGIOUS ENDOWMENT—ASTHAL—MOHUNT OF—ALIENATION OF ASTHAL PROPERTY BY. (1883) 10 I. A. 62 (65) = 9 C. 961 (971) and (1918) = 35 M. L. J. 5.

———*Validity of—Rule as to.*

There is no doubt that, as a general rule of Hindu law, property given for the maintenance of religious worship and of charities connected with it is inalienable (150). (*Sir Montague E. Smith.*) PROSUNNO KUMARI DEBYA *v.* GOLAB CHAND BABOO. (1875) 2 I. A. 145 = 14 B.L.R. 450 = 23 W.R. 253 = 3 Sar. 449 = 3 Suth 102.

APPLICATION OF, AND OF INCOME OF.

———*Alien charity—Application to—Breach of duty.*

A trustee of a charity is not justified in applying its property or the produce thereof to another charity which is not in any sense subsidiary to or connected with the former charity but which is an entirely separate and independent charity. (*Lord Atkinson.*) PALANIAPPA CHETTY *v.* DEIVASIKAMANY PANDARA. (1917) 44 I. A. 147 (150) = 40 M. 709 = 22 M. L. T. 1 = (1917) M. W. N. 507 = 6 L. W. 222 = 21 C. W. N. 729 = 19 Bom. L. R. 567 = 26 C. L. J. 153 = 1 Pat. L. W. 697 = 15 A. L. J. 485 = 39 I. C. 722 = 33 M. L. J. 1.

———Law governing—Usage of institution. *See* HINDU LAW—RELIGIOUS ENDOWMENT—LAW APPLICABLE TO—PROPERTY OF ENDOWMENT AND OF ITS INCOME. (1917) 44 I. A. 147 (149-50) = 40 M. 709.

CORPUS OF.

———Attachment and sale of, in execution of personal decree against shebait—Validity—Beneficial interest in surplus income—Shebait having—Effect. *See* TRUST—RELIGIOUS TRUST. (1887) 15 I. A. 1 (9-10) = 15 C. 329 (339-40).

———Sale of, in execution of decree against shebait for binding debts—Validity. *See* HINDU LAW—RELIGIOUS ENDOWMENT—IDOL—PROPERTY OF—EXECUTION SALE OF CORPUS OF, ETC. (1875) 2 I. A. 145 (150).

DEBT OF SHEBAIT.

———Binding debt—Decree for. *See* HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT OF (1) DEBT BINDING OF; AND (2) DECREE FOR.

———*Liability for—Conditions.*

Notwithstanding that property devoted to religious purposes is, as a rule, inalienable, it is competent for the shebait of property dedicated to the worship of an idol, in the capacity as shebait and manager of the estate, to incur debts and borrow money for the proper expenses of keepiug up the religious worship, repairing the temples or other possessions of the idol, defending hostile litigious attacks, and other like objects. The power, however, to incur such debts must be measured by the existing necessity for incurring them. The authority of the shebait of an idol's estate would appear to be in this respect analogous to that of the manager for an infant heir as laid down in the case of Hanooman Persaud Panday (151-2).

HINDU LAW—(*Contd.*)

Religious Endowment—Shebait of—Property of—Endowment—(*Contd.*)

DEBT OF SHEBAIT—(*Contd.*)

It is only in an ideal sense that property can be said to belong to an idol; and the possession and management of it must in the nature of things be entrusted to some person as shebait or manager. It would seen to follow that the person so entrusted must of necessity be empowered to do whatever may be required for the service of the idol, and for the benefit and preservation of its property, at least to as great a degree as the manager of an infant heir. If this were not so, the estate of the idol might be wasted or destroyed, and its worship discontinued. for want of the necessary funds to preserve nnd maintain them (152). (*Sir Montague E. Smith.*) PROSUNNO KUMARI DEBYA *v.* GOLAB CHAND BABOO. (1875) 2 I. A. 145 = 14 B. L. R. 450 = 23 W. R. 253 = 3 Sar. 449 = 3 Suth 102.

DERIVATIVE TENURES AS REGARDS

———*Creation of—Power of.*

In the exercise of the office of shebait, the shebait of an idol could not alienate the property devoted to its religious services, though she might create proper derivative tenures and estates conformable to usage (273). (*Lord Chelmsford.*) MAHARANEE SHIBESSOUREE DEBIA *v.* MOTHOORNATH ACHARJO. (1869) 13 M. I. A. 270 = 13 W. R. P. C. 18 = 15 B. L. R. 178 (Note) = 2 Suth 300 = 2 Sar. 528.

GRANT OF—VALIDITY OF.

———*Right to dispute—Estoppel.*

In the case of a Shebait a grant by him in violation of his duty of an interest in endowed lands which he has not authority as shebait to make may possibly under some circumstances be good as against himself by way of estoppel, but is not binding on his successors. (*Sir John Edge.*) NAINAPILLAI MARKAYAR *v.* RAMANATHAN CHETTIAR. (1923) 51 I. A. 83 (97) = 47 M. 337 = A. I. R. (1924) P. C. 65 = 22 A.L.J. 130 = 19 L.W. 259 = 34 M. L. T. 10 = (1924) M. W. N. 293 = 10 O. & A. L. R. 464 = 28 C. W. N. 809 = 82 I. C 226 = 46 M. L. J. 546.

INCOME OF.

———(*See also* UNDER THIS SUB-HEAD—RENTS AND PROFITS).

———Acquisitions by shebait with—Ownership of. *See* HINDU LAW — RELIGIOUS ENDOWMENT—ASTHAL—MOHUNT OF—GRANT BY NATIVE RULER TO. (1918) 35 M. L. J. 5 (9-10).

———Application of—Law governing—Usage of institution *See* HINDU LAW — RELIGIOUS ENDOWMENT—LAW APPLICABLE TO—PROPERTY OF ENDOWMENT AND ITS INCOME. (1917) 44 I. A. 147 (149-150) = 40 M. 709.

———Application of, to alien charity—Breach of duty. *See* HINDU LAW—RELIGIODS ENDOWMENT—SHEBAIT OF—PROPERTY OF ENDOWMENT—APPLICATION OF, OR ETC. (1917) 44 I. A. 147 (150) = 40 M. 709.

———*Surplus income—Appropriation for personal use—Legality.*

The settled rule of administration with regard to such institutions under the law of India is that their administration must be, not for the personal ends of the trustee or trustees, but entirely for and on behalf of and in the interest of the institution itself (p. 223). The trustee cannot employ surplus income for his personal use. His duty is to refrain from the personal enjoyment of such surplus and to add the same to the capital of the estate to be administered and this law also applies to the property of a math or asthal, whether the title to the same is in a gurukal as spiritual head of the institution—which is the ordinary case

HINDU LAW—(*Contd.*)

Religious Endowment—Shebait of—Property of Endowment—(*Contd.*)

INCOME OF—(*Contd.*)

—or in trustees according to the usage and custom of the institution (226-7). (*Lord Shaw.*) ARUNACHALLAM CHETTY *v.* VENKATACHALAPATHY GURUSWAMIGAL.
(1919) 46 I A. 204=43 M. 253 (268-70)= 24 C. W. N. 249=26 M. L. T. 479= (1919) M. W. N. 850=10 L. W. 642= 17 A. L. J. 1097=53 I. C. 288=37 M. L. J. 460.

MORTGAGE IN FAVOUR OF SHEBAIT TAKEN WITH INCOME OF—SUIT ON.

———*Succeeding shebait's right of.*

Where out of the income of an endowment money is lent on mortgage to a person by the shebait of the endowment the person appointed by the latter as his successor in the shebaitship is entitled to sue the debtor for the recovery of the loan. (*Sir Andrew Scoble.*) MAHANT BISHAMBAR DAS *v.* THAKUR DRIGBIJAI SINGH.
(1905) 32 I. A. 172 (176)=27 A. 581 (591)= 9 C. W. N. 914=2 C. L. J. 182=7 Bom. L. R. 869= 8 O. C. 297=8 Sar. 849=15 M. L. J. 323.

MORTGAGE OF.

———*Antecedent debts on very oppressive terms—Mortgage on easy terms for paying off—Validity—Proof of necessity for earlier loans if condition of.*

The learned Judges of the High Court appear to be of opinion that the procurement by the shebait of a muth of a loan of money on easy terms for the purpose of paying off antecedent loans obtained on very oppressive terms can never be held to be a necessary proceeding unless the obtaining of the oppressive loan was, at the time it was obtained, a matter of necessity also. This view is not correct (265).

It is the immediate, not the remote cause, the *causa causans*, of the borrowing which has to be considered (267).

Where therefore, the immediate cause of the borrowing was the Muth's need of money to carry on and pay for its services, but the remote cause of the Muth's need was due to the profligate expenditure of the shebait, *held* that a mortgage executed by the shebait for such immediate cause was binding on the muth (267). (*Lord Atkinson.*) NILADRI SAHU *v.* MAHANT CHATURBHUJ DAS.
(1926) 53 I.A. 253=25 A.L.J. 8=28 Bom. L. R. 1418= 44 C. L. J. 494=31 C. W. N. 221=(1926) M.W.N 857= 38 M. L. T. P. C 24=A. I. R (1926) P. C. 112= 98 I. C. 576=51 M. L. J. 822.

———*Necessity—Mortgage for—Decree on foot of—Realisation of amount of, from rents and profits—Provision in decree for—Receiver—Appointment of.*

In a suit to enforce a mortgage of mutt property executed by a Shebait, their Lordships directed that the portion of the mortgage debt legitimately attributable to the endowment under the Hindu law should be realised from the profits of the debutter property. They directed the High Court to appoint a Receiver to realise the rents and profits of the debutter estate and provided that the shebait's share, after payment of maintenance allowance to be fixed by the court, should be allocated for the payment of the mortgage debt (267-8). (*Lord Atkinson.*) NILADRI SAHU *v.* MAHANT CHATURBHUJ DAS. **(1926) 53 I. A. 253= 25 A. L. J. 8=28 Bom. L. R. 1418=44 C. L. J. 494= 31 C. W. N. 221=(1926) M. W. N. 857= 38 M. L. T. P. C. 24=A. I. R. (1926) P. C. 112= 98 I. C. 576=51 M. L. J. 822.**

———Necessity for—Proof of—Onus—Quantum—Recent transaction—Ancient transaction recognised by succeeding shebaits — Distinction. *See* HINDU LAW—RELIGIOUS

HINDU LAW—(*Contd.*)

Religious Endowment—Shebait of—Property of Endowment—(*Contd.*)

MORTGAGE OF—(*Contd.*)

ENDOWMENT—MUTH—MOHUNT OF—PROPERTY OF MUTH—MORTGAGE OF. **(1917) 44 I. A. 98 (902)= 40 M. 402 (408).**

———*Service and benefit of idol—Mortgage for money borrowed for—Validity of.*

Quaere—Where the shebait of an idol has no power to make a specific pledge of the debutter property to secure money borrowed by him for the service and benefit of the idol (149-50). (*Sir Montague E. Smith*) PROSUNNO KUMARI DEBYA *v.* GOLAB CHAND BABOO.
(1875) 2 I. A. 145=14 B. L. R. 450=23 W. R. 253= 3 Sar. 449= 3 Suth. 102.

———Ownership of—Incidents of—Law governing. *See* HINDU LAW—RELIGIOUS—ENDOWMENT—LAW APPLICABLE TO—PROPERTY OF ENDOWMENT.
(1919) 46 I. A. 204 (223-4)=43 M. 253 (268).

PERMANENT LEASE OF.

———*Custom authorising—Validity of—Essentials.*

Where, in recording a finding that an ancient custom existed authorising and empowering a shebait to alienate debutter lands at a fixed rent or in consideration of a premium, whether he was constrained so to do by some necessity or the contrary, and whether the alienation was a benefit to the debutter estate or not, the District Munsif observed: "I must find that for a very long time permanent leases of temple land are being granted and that the alienees are in undisputed possession thereof", and the subordinate Judge stated: "If custom were needed to justify such a grant, the District Munsif has found upon the evidence (and I agree in his finding) that such local usage does obtain in the village in question." The custom is perfectly reasonable, and is not opposed to public policy," their Lordships observed that there could scarcely be a more glaring instance of the misapplication of the word "Custom" or a more remarkable instance of forgetfulness of essentials of a custom which modifies the ordinary law. (*Lord Atkinson*) PALANIAPPA CHETTY *v.* DEIVASIKAMONY PANDARA. **(1917) 44 I. A. 147 (157-8)=40 M. 709= 1 Pat. L. W 697=21 C. W. N. 729= 26 C. L. J. 153=15 A. L. J. 485=19 Bom. L. R. 567= 22 M. L. T. 1=6 L. W. 222=(1917) M. W. N. 507= 39 I. C. 722=33 M. L. J. 1.**

———*Invalid lease—Period for which, enures.*

A Mokarari pottah or permanent lease of debuttur property granted by a mohunt without any special circumstances of necessity to justify the grant enures, son the most favourable construction, only for the lifetime of the grantor. (*Sir Andrew Scoble.*) ABHIRAM GOSWAMI *v.* SHYAMA CHARAN NANDI. **(1909) 36 I. A. 148 (165)= 36 C. 1003 (1013)=10 C. L. J. 284=14 C. W. N. 1= 11 Bom. L. R. 1234=6 A. L. J. 857=4 I. C. 449= 19 M.L.J. 530.**

———Mohunt of mutt—Permanent lease of mutt property by. *See* HINDU LAW—RELIGIOUS ENDOWMENT—MUTT—MOHUNT OF—PROPERTY OF MUTT—PERMANENT LEASE OF.

———Presumption of—Propriety. *See* LANDLORD AND TENANT—PERMANENT TENANCY—PRESUMPTION OF—RELIGIOUS ENDOWMENT.
(1923) 51 I.A. 83 (97-8)=47 M. 337.

———*Validity of.*

To create a new and fixed rent for all time, though adequate at the time, in lieu of giving the endowment the benefit of an augmentation of a variable rent, from time to time, would be a breach of duty in a shebait, and is not,

HINDU LAW—(*Contd.*)

Religious Endowment—Shebait of—Property of Endowment—(*Contd.*)

PERMANENT LEASE OF—(*Contd.*)

therefore, presumable (275) (*Lord Chelmsford.*) MAHARANEE SHIBESSOUREE DEBIA *v.* MOTHOORANATH ACHARJO. (1869) 13 M. I. A. 270 = 13 W. R. P. C. 18 = 15 B. L. R. 178 (Note) = 2 Suth. 300 = 2 Sar. 528.

In this case it cannot be said the grant of a mokurrari pottah was an improvident way of raising money, if it were necessary to do it at all. It still left a rent for the sustentation of the idol (64). (*Sir Montague E. Smith*) KONWUR DOORGANATH ROY *v.* RAM CHUNDER SEN.

(1876) 4 I. A. 52 = 2 C. 341 (352–3) = 3 Sar. 681 = 3 Suth. 375.

To create a new and fixed rent for all time, though adequate at the time, in lieu of giving the endowment the benefit of an augmentation of variable rent from time to time would be a "breach of duty" in the trustee unless there were special circumstances of necessity to justify it. (*Sir Andrew Scoble.*) SEENA PENA REENA SEENA MAYANDI CHETTIAR *v.* CHOKKALINGAM PILLAY.

(1904) 31 I. A. 83 (88): 27 M 291 (295) = 8 C. W. N. 545 = 8 Sar. 587 = 14 M. L. J. 200.

It was urged that the power of leasing property devoted to religious purposes would not extend beyond the granting of a lease for the life of the head of the religious charity, whoever it might be, for the time being. The disability of a shebait to make a permanent grant is not however, absolute. There is attached to the office in special and unusual circumstances, the power of making a wider grant than one which enures only for his life. (*Lord Buckmaster.*) BAWA MAGNIRAM SITARAM *v.* KASTURBHAI MANIBHAI.

(1921) 49 I. A. 54 (58-9) = 46 B. 481 (487) = 26 C. W. N. 473 = 20 A. L. J. 371 = 35 C. L. J. 421 = 24 Bom. L.R. 584 = 30 M. L. T. 268 = (1922) M. W. N. 319 = A. I. R. 1922 P. C 163 = 66 I. C. 162 = 42 M. L. J. 501.

———*Validity of—Agricultural lands and building sites —Distinction.*

Where a shebait of a Hindu temple leased out on permanent cowli a house site belonging to the temple on which there were some ruins and which was not fetching any income, on a premium of Rs. 93-12-0 to the trustees of another charity and the succeeding shebait sued for a declaration that the permanent lease was invalid and for recovery of possession of the site after demolishing the buildings which the lessees had erected on the site, *held* that the grant of a lease in perpetuity of debutter lands at a fixed rent required to be justified by unavoidable necessity and that an absolute alienation of the property in perpetuity in consideration of a premium also required to be justified by the same kind of necessity.

There is no distinction in this respect between agricultural lands and building sites.

It is a breach of duty on the part of a shebait, unless constrained thereto by unavoidable necessity, to grant a lease in perpetuity of debutter lands at a fixed rent, however, adequate that rent may be at the time of granting, by reason of the fact that by this means the debutter estate is deprived of the chance it would have, if the rent were variable, of deriving benefit from the enhancement in value in the future of the lands leased. (*Lord Atkinson.*) PALANIAPPA CHETTY *v.* DEIVASIKAMANY PANDARA.

(1917) 44 I. A. 147 = 40 M. 709 = 22 M. L. T. 1 = (1917) M. W. N. 507 = 6 L. W. 222 = 21 C. W. N. 729 = 19 Bom. L. R. 567 = 26 C. L. J. 153 = 1 Pat. L. W. 697 = 15 A. L, J. 485 = 39 I C. 722 = 33 M. L. J. 1.

HINDU LAW—(*Contd.*)

Religious endowment—Shebait of—Property of Endowment—(*Contd.*)

PERMANENT LEASE OF—(*Contd.*)

———*Validity—Presumption—Lapse of time—Effect.*

Although the manager for the time being of a religious charity has no power to make a permanent alienation of temple property in the absence of proved necessity for the alienation, yet the long lapse of time between the alienation and the challenge of its validity is a circumstance which enables the court to assume that the original grant was made in exercise of that extended power.

Their Lordships have no hesitation in applying the above doctrine to the present case. If in fact the grant, the validity of which is in question, was made by a person who possessed the limited power of dealing under which a shebait holds lands devoted to the purposes of religious worship, yet none the less there is attached to the office in special and unusual circumstances, the power of making a wider grant than one which enures only for his life. At the lapse of 100 years, when every party to the original transaction has passed away, and it becomes completely impossible to ascertain what were the circumstances which caused the original grant to be made, it is only following the policy which the courts always adopt, of securing as far as possible quiet possession to people who are in apparent lawful holding of an estate, to assume that the grant was lawfully and not unlawfully made. (*Lord Buckmaster.*) BAWA MANGIRAM SITARAM *v.* KASTURBHAI MANIBHAI.

(1921) 49 I.A.54 (59) = 46 B. 481 (488) = 26 C. W. N. 473 = 20 A.L.J. 371 = 35 C. L. J. 421 = 24 Bom. L. R. 584 = 30 M. L. T. 268 = (1922) M.W.N. 319 = A. I. R. (1922) P. C. 163 = 66 I. C. 162 = 42 M.L.J. 501.

———*Validity of—Rule—Exception.*

A *mokarruri pottah* of debutter lands granted by a Mohunt in consideration of money required for the repair and completion of a temple, for which no other funds could be obtained, is no doubt valid and binding on the endowment. The general rule, however, is that, apart from such necessity "to create a new and fixed rent for all time, though adequate at the time, in lieu of giving the endowment the benefit of an augmentation of a variable rent from time to time, would be a breach of duty" in the Mohunt (165). (*Sir Andrew Scoble.*) ABHIRAM GOSWAMI *v.* SHYAMA CHARAN NANDI. (1909) 36 I. A. 148 = 36 C. 1003 (1013) = 10 C. L. J. 284 = 14 C. W. N. 1 = 11 Bom. L. R. 1234 = 6 A. L. J. 857 = 4 I. C. 449 = 19 M. L. J. 530.

PRIVATE PROPERTY OF SHEBAIT OR.

———Acquisitions with income of debutter property. *See* HINDU LAW — RELIGIOUS ENDOWMENT — ASTHAL — MOHUNT OF—GRANT BY NATIVE RULER TO.

(1918) 35 M. L. J. 5 (9-10).

———Evidence. *See* TRUST—TRUSTEE—TRUST PROPERTY—PRIVATE PROPERTY OF TRUSTEE OR.

(1920) 48 I. A. 12 (16) = 48 C. 493 (498).

———*Evidence—Will by shebait describing himself as owner and proprietor—Admissibility of.*

The mere fact that, in a will executed by the head of a religious foundation, he describes himself as the owner and proprietor of the properties of the endowment, is no evidence that any particular property was his personal property or acquisition. (*Mr. Ameer Ali.*) MUSAMMAT KAMALA LACHHMI *v.* BASDEO PRASAD.

(1920) 13 L. W. 156 (158-9) = 25 C. W. N. 217 = 23 O. C. 171 = (1920) M. W. N. 553 = 58 I. C. 900 = 28 M. L. T. 404 = 7 O. L. J. 434 = 2 U. P. L. R. (P. C.) 130.

HINDU LAW—(*Contd.*)

Religious endowment—Shebait of—Property of Endowment—(*Contd.*)

PRIVATE PROPERTY OF SHEBAIT OR—(*Contd.*)

———*Issue as to—Evidence—Pymash proceedings—Survey and settlement register of village—Value of.*

Where the question was whether the suit lands, which was situated in the Chingleput District and were held under the mirasi tenure, belonged to the suit temple or were the private property of the respondent, who, in point of fact, was its Dharmakarta or hereditary trustee, *held* that the greatest weight must be attached to the elaborate paimash proceeding of 1876, and in particular to the survey and settlement register of the village in which the suit lands were situated.

It cannot be too clearly premised, however, that the Board would not hold any such record to be conclusive evidence of ownership; but, upon the other hand, their Lordships cannot be blind to the importance of such a document which appears, *de facto*, to have settled the bounds of the possessions of the lands dealt with therein for a period of 35 years—that is to say, from 1876 to 1910. This is especially important in any case where the personal as against the trust claim is supported also, and alone, by a reference to an earlier record of a similar character. (*Lord Shaw*) SRINIVASA CHARIAR *v.* EVALAPPA MUDALIAR.

(1922) 49 I. A. 237 (246-7) = 45 M. 565 (576) = 31 M. L. T. 1 = 16 L. W. 247 = 24 Bom. L. R. 1214 = 36 C. L. J. 524 = A. I. R. (1922) P. C. 325 = 27 C. W. N. 317 = 21 A. L. J. 250 = 68 I. C. 1 = 43 M. L. J. 536.

———Mortgage of debutter property—Property purchased by shebait with money raised by. *See* HINDU LAW—RELIGIOUS ENDOWMENT— ASTHAL— MOHUNT OF—PROPERTY OF ASTHAL—PURCHASE WITH, ETC.

(1877) Bald 140 (146-7).

———*Onus of proof—Property shown to have been once debutter property.*

Their Lordships must dissent entirely from the view that where the discoverable origins of property show it to be trust property the onus of establishing that it must have illegitimately come into the trustee's own right rests upon the beneficiares. Upon the contrary, the ouns is, and is heavily, upon the trustee to show by the clearest and most unimpeachable evidence the legitimacy of his personal acquisition. (*Lord Shaw.*) SRINIVASA CHARIAR *v.* EVALAPPA MUDALIAR.

(1922) 49 I.A. 237 (246) = 45 M. 565 (575-6) = 31 M. L. T. 1 = 16 L. W. 247 = 24 Bom. L. R. 1214 = 36 C.L.J. 524 = A. I. R. (1922) P.C. 325 = 27 C.W.N. 317 = 21 A.L.J. 250 = 68 I. C. I. = 43 M.L.J. 536.

———*Proof—Onus—Quantum.*

Any person contending that a particular property was the personal property or acquisition of the head of the foundation and not a part of the endowment might show that it was acquired by the head with funds which belonged exclusively to him or which might be regarded as his official perquisites. (*Mr. Ameer Ali.*) MUSAMMAT KAMALA LACHHMI *v.* BASDEO PRASAD.

(1920) 13 L. W. 156 (160) = 25 C. W. N. 217 = 23 O.C. 171 = (1920) M.W.N. 553 = 58 I.C. 900 = 28 M. L. T. 404 = 7 O. L. J. 434 = 2 U.P.L.R. (P.C.) 130.

———*Word "Shri"—Use of, in connection with property—Effect.*

Where the question was whether a particular property alienated by the head of a religious endowment was his personal property or acquisition or was the property of the endowment, *held* that the fact that in all the accounts kept in connection with the foundation the property in question was mentioned with the prefix "*Shri*" was significant, as

HINDU LAW—(*Contd.*)

Religious endowment—Shebait of—Property of Endowment—(*Contd.*)

PRIVATE PROPERTY OF SHEBAIT OR—(*Contd.*)

the expression devoted its sacred or endowed character (*Mr. Ameer Ali.*) MUSAMMAT KAMALA LACHMI *v.* BAS DEO PRASAD.

(1920) 13 L. W. 156 (160) = 25 C. W. N. 217 = 23 O. C. 171 = (1920) M. W. N. 553 = 58 I. C. 900 = 28 M. L. T. 404 = 7 O. L. J. 434 = 2 U. P. L. R. (P.C.) 130.

PURCHASE BY SHEBAIT OF.

———*Setting aside of—Terms—Purchase-money—Charge on debutter estate for.*

While setting aside a purchase of debutter property by its shebait, their Lordships declared him to be entitled to repayment of the purchase money and directed that it should be a charge on the debutter estate. (*Lord Buckmaster.*) PEARY MOHAN MUKERJI *v.* MANOHOR MUKERJI.

(1921) 48 I. A. 258 (266-7) = 48 C. 1019 (1029-30) = 23 Bom. L. R. 913 = 14 L.W. 104 = (1921) M. W. N. 554 = 19 A. L. J. 773 = 26 C. W. N. 133 = 2 P. L. T. 725 = 62 I. C. 76 = 30 M. L. T. 24 = (1922) P. C. 235 = 41 M. L. J. 68.

———*Son—Purchase in name of—Benami nature of.*

Held that a shebait who purchased property of which he was trustee benami in the name of his son made the benami purchase a cloak for an improper transaction. (*Lord Buckmaster.*) PEARY MOHUN MUKERJI *v.* MANOHAR MUKERJI.

(1921) 48 I.A. 258 (266) = 48 C. 1019 (1028-9) = 23 Bom. L. R, 913 = 14 L. W 104 = (1921) M.W.N. 554 = 19 A. L. J. 773 = 26 C. W. N. 133 = 2 P. L. T. 725 = 62 I. C. 76 = 30 M.L.T. 249 = (1922) P.C. 235 = 41 M. L. J. 68.

———*Validity—Purchase benami in name of another—Rule applicable to such cases.*

There is a dissimilarity between a shebait and trustees to whom the rule against the purchase by a trustee of an estate of which he is trustee applies; and it follows that rules and decisions which depend upon the special conditions attached to the particular class would not of necessity apply to another where these conditions did not exist. But the rule forbidding the purchase of an estate by a person who stands in regard to his dealings with it in a fiduciary relationship is, however, general in its application.

Held that a purchase of debutter property by its shebait benami in the name of his son and without disclosing that he was the real purchaser was invalid.

Considerations such as that the purchase was for abundant price, one largely above the market value of the property, cannot have weight where the purchase is challenged upon the grounds in the present suit.

The rule laid down by Lord St. Leonards that even if an attorney or agent can show that he is entitled to purchase, yet if instead of openly purchasing, he purchases in the name of a trustee or agent without disclosing the fact, no such purchase as that can stand for a single moment, applies to this case. (*Lord Buckmaster.*) PEARE MOHAN MUKERJI *v.* MANOHAR MUKERJI.

(1921) 48 I.A. 258 (265-6) = 41 C. 1019 (1028-9) = 23 Bom. L. R. 913 = 14 L.W. 104 = (1921) M. W. N. 554 = 19 A.L.J. 773 = 26 C. W. N. 133 = 2 P. L. T. 725 = 62 I. C. 76 = 30 M. L. T. 24 = (1922) P. C. 235 = 41 M. L. J. 68.

PURCHASE BY SHEBAIT WITH MONEY BORROWED ON SECURITY OF.

———Ownership of property purchased—Loan paid by mohunt—credit for, in account with endowment—Right of. *See* HINDU LAW—RELIGIOUS ENDOWMENT—ASTHAL—MOHUNT OF—PROPERTY OF ASTHAL.

(1877) Bald. 140 (146-7).

HINDU LAW—(*Contd.*)

Religious Endowment—Shebait of—Property of Endowment—(*Contd.*)

RENTS AND PROFITS OF.

———Decree for binding debts against shebait—Realisation of amount of, from rents and profits of debutter property—Provision in decree for—Receiver—Appointment of. *See* HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT OF—PROPERTY OF ENDOWMENT—MORTGAGE OF—NECESSITY. **(1926) 53 I. A. 253 (267-8).**

Decree against shebait directing realization of decree amount out of—Execution of, against succeeding shebait in case of—Limiting of, to such rents and profits—Necessity. *See* HINDU LAW—RELIGIOUS ENDOWMENT SHEBAIT OF—DECREE AGAINST—RENTS AND PROFITS OF ETC. **(1875) 2 I.A. 145 (153).**

Sale of, in execution of decree against shebait for binding debts—Expenses connected with institution—Provision in decree for—Necessity. *See* HINDU LAW—RELIGIOUS ENDOWMENT—IDOL—PROPERTY OF—EXECUTION SALE OF RENTS AND ETC. **(1875) 2 I. A. 145 (153).**

SALE OF.

———Fraudulent or *bona fide* transaction—Evidence. *See* HINDU LAW—RELIGIOUS ENDOWMENT — MOHUNT OF—SALE OF ETC. **(1877) Bald. 140 (143).**

———*Necessity for—Onus of proof of—Lapse of time—Question raised after long—Recital in sale-deed as to representation of necessity—Effect.*

The shebait of an idol sold dewutter property for the purpose of the repair of the temple, of the idol, the deed of sale expressly stating that the sale was effected for that purpose. Thirty years after the sale, the plaintiff came into court to set aside the deed of sale upon the ground that it was collusive.

Held that, if the plaintiff had shown that the representation of necessity for the sale, although made, was not believed by the grantees, and that they colluded with the shebait to put a pretended consideration on the face of the deed, he might have succeeded (62-3.) (*Sir Montague E. Smith.*) KONWAR DOORGANATH ROY *v.* RAM CHUNDER SEN.

(1876) 4 I. A. 52 = 2 C. 341 (351-2) = 3 Sar. 681 = 3 Suth. 375.

———*Necessity in part only for—Sale not liable to be set aside in toto on ground of.*

If part of the purchase money only was required for the repairs of the idol, or was represented to have been so required, and this was *bona fide* believed in by the grantees, the deed of sale by the Shebait would not be wholly void by reason that some of the money was raised for another purpose. It would then come to this, that too much of the idol's property may have been granted, and that a less quantity of land than that included in the grants would have sufficed to raise the money required for the temples; but that would not be a sufficient ground for setting aside the deed altogether (65). (*Sir Montague E. Smith.*) KONWAR DOORGANATH ROY *v.* RAM CHUNDAR SEN.

(1876) 4 I. A. 52 = 2 C. 341 (353) = 3 Sar. 681 = 3 Suth. 375.

———*Necessity in part only for—Suit to set aside sale in case of—Offer in plaint to pay portion of price legitimately advanced—Necessity.*

In a suit to set aside a deed of sale of dewutter property by the shebait, it was found that part of the purchase money only was required for purposes justifying the sale of dewutter property.

Held, that the plaintiff should have offered to reimburse the *bona fide* purchasers so much of the money as had been legitimately advanced, and that the suit brought to have the deed set aside unconditionally was unsustainable (65).

HINDU LAW—(*Contd.*)

Religious endowment—Shebait of—Property of Endowment—(*Contd.*)

SALE OF—(*Contd.*)

(*Sir Montague E. Smith.*) KONWAR DOORGANATH ROY *v.* RAM CHUNDER SEN. **(1876) 4 I. A. 52 = 2 C. 341 (353-4) = 3 Sar. 681 = 3 Suth. 375.**

———*Validity of—Repair of temple of idol—Sale for.*

A sale by a shebait of an idol of the dewutter property of the idol for the purpose of the repair of the temple of idol, which was out of repair, would be justifiable (62). (*Sir Montague E. Smith.*) KONWAR DOORGANATH ROY *v.* RAM CHUNDER SEN. **(1876) 4 I. A. 52 = 2 C. 341 (350-1) = 3 Sar. 681 = 3 Suth. 375.**

———*Validity of—Sale solely for purpose of so investing price as to increase income to endowment.*

Attractive and lucrative as money-lending business may be in India, a shebait would not be justified in selling debutter land solely for the purpose of getting capital to embark in the money-lending business. And no authority has been cited giving any countenance to the notion that a shebait is entitled to sell debutter lands solely for the purpose of so investing the price of it as to bring an income larger than that derived from the probably safer and certainly more stable property, the debutter land itself. Such a transaction cannot be upheld on the ground of its being for the benefit of the endowment. (*Lord Atkinson.*) PALANIAPPA CHETTY *v.* DEIVASIKAMANY PANDARA.

(1917) 44 I A 147 = 40 M. 709 = 22 M. L. T. 1 = (1917) M. W. N. 507 = 6 L. W. 222 = 21 C. W. N. 729 = 19 Bom. L. R. 567 = 26 C. L. J. 153 = 1 Pat L.W. 697 = 15 A. L. J. 485 = 39 I. C. 722 = 33 M. L. J. 1.

Religious Endowment—Temple.

———(*See also* HINDU LAW—RELIGIOUS ENDOWMENT—IDOL.)

DEDICATION TO PUBLIC OF.
DHARMAKARTA OF.
ERECTION OF, ON PROPERTY.
GRANT TO—ESTATE CONVEYED.
INTEREST IN—DIRECT INTEREST IN.
JURIDICAL ENTITY IF A.
MANAGEMENT OF.
MANAGER OF.
MARKET—VALUE OF.
PRIVATE OWNERSHIP OF.
PROPERTY OF.
PUBLIC TEMPLE.
RAMESWARAM TEMPLE.
SCHEME FOR.
SHEBAIT OF.
SUPERINTENDENCE OF.
TIRUPATI TEMPLE.
TRUSTEE OF.
VISITATORIAL JURISDICTION.
WORSHIP IN.

DEDICATION TO PUBLIC OF.

———*Inference of, from founder's holding out of temple as a public temple.*

It would be a legitimate inference to draw that the founder of a temple dedicated it to the public, if it is found that he held out the temple to the public as a public temple (256). (*Sir John Edge.*) LAKSHMANA GOUNDAN *v.* SUBRAMANIA AYYAR. **(1923) 19 L. W. 253 = A. I. R. (1924) P. C. 44 = 22 A. L. J. 160 = (1924) M. W. N. 278 = 29 C.W.N. 112 = 33 M L.T. 466 = 10 O. & A. L. R. 606 = 81 I. C. 518.**

———*Proof of.*

Held, on the evidence in the case, that the founder of the suit temple held out and represented to the Hindu

HINDU LAW—(*Contd.*)

Religious endowment—Temple—(*Contd.*)

DEDICATION TO PUBLIC OF—(*Contd.*)

public, that it was a public temple at which all Hindus might worship, and that the inference was that he had dedicated the temple to the public (258). (*Sir John Edge.*) LAKSHMANA GOUNDAN *v.* SUBRAMANIA AYYAR.

(1923) 19 L. W. 253 = A. I. R. (1924) P. C. 44 = 22 A. L. J. 169 = (1924) M. W. N. 278 = 29 C.W.N. 112 = 33 M.L.T. 466 = 10 O. & A.L.R. 606 = 81 I. C. 518.

DHARMAKARTA OF.

———(*See also* HINDU LAW—RELIGIOUS ENDOWMENT—TEMPLE—SHEBAIT OF.)

———*Meaning of.*

The title "Dharmakarta" may have a definite signification, but their Lordships observe, in the proceedings of this record, it is used in different senses, sometimes to denote a trustee who appoints the pandaram, or head manager, and sometimes the manager himself (229). (*Sir Montague E. Smith.*) RAJAH MUTHU RAMALINGA SETUPATI *v.* PERIANAYAGUM PILLAI.

(1874) 1 I. A. 209 = 3 Sar. 344.

———*Position of—Trustee—Shebait of religious institution—Comparison with.*

The position of dharmakarta is not that of a shebait of a religious institution, or of the head of a math. Those functionaries have a much higher right with larger power of disposal and administration, and they have a personal interest of a beneficial character. But a dharmakarta is literally and no more than the manager of a charity, and his rights, apart it may be in certain circumstances from the question of personal support, are never in a higher legal category than that of a mere trustee. (*Lord Shaw.*) SRINIVASA CHARIAR *v.* EVALAPPA MUDALIAR.

(1922) 49 I A. 237 (251) = 45 M. 565 (581) = 31 M. L. T. 1 = 16 L. W. 247 = 24 Bom. L. R. 1214 = 36 C. L. J. 524 = A. I. R. (1922) P. C. 325 = 27 C. W. N. 317 = 21 A. L. J. 250 = 68 I. C. 1 = 43 M. L J. 536.

———Private property of—Property of temple—Evidence—Pymash proceedings—Survey and settlement register of village—Value of. *See* HINDU LAW — RELIGIOUS ENDOWMENT—SHEBAIT OF—PROPERTY OF ENDOWMENT—PRIVATE PROPERTY OF SHEBAIT OR—ISSUE AS TO. **(1922) 49 I. A. 237 (246-7) = 45 M. 565 (576).**

ERECTION OF, ON PROPERTY.

———Market-value of property if enhanced by. *See* TEMPLE—ERECTION OF, ON PROPERTY.

(1913) 40 C. 555 (564).

GRANT TO—ESTATE CONVEYED.

———Kudiwaram and melwaram or melwaram only. *See* UNDER INAM—GRANT OF.

(1923) 51 I. A. 83 (96) = 47 M. 337.

INTEREST IN—DIRECT INTEREST IN.

———Meaning of—Persons having. *See* C. P. C. OF 1908, S. 92—INTEREST IN THE TRUST.

(1924) 51 I.A. 282 = 47 M. 884.

JURIDICAL ENTITY IF A.

———*See* UNDER HINDU LAW—RELIGIOUS ENDOWMENT—IDOL—JURIDICAL ENTITY.

MANAGEMENT OF.

———Scheme for. *See* C. P. C. OF 1908, S. 92—TEMPLE—SCHEME FOR.

———Scheme for—Surplus income of temple—Application of, to foreign objects—Propriety. *See* C. P. C. OF 1908, S. 92—RELIGIOUS ENDOWMENT — TEMPLE—SCHEME FOR—SURPLUS INCOME. **(1907) 34 I. A. 78 = 30 M. 138.**

HINDU LAW—(*Contd.*)

Religious endowment—Temple—(*Contd.*)

MANAGEMENT OF—(*Contd.*)

———Scheme for—Tirupati temple. (*Lord Macnaghten.*) PRAYAGA DOSS JEE VARU *v.* TIRUMALA SRIRANGA CHARYULU VARU. **(1907) 34 I. A. 78 = 30 M. 138 = 11 C. W. N. 442 = 9 Bom. L. R. 588 = 9 Sar. 213 = 18 M. L. J. 236.**

———*Turns—Management by—Arrangement as to—Validity.*

The manager of a temple (dedicated to the public worship of the deity in whose honour it was founded) is by virtue of his office the administrator of the property attached to it. As regards the property, the manager is in the position of a trustee. But as regards the service of the temple and the duties that appertain to it, he is rather in the position of the holder of an office or dignity which may have been originally conferred on a single individual, but which, in course of time, has become vested by descent in more than one person. In such a case, it is not unusual, and it is certainly not improper, for the parties interested to arrange among themselves for the due execution of the functions belonging to the office in turn or in some settled order and sequence. There is no breach of trust in such an arrangement, nor any improper delegation of the duties of a trustee. Such an arrangement is one which will be sanctioned by the court if its authority is invoked. It is one which the parties interested are competent to make without applying to the court. (*Lord Macnaghten.*) RAMANATHAN CHETTI *v.* MURUGAPPA CHETTI.

(1906) 33 I. A. 139 (144) = 29 M. 283 (289) = 10 C. W. N 825 = 8 Bom. L R. 498 = 4 C. L. J. 189 = 3 A. L. J. 707 = 1 M. L. T. 327 = 16 M. L. J. 265.

———*Turns—Management by—Family arrangement—Validity of—Presumption of, from long unbroken usage—Alteration of—Remedy of party who has taken benefit under it—Estoppel.*

The office of manager of a Hindu temple (dedicated to the public worship of the deity in whose honour it was founded, and endowed with the revenue of three villages) was hereditary in a family of which the appellant and respondent were both members, but the family had no beneficial interest in the property or in the income of the temple. The office of manager was at one time vested in *M*, the grandfather of the respondent and the great-grandfather of the appellant. On the death of *M*, the office devolved by inheritance on his male descendants by his two wives, four by each wife, or eight in all. One member of each branch took the management for one year in alternate succession until 1881-2. About that time the members of the junior branch renounced or relinquished their claim to the office in favour of the respondent, a member of the senior branch. During the nineteen years immediately preceding the institution of the suit (referred to below), in each cycle of 8 years, there had been a settled order of succession among the members of the senior branch, the respondent having had 5 turns, and the appellant and the other two representatives of the senior branch one turn each.

In accordance with the above arrangement the appellant held the office of manager of the temple, and the property belonging to it, from 15—7—1898 to 13—7—1899. On the expiration of that year it was the respondent's turn to hold office for the next years—one year in his original right and two years in right of the junior branch. The appellant handed over the temple to the respondent, but he kept back the jewels and retained or retook possession of the villages with which the temple was endowed. In a suit by the respondent to recover the jewels and the villages, *held*, (1) the unbroken usage for a period of 19 years was as against the appellant conclusive evidence of a family

HINDU LAW—(*Contd.*)

Religious endowment—Temple—(*Contd.*)

MANAGEMENT OF—(*Contd.*)

arrangement to which the court was bound to give effect; (2) it was perfectly competent to the parties to enter into such an arrangement without applying to the court; (3) the arrangement was not intended to be merely temporary, nor could it be regarded as precarious; and (4) the arrangement was binding upon the parties until altered by the court or superseded by a new scheme effected with the concurrence of all parties interested.

Twice during the period of 19 years the appellant has, in his proper turn, enjoyed the position of manager for a year. If the appellant wishes to set aside the arrangement, and to have a new scheme settled, he must take proper proceedings. But it is not for him, at his will and pleasure, to disturb an arrangement of which he has on more than one occasion taken the benefit. (*Lord Macnaghten.*) RAMANATHAN CHETTI *v.* MURUGAPPA CHETTI.

(1906) 33 I. A. 139 (143-4) = 29 M. 283 (288-9) = 10 C. W. N. 825 = 8 Bom. L. R. 498 = 4 C. L. J. 189 = 3 A. L. J. 707 = 1 M. L. T. 327 = 16 M. L. J. 265.

MANAGER OF.

——*See* UNDER HINDU LAW—RELIGIOUS ENDOWMENT—TEMPLE—SHEBAIT OF.

MARKET-VALUE OF.

——*See* LAND ACQUISITION ACT OF 1894, S. 23 (1)—TEMPLE AND CARVINGS. **(1893) 20 I. A. 80 (87) = 16 M. 369 (377).**

PRIVATE OWNERSHIP OF.

——*Improbabitity of.*

So far as the temples are concerned, the position of private ownership is *prima facie* improbable (159). (*Mr. Amcer Ali.*) MUSAMMAT KAMALA LACHHMI *v.* BASDEO PRASAD.

(1920) 13 L. W. 156 = 25 C. W. N. 217 = 23 O. C 171 = (1920) M. W. N. 553 = 58 I. C. 900 = 28 M. L. T. 404 = 7 O. L. J. 434 = 2 U. P. L. R. (P. C.) 130.

PROPERTY OF.

——*See* HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT OF—PROPERTY OF ENDOWMENT—PRIVATE PROPERTY OF SHEBAIT OR.

PUBLIC TEMPLE.

——Dedication to — Diversion of—Power of. *See* HINDU LAW—RELIGIOUS ENDOWMENT—DEDICATION TO—DIVERSION OF. **(1876) 4 I. A. 52 (58) = 2 C. 341 (347).**

——*Dedication to public—Necessity.*

Unless a temple is dedicated to the public, it is not a public temple (255). (*Sir John Edge.*) LAKSHMANA GOUNDAN *v.* SUBRAMANIA AYYAR.

(1923) 19 L. W. 253 = A. I. R. 1924 P. C. 44 = 22 A. L. J. 169 = (1924) M. W. N. 278 = 29 C. W. N. 112 = 33 M. L. T. 466 = 81 I. C. 518 = 10 O. & A. L. R. 606.

——*Private temple—Evidence.*

The question was whether the temple of Sri Kandaswami in the village of Kalipathi, situate in the district of Salem, was a public religious institution or the private property of the family of the defendants, the descendants of the founder of the temple.

Held, on the evidence in the case, that the temple in question was a public temple. (*Sir John Edge.*) LAKSHMANA GOUNDAN *v.* SUBRAMANIA AYYAR.

(1920) 19 L. W. 253 = 22 A. L. J. 169 = (1924) M. W. N. 278 = 29 C. W. N. 112 = 33 M.L.T. 466 = 10 O. & A.L.R. 606 = 81 I. C. 518 = A. I.R. 1924 P. C. 44.

HINDU LAW—(*Contd.*)

Religious endowment—Temple—(*Contd.*)

PUBLIC TEMPLE—(*Contd.*)

——Proof of temple being a. *See* Under HINDU LAW—RELIGIOUS ENDOWMENT — TEMPLE — DEDICATION TO PUBLIC.

——*Pujari of—Sudra if may be.*

It may appear strange that the pujari of a public Hindu temple should be of a caste other than that of Brahmin; but apparently in the Madras Presidency there are some public Hindu temples the pujaries of which are Sudras (258). (*Sir John Edge.*) LAKSHMANA GOUNDAN *v.* SUBRAMANIA AYYAR. **(1923) 19 L. W. 253 = 22 A. L. J. 169 = (1924) M. W. N. 278 = 29 C. W. N. 112 = 33 M. L. T. 466 = 81 I. C. 518 = 10 O. & A. L. R. 606 = A. I. R. 1924 P. C. 44.**

RAMESWARAM TEMPLE.

——*Collector's interference with affairs of, between* 1815 *and* 1828, *if on behalf of zemindar or in right of Government's right of superintendence.*

In a suit in which the question related to the right of the zemindars of Ramnad either to appoint, or to confirm the election of, the pandaram or head of the pagoda of Rameswaram, it appeared that, from 1815 until 1828, during the whole of which time both the zemindary and the pagoda were under attachment, the pagoda was managed by the pandaram for the time being under the control of the collectors of the district, even in minute details. From that evidence counsel for the zemindar sought to draw the inference that the Collector's interference arose from his representing the zemindar's interest, in other words, from his acting in virtue of the rights of the zemindar. The evidence showed that the pagoda had not been attached as part of the zemindary, and that it was not until after the zemindary had been attached in consequence of a disputed succession, that the pagoda was placed under attachment on account of the alleged misconduct of the pandaram.

Held, that in view of the fact that the pagoda had been attached for the alleged misconduct of the pandaram, and in view of the powers of superintendence entrusted to the Collectors as agents of the Government, both before and under the Regulation of 1817, the interference of the Collectors ought to be referred to the exercise of those powers (235). (*Sir Montague E. Smith.*) RAJAH MUTTU RAMALINGA SETUPATI *v.* PERIANAYAGUM PILLAI.

(1874) 1 I. A. 209 = 3 Sar. 344.

——*History of—Ramnad Rajah's powers in the affairs of.*

The early history of the celebrated and richly endowed pagoda of Rameswaram is obscured by time, and its foundation cannot be shown. But it is evidently an ancient temple of great renown, which has long attracted pilgrims from all parts of India. It is situate on an island in the extreme south of India, connected with the lands of the zemindary by a Causeway. The Rajahs of Ramnad were the guardians of this Causeway, and had thence acquired the title of Setupati, or Lord of the Causeway (227). (*Sir Montague E. Smith.*) RAJAH MUTTU RAMALINGA SETUPATI *v.* PERIANAYAGUM PILLAI. **(1874) 1 I. A. 209 = 3 Sar. 344.**

——*Pandarams of—Appointment or Confirmation of—Ramnad Zemindar's right of—Proof of——Onus—Quantum.*

The question was whether the zemindar of Ramnad had established the right to appoint or to confirm the election of the pandarams of the pagoda of Rameswaram, and was entitled to a decree for the removal of the defendant, who *de facto* held the officer, from his office because he was not so appointed or confirmed.

HINDU LAW—(*Contd.*)

Religious endowment—Temple—(*Contd.*)

RAMESWARAM TEMPLE—(*Contd.*)

Held that the onus of proving that the right claimed by the zemindar was supported by usage lay upon him, and that he had failed to discharge that onus (241).

There is no instance of the appointment of a pandaram by the zemindars satisfactorily proved, nor of any pandaram having been kept out of his office, because the zemindar had not confirmed his appointment (240). (*Sir Montague E. Smith.*) RAJAH MUTHU RAMALINGA SETUPATI *v.* PERIANAYAGAM PILLAI. **(1874) 1 I. A. 209 = 3 Sar. 344.**

———Scheme for. *See* UNDER HINDU LAW—RELIGIOUS ENDOWMENT—TEMPLE—MANAGEMENT OF.

SHEBAIT OF.

———*See also* HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT OF.

———*Decree favourable — Compromise surrendering—Validity.*

A suit brought by the hereditary trustee of a Hindu temple, for a declaration that the defendants, members of the Shanar community, were not entitled to enter the temple and for an injunction restraining them from doing so, was decreed by the Subordinate Judge on the finding that the plaintiff had proved that by custom the defendants were not among the people for whose worship the temple existed. The defendants appealed to the High Court and, pending the appeal, a petition, signed by the plaintiff and the defendants, was preferred on behalf of the latter, stating that the parties had effected a compromise of the matters in suit, and praying that the compromise might be recorded and a decree passed in accordance therewith. The agreement of compromise recognised the right of the defendants and their caste people of free access to and of worshipping in the suit temple in the same manner and to the same extent as such rights were enjoyed by Sudra sects of the Hindu community.

The High Court refused to pass a decree in terms of the compromise on the ground that the agreement of compromise was not a lawful agreement or compromise within the meaning of S. 375 of C. P. C. of 1882.

Held that the High Court was right in doing so. (*Lord Robertson.*) SANKARALINGA NADAN *v.* RAJA RAJESWARA DORAI. **(1908) 35 I. A. 176 = 31 M. 236 = 4 M. L. T. 101 = 8 C. L. J. 230 = 12 C. W. N. 946 = 10 Bom L. R. 781 = 18 M. L. J. 387.**

———*Office of—Emoluments attached to office—Rights to—Right to latter dependent on right to former.*

The shebaits of a temple performed the worship or puja of the Deity, and received offerings made to the Deity by the worshippers. After defraying the expenses of the management of the temple, and the charities connected with it, the shebaits divided the balance of the income among themselves in proportion to their rights for services rendered by them. The right to participate in the offerings was in return for the services rendered from day to day by the shebaits.

Held, in such a case, that the right to the office of shebait did not arise from, or depend upon, the receipt of a share of the surplus daily income from the offerings to the temple, although the right to receive daily a share of the net income from the offerings to the temple was attached to and dependent upon the possession of the right to the shebaitship (274). (*Sir John Edge.*) JALANDHAR THAKUR *v.* JHARULA DAS. **(1914) 41 I. A. 267 = 42 C. 244 (252) = 16 M. L. T. 210 = (1914) M. W. N. 636 = 12 A. L. J. 1176 = 16 Bom. L. R. 845 = 20 C. L. J. 360 = 18 C. W. N. 1029 = 24 I. C. 501 = 27 M. L. J. 100.**

———Office of—Founder's heirs—Right of. *See* HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT OF—OFFICE OF—FOUNDER'S HEIRS.

HINDU LAW—(*Contd.*)

Religious endowment—Temple—(*Contd.*)

SHEBAIT OF—(*Contd.*)

———*Office of—Removal from—Grounds—Diversion of endowed property—Concoction of accounts to support.*

In a suit instituted by the appellant and another under S. 92 of C. P. C. against the respondent, who was hereditary dharmakarta of a Hindu temple, praying, *inter alia*, for the defendant's removal from his office, their Lordships found that the whole of the litigation had substantially been occupied by an unfounded assertion, supported by the concoction of accounts—an assertion by the trustee of private ownership in himself and a powerful resistance to the recovery of properties forming the endowments of the temple for the trust which he administered.

Held, that it was not open to their Lordships, on any sound principles either of administration or of law, to permit the continuance of the respondent in the office of dharmakarta (253).

Their Lordships have considerable doubt whether any litigant found to have been guilty of seriously reprehensible conduct of this description could ever have been retained in the office of dharmakarta. The worshippers of the temple, the true beneficiaries in the endowments, are entitled, at least in regard to the trusteeship thereto, as also is a court of law before whom such delinquencies are established, to insist upon the first step towards trustworthiness in administration being taken by the removal of the trustee. (*Lord Shaw.*) SREENIVASA CHARIAR *v.* EVALLAPA MUDALIAR. **(1922) 49 I. A. 237 (253-4) = 45 M. 565 (583-4) = 31 M. L. T. 1 = 16 L. W. 247 = 24 Bom. L. R 1214 = 36 C. L. J. 524 = A. I. R. 1922 P. C. 325 = 27 C. W. N. 317 = 21 A. L. J. 250 = 68 I. C. 1 = 43 M. L. J. 536.**

———Office of—Removal from—Grounds—Worship in temple—Change in accustomed mode of, if a ground. *See* MAHOMEDAN LAW—RELIGIOUS ENDOWMENT—MOSQUE—WORSHIP IN. **(1891) 18 I. A. 59 (68) = 18 C. 448 (458).**

———Office of—Removal from—Grounds. *See* MAHOMEDAN LAW—WAKF—GADDINISHIN OF—REMOVAL FROM OFFICE OF. **54 M.L.J. 692**

———*Office of—Right to—Compromise as to—Binding character of.*

The respondents were the representatives of the original rulers of the district in which the suit temple was situated who so continued till the British sovereignty was established over the country in the year 1792. The family of the appellants always held the office of Urallers or managers of the temple, while the Nambidi possessed certain sovereign rights of superintending the temple called Melkoima rights.

As long as since as the year 1845 disputes arose between the ancestors of the appellants and respondents, and a suit was commenced as to the management of the temple, which was settled by a karar on 16—8—1845 ; and in accordance therewith the parties two days afterwards filed a razi withdrawing the suit. The karar provided that the affairs of the temple were to be managed and that the ceremonies were to be performed jointly " just as they were hitherto," and for a period of thirty years afterwards—namely, until 1874—that arrangement was carried out In 1874 fresh disputes sprung up between the Urallers and the Nambidi, and led to a suit in which the Urallers sought to recover certain lands belonging to the temple from a tenant who held under a demise granted by the Samudayam appointed by the Urallers and the Nambidi according to the agreement contained in the karar of 1845. That suit was compromised, and in a razi of 21—11—1874, terms were set out which again determined that there should be a joint management of the affairs of the temple by the Urallers and the Nambidi. That razi was acted upon until the date

HINDU LAW—(*Contd.*)

Religious endowment--**Temple**—(*Contd.*)

SHEBAIT OF—(*Contd.*)

of the suit out of which the appeal arose, the Urallers and the Nambidi jointly appointing a Samdayam and a Pattawali, and joining in suits to recover temple lands and in applications to execute decrees.

Held, that the state of things which had admittedly continued since 1845 could not be questioned, and that the compromise of their rights, entered into in 1845 and 1874 by the Urallers and Nambidi, was binding upon them and their successors, and conld not be re-opened upon any theory of the extent of the Melkoima right in the abstract.

The usage which has existed for so long a period is the best exponent of the Melkoima right vested in the respondents, a right twice acquiesced in by the appellants or their predecessors in legal proceedings in which the opportunity was afforded of a definite decision as to the rights of the respective families. (*Lord Morris.*) CHERUKUNNHATH MANUKEL NEELAKANDHEN NAMBOODRIPAD *v.* VENGUNATH SWAROOPATHIL. **(1894) 21 I. A. 128 = 18 M. 1 = 6 Sar. 478 = 4 M. L. J. 233.**

———*Property of temple—Alienation of, by way of mortgage, sale or permanent lease—Validity—Conditi ns—Onus of Proof of.*

The position of the shebait the manager or the trustee of a temple is, so far as their power to deal with the endowed lands of the temple is concerned, analogous to the position of a mahant of a math to deal with the endowed lands of a math. They can doubtless sell or mortgage the endowed lands of the temple if there is an actual, special, and unavoidable necessity of the temple to do so, but that necessity would have to be proved by those who alleged that it existed. Except in a case of such unavoidable necessity the shebait, the manager or the trustee of a temple, or the mahant of a math, have no power to sell or mortgage the endowed property in their custody, and obviously they have no right to impair the endowed property by creating or granting in favour of any one rights of permanent occupancy in the endowed lands. (*Sir John Edge.*) NAINAPILLAI MARAKAYAR *v.* RAMANATHAN CHETTIAR. **(1923) 51 I. A 83 (96-7) = 47 M. 337 = A. I. R. 1924 P. C. 65 = 22 A. L J. 130 = 19 L. W. 259 = 34 M. L. T. 10 = (1924) M. W. N. 293 = 10 O. & A. L. R. 464 = 28 C. W. N. 809 = 82 I. C. 226 = 46 M. L. J. 546.**

———Property of temple—Permanent occupancy right in—Creation of—Validity. *See* PREVIOUS CASE.

———Property of temple—Private property of shebait or. *See* HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT—PROPERTY OF ENDOWMENT—PRIVATE PROPERTY OF SHEBAIT OR.

———*Suit by—Compromise improper of—Addition of parties to protect interests of worshippers—Propriety of.*

Pending an appeal by the defendants in a suit brought by the hereditary trustee of a temple, the trustee entered into a compromise surrendering the decree of the Court below in favour of the temple. The defendants then applied for the passing of a decree in terms of the compromise. Thereupon two of the worshippers of the suit temple, and also the son of the original plaintiff were joined as party-respondents to the appeal, in order that they might oppose the petition of compromise.

Held, that the High Court acted properly in reinforcing the cause of the worshippers of the temple by joining the new plaintiffs as parties to the appeal. (*Lord Robertson.*) SANKARALINGA NADAN *v.* RAJA RAJESWARA DORAI.

(1908) 35 I. A. 176 = 31 M. 236 = 4 M. L. T. 101 = 8 C. L. J. 230 = 12 C. W. N. 946 = 10 Bom. L. R. 781 = 18 M. L. J. 387.

HINDU LAW—(*Contd.*)

Religious endowment—Tempie—(*Contd.*)

SHEBAIT OF—(*Contd.*)

———*Suit by—Right asserted in—Individual right of shebait or right of temple.*

Where a person, describing himself as plaintiff and as dharmakarta of a temple, instituted a suit against the Government in regard to certain lands and trees, claiming a declaration to establish his right "to the said property as absolute owner thereof," *held*, that it was an entire mistake to reckon that an assertion of private ownership by the dharmakarta. (*Lord Shaw.*) SRINIVASA CHARIAR *v.* EVALAPPA MUDALIAR. **(1922) 49 I. A, 237 (250) = 45 M. 565 (580) = 31 M. L. T. 1 = 16 L. W. 247 = 24 Bom. L. R. 1214 = 36 C. L J 524 = A. I. R. 1922 P. C. 325 = 27 C. W. N. 317 = 21 A. L. J. 250 = 68 I. C. 1 = 43 M. L. J. 536.**

———Surplus income of temple—Application of, to foreign objects—Propriety. *See* C. P. CODE OF 1908, S. 92—RELIGIOUS ENDOWMENT—TEMPLE—SCHEME FOR—SURPLUS INCOME. **(1907) 34 I. A. 78 = 30 M. 138.**

———Worship in—Accustomed mode of—Change in—Removal from office on ground of. *See* MAHOMEDAN LAW—RELIGIOUS ENDOWMENT—MOSQUE—WORSHIP IN. **(1891) 18 I. A. 59 (68) = 18 C. 448 (458).**

———Worship in—Persons not entitled to participate in—Exclusion of—Duty as to. *See* TRUST—PERSONS NOT ENTITLED TO BENEFIT OF. **(1925) 53 I.A. 42 (54-5) = 3 R. 582.**

———Worship in—Persons not entitled to participate in—Intrusion into temple of—Trespass for—Suit for—Trustee's right of. *See* HINDU LAW—RELIGIOUS ENDOWMENT—TEMPLE—WORSHIP IN—PERSONS NOT ENTITLED TO PARTICIPATE IN—INTRUSION ETC. **(1925) 53 I A. 42 (56-7) = 3 R. 582.**

SUPERINTENDENCE OF.

———Government's powers of—Mode of exercise of, prior to Regulation VII of 1817—Effect of Regulation. *See* HINDU LAW—RELIGIOUS ENDOWMENT—TEMPLE—VISITATORIAL JURISDICTION. **(1874) 1 I.A. 209 (233-5).**

———Powers of—British Government—Ancient Rulers—Latter's powers after advent of British Government. *See* HINDU LAW—RELIGIOUS ENDOWMENT—TEMPLE—VISITATORIAL JURISDICTION. **(1874) 1 I. A. 209 (233-5).**

TIRUPATI TEMPLE.

———Management of—Scheme of. *See* HINDU LAW—RELIGIOUS ENDOWMENT—TEMPLE—MANAGEMENT OF—SCHEME OF—TIRUPATI TEMPLE. **(1907) 34 I. A. 78 = 30 M. 138.**

TRUSTEE OF.

———*See* HINDU LAW—RELIGIOUS ENDOWMENT—TEMPLE—SHEBAIT OF.

VISITATORIAL JURISDICTION.

———*British Government—Ancient rulers—Powers of—Latter's powers after advent of British Government—Jurisdiction how exercised by British Government before Regulation VII of* 1817—*Effect of Regulation upon it.*

Before Regulation VII of 1817 the British Government, by virtue of its sovereign power, asserted, as the former rulers of the country had done, the right to visit endowments of this kind (pagodas) and to prevent and redress abuses in their management (232-3). There can be little doubt that this superintending authority was exercised by the old rulers (233). The powers they enjoyed as sovereigns passed to the British Government, and after the advent of the British Government the old rulers can have no rights with respect to the pagodas other than those of a private and proprie-

HINDU LAW—(*Contd.*)

Religious endowment—Temple—(*Contd.*)

VISITATORIAL JURISDICTION—(*Contd.*)

tary nature, which they can establish by evidence to belong to them (233-4). Long before Regulation VII of 1817, the British Government not only assumed the power to superintend the management of the property and affairs of the pagodas throughout the Peninsula, but exercised its authority through the agency of the Collectors (234). At an early date the power of superintendence was intrusted by the Government to the Board of Revenue, and the Collectors. Regulation VII of 1817, in fact, merely defined the manner in which that power was thenceforth to be excercised (235). (*Sir Montague E. Smith.*) RAJAH MUTTU RAMALINGA SETUPATI *v.* PERIANAYAGAM PILLAI.

(1874) 1 I. A. 209 = 3 Sar. 344.

WORSHIP IN.

———Accustomed mode of—Change of—Trustee's power of. *See* MAHOMEDAN LAW—RELIGIOUS ENDOWMENT—MOSQUE—WORSHIP IN.

(1891) 18 I. A 59 (68) = 18 C. 448 (458).

———*Exclusion by custom from—Proof of—Shiva temple—Exclusion of Nadars from.*

The appellants belonged to the Nadar or Shanar caste. The question was whether they and the caste to which they belonged had legal right to enter and worship in a temple at Kamudi, which temple was dedicated to the worship of Shiva.

Held, that the respondents, the trustees and worshippers of the temple, had succeeded in proving that by custom the appellants were not among the people for whose worship the particular temple existed.

The circumstances that the appellants, as a matter of fact, worshipped by themselves in a temple of their own, and that they completely failed to prove any resort by persons of their caste to the temple in dispute not merely negatived the case of the appellants that they "have been from time immemorial . . . participating in the pooja and worship" in the disputed temple, but made easy the respondent's further contention that that separation in worship between the two classes was not accidental or voluntary, but rested on a deeper ground (*Lord Robertson.*) SANKARALINGAM NADAN *v.* RAJA RAJESWARA DORAI. **(1908) 35 I. A. 176 = 31 M. 236 = 4 M. L. T. 101 = 8 C.L.J. 230 = 12 C. W. N. 946 = 10 Bom. L. R. 871 = 18 M.L.J. 387.**

———Persons not entitled to participate in—Exclusion of—Trustee's duty as to. *See* TRUST—PERSONS NOT ENTITLED TO BENEFIT OF.

(1925) 53 I. A. 42 (54-5) = 3 R. 582.

———*Persons not entitled to participate in—Intrusion into temple of—Trespass for—Suit for—Trustee—Beneficiaries—Right of—Injunction against intruder—Suit by beneficiaries for—Maintainability.*

The intrusion of an unbeliever into a place of religious worship might well be a case of substantial interference with the devotions of worshippers. If it were a question of caste and worshippers of a higher caste would be defiled by the presence of a lower caste, as in I.L.R. 7 B. 323, this would be a serious disturbance (55-6).

A claim for an injunction restraining a person not legally entitled to enter into a temple and to attend the religious ceremonies held there involves a claim for an injunction to prevent the repetition of an alleged trespass. It must therefore first be established that there was a trespass and one for which damages, though possibly only nominal, could be recovered. But for trespass upon land the only person to bring the action is the person in possession of the land, that is, the trustee. That a beneficiary or two or three beneficiaries of a trust for public purposes may bring a suit for trespass against an intruder is a novel principle of jurisprudence; and the case is not made stronger by the suggestion that several other beneficiaries agree with them. It may be that in India it would be convenient in some cases to allow such a suit, and the judgment in I.L.R. 7 B. 323 may form a precedent But, if so, the circumstances must be as powerful as in that case. It must be established that the juxtaposition of the two sets of persons is so repugnant to their habits of mind that the entrance of one set into the temple entails the departure of the other, so that it is as it were a trespass to the person (56-7) (*Lord Phillimore.*) SAKLAT *v.* BELLA.

(1925) 53 I.A. 42 = 3 R. 582 = 43 C.L.J. 23 = 92 I. C. 200 = 30 C.W.N. 289 = 28 Bom. L. R. 161 = A. I. R. 1925 P. C. 298 = 23 A.L.J. 1016 = 49 M. L. J. 821 (831-3).

Religious Endowment Temple and Mutt—Headship of both vested in same person.

———*Principal of the two offices—Which is the.*

In a case in which the headship of a mutt and the dharmakartaship of a temple were held by the same person, it was contended that the temple and the mutt were inseparable institutions, that the mutt was the original institution to which the temple became an accretion, and that the head of the mutt must be the head of the temple.

Held, that the evidence, far from supporting the contention urged, showed that the dharmakartaship was the principal office (154).

In the case in which there is evidence in the record of an appointment it is to be the dharmakartah, and this appears to be the principal office. Priority is given to it in the statement in the plaint of the usage. The sub-judge says that the trusteeship being the more important of the two offices almost absorbed the headship of the mutt, so much so that the distinct existence of the mutt was very nearly forgotten, and the succession came to be regarded as for the trusteeship alone. This is proved by the evidence referred to in his judgment (154). (*Sir Richard Couch.*) RAMALINGAM PILLAI *v.* VITHILINGAM PILLAI. **(1893) 20 I. A. 150 = 16 M. 490 (498) = 6 Sar. 351.**

TRUSTEESHIP OF TEMPLE.

———*Invalid appointment to—Headship of mutt—Appointment to, if also invalid.*

The question was whether the appellant was the lawful dhurmakarta or trustee of the ancient temple at Rameswaram. According to the established usage of the religious foundation each dhurmakartah initiated a Vallala layman and made him an ascetic and thereupon appointed him as his successor, whilst in office and shortly before his death. The appellant claimed to have been so appointed by the last lawful dhurmakartah.

The Courts below, however, concurred in finding that the appointment of the appellant was not made *bona fide*. The Sub judge, referring to the circumstances which had been proved, said, "all these convince me that the appointment of the plaintiff" (appellant) "was not made *bona fide* in the interests of the institution, but was for the personol interests of the late trustee." And the High Court concurred in finding that the appellant's appointment was made by the former Pandaram in furtherance of his own interests, and that it was not a *bona fide* exercise, of his power, if any.

Held, that the finding of both the courts below invalidated the whole appointment, and that it applied to the headship of the mutt which followed the principal office of dhurmakartah as well as to the office of dhurmakartah (154-5).

HINDU LAW—(*Contd.*)

Religious endowment—Temple and Mutt—Headship of both vested in same person—(*Contd.*)

TRUSTEESHIP OF TEMPLE—(*Contd.*)

(*Sir Richard Couch.*) RAMALINOAM PILLAI *v.* VITHILINGAM PILLAI. (1893) 20 I. A. 150 = 6 Sar. 351 = 16 M. 490 (498).

Religious Office.

———(*See also* SPIRITUAL MINISTER.)

———Purohitam *or religious rites—Privilegs of administering to pilgrims visiting temple—Proof of—Rameswaram* Arya *Brahmins—Right of.*

The plaintiffs appellants were *Arya* Brahmins settled at Rameswaram, and claimed to have the hereditary right of administering *Purohitam*, or religious rites, to seventeen classes of pilgrims who resorted to the great pagoda, and other temples in Rameswaram, and to the fees paid, or presents offered, by the pilgrims resorting to that shrine.

Held, that the evidence, though it might establish that the *Arya* community had existed as a part, and a principal part, of the Hierarchy of the suit pagoda and its dependencies from a period of remote antiquity, and that the appellants might be taken to be the actual representatives of that community, failed to show, either by documentary proof of its origin, or by such proof of long and uninterrupted usage as in the absence of a documentary title would suffice to establish a prescriptive right, the existence at any time of the original and exclusive privilege which the appellants made the foundation of their title (384). (*Lord Justice Knight Bruce.*) RAMASAWMY AIYAN *v.* VENKATA ACHARI. (1863) 9 M. I. A. 344 = 2 W. R. 21 P.C. = 1 Suth. 492 = 2 Sar. 1.

———Transfer of—Validity. *See* TRUST—TRUSTEE—OFFICE OF.

Re-union.

WHAT AMOUNTS TO.

———A re-union implies that there was an actual division, and then a coming together by mutual agreement of the members who became divided. (*Sir James Colvile.*) RAJAH SURANENI VENKATA GOPALA NAKASIMHA RAO *v.* RAJAH SURANENI LAKSHMA VENKAMA ROW. (1869) 13 M. I. A. 113 (139) = 12 W. R. P. C. 40 = 3 B. L. R. P. C. 41 = 2 Suth. 265 = 2 Sar. 496.

AGREEMENT FOR.

———*Proof of—Necessity.*

When coparceners in a Mithakshara family had separated an agreement to re-unite must be proved like any other fact, and, if not proved, they remain separate. (*Sir John Edge.*) JAG PRASAD RAI *v.* MUSSAMMAT SINGARI, (1924) 29 C.W.N. 941 = 23 A.L.J. 97 = 2 O.W.N. 229 = 86 I.C. 122 = L.R. 6 P.C. 111 = 27 Bom. L.R. 760 = A.I.R. 1925 P.C. 93 (2) = 49 M.L.J. 162 (167).

DEED OF—CONSTRUCTION.

———*Purchase by one of members prior to—Amount borrowed on bonds or otherwise for—Payment of share of, by other member—Provision for—Amount advanced from private funds if can be recovered under.*

Two brothers, who were, in all respects, a joint and undivided family, separated, but there was no regular partition of the estate. The effect of the separation was that the lands remained undivided, but each brother, being no longer a member of a joint Hindu family, took his share of the rents. The younger brother had then a large claim against the elder brother, who had been the manager of the estate, in respect of the rents and profits received previous to the partition. The separation of the brothers continued for little more than 11 months; they then re-united. During the period of separation, however, the elder brother purchased a putni taluq. On the re-union it was expressly agreed, by a deed, that those acquisitions which the elder brother had made whilst the separation continued, should all go into the joint fund. It was expressly provided that the entire property, whether ancestral, or then acquired, or thereafter to be acquired, was to be joint, and enjoyed in equal moieties. The deed further provided that whatever the elder brother had borrowed on bonds given in his name, or whatever the two had borrowed on their joint security, in order to provide the consideration money for the purchase of the Putnee, should be a charge on the joint estate, and should be liquidated out of the joint property. There was, however, no provision in the deed whatever for the repayment, out of the joint property, to the elder brother, of any funds which he might have advanced, or might have alleged that he had advanced, on the same account, out of his private money.

After a short period of re-union, the two brothers again separated, and the elder brother brought a suit against the younger for the recovery of the moiety of the money alleged to have been paid by the elder brother out of his private funds for the purchase of the Putnee. *Held*, on a construction of the deed, that he was not entitled to recover anything from the defendant, except in regard to moneys actually borrowed on bond or otherwise (410-1). (*Sir James Colvile.*) PRANKISHEN PAUL CHOWDRY *v.* MOTHOORAMOHUN PAUL CHOWDRY. (1865) 10 M.I.A. 403 = 5 W.R. 11 = 1 Suth. 609 = 2 Sar. 164.

EFFECT OF.

———*Brothers—Re-union among.*

The re-union of the two brothers of itself remitted them to their former status as members of a joint Hindu family (406). (*Sir Jamei Colvile.*) PRANKISHEN PAUL CHOWDRY *v.* MOTHOORAMOHUN PAUL CHOUDRY. (1865) 10 M.I.A. 403 = 5 W.R. 11 = 1 Suth. 609 = 2 Sar. 164.

INTENTION TO RE-UNITE.

———*Proof of—Necessity.*

Held, on the evidence, that no re-union was established, because there was no proof of an intention of the parties to re-unite in estate and interest (151). (*Lord Davey.*) BALKISHEN DAS *v.* RAM NARAIN SAHU. (1903) 30 I.A. 139 = 30 C. 738 (753) = 7 C.W.N. 578 = 5 Bom. L.R. 461 = 8 Sar. 489.

PARTIES WHO MAY RE-UNITE.

———*Father, brother, or paternal uncle—Re-union if possible only with—Bengal law.*

It was argued that the parties were incompetent in law to reunite in the accurate sense of that word, or so as to restore the status of a family joint in estate. The argument was that in Bengal a member of a joint family once separated can reunite only with a father, brother, or paternal uncle, following the text of Vrihaspati. Their Lordships do not find it necessary to express an opinion on this point (150-1). (*Lord Davey.*) BALKISHEN DAS *v.* RAM NARAIN SAHU. (1903) 30 I.A. 139 = 30 C. 738 (753) = 7 C.W.N. 578 = 5 Bom. L.R. 461 = 8 Sar. 489.

———*Minor—Agreement to re-unite by or on behalf of—Validity.*

It is difficult to see how an agreement to re-unite could have been made by or on behalf of the appellant during

HINDU LAW—(*Contd.*)

Re-union—(*Contd.*)

PERSONS WHO MAY RE-UNITE—(*Contd.*)

his minority (136). (*Lord Davey.*) BALABUX LADHURAM *v.* RUKMABHAI. (1903) **30 I. A. 130 = 30 C. 725 (734-5) = 7 C.W.N. 642 = 5 Bom. L. R. 469 = 8 Sar. 470.**

———*Partition—Persons not parties to—Re-union between.*

A re-union in estate properly so called can only take place between persons who were parties to the original partition. This appears to be the meaning placed on the well-known text of Vrihaspati: "He who being once separated dwells again through affection with his father, brother, or paternal uncle is termed reunited." (136). (*Lord Davey.*) BALABUX LADHURAM *v.* RUKMABAI. **(1903) 30 I.A. 130 = 30 C. 725 (734) = 7 C.W.N. 642 = 5 Bom. L.R. 469 = 8 Sar. 470.**

———*Some of separated mambers only—Re-union among—Re-united property—Trusts on creation by common consent of.*

A Hindu family, consisting of persons in a near relation to each other may separate and then re-unite; part also may re-unite, and such re-united members may impress on their re-united property by common family consent such trusts as their law will support. SRIMATI SUKHIMANI DASI *v.* MAHENDRA NATH DUTT. **(1869) 4 B.L.R. 16 (27) = 13 W.R. P.C. 14 = 2 Sar. 530 = 2 Suth. 297.**

PROOF OF—NECESSITY.

———Re-union is a question of fact, and there must be evidence to show that any members of a family who became divided re-united subsequently or even contemplated re-union. (*Lord Macnaghten*). RAGHUBIR SINGH *v.* MOTI KUNWAR. **(1912) 35 A. 41 (47) = 13 M.L.T. 162 = (1913) M.W.N. 127 = 17 C.L.J. 306 = 11 A.L.J. 146 = 17 C.W.N 453 = 15 Bom. L. R. 426 = 17 I.C. 766 = 25 M.L.J. 28.**

———*Separated members of joint family—Re-union among.*

If a joint Hindu family separates, the family or any members of it may again re-unite as a joint Hindu family, but such a re-uniting must be strictly proved as any other disputed fact is proved (86). (*Sir John Edge.*) PALANI AMMAL *v.* MUTHU VENKATACHALA MANIAGAR. **(1924) 52 I.A. 83 = 48 M. 254 = 6 P.L.T. 133 = 21 L. W. 439 = (1925) M W.N. 330 = 3 P.L.R. 126 = 27 Bom. L.R. 735 = 23 A.L.J. 746 = 29 C.W.N. 846 = 87 I.C. 333 = 6 L. R. P.C. 143 = A.I.R. 1925 P.C. 49 = 48 M.L.J. 83.**

Reversioner.

(*N.B.*—Cases not found under this head will be found under the head of—Hindu Law—Widow).

—HEIR OF—SALE BY WIDOW.

POSSESSION OF LAST MALE OWNER'S PROPERTY.

PRESUMPTIVE REVERSIONER—CONTRACT IN REFERENCE TO EXPECTANCY BY.

PRESUMPTIVE REVERSIONER—HEIR OF—SALE BY WIDOW.

PRESUMPTIVE REVERSIONER—INTEREST OF.

PRESUMPTIVE REVERSIONER—MINOR REVERSIONER—INTEREST OF—ARBITRATION IN REGARD TO.

PRESUMPTIVE REVERSIONER—STATUS OF.

PRESUMPTIVE REVERSIONER—SUIT BY.

PRESUMPTIVE REVERSIONER—WIDOW—ADOPTION BY—SUIT TO SET ASIDE.

PRESUMPTIVE REVERSIONER—WIDOW—ALIENATION BY.

HINDU LAW—(*Contd.*)

Reversioner—(*Contd.*)

PRESUMPTIVE REVERSIONER—WIDOW—POSSESSION OF PROPERTY FROM—SUIT FOR RECOVERY OF, ON FOOT OF JOINT STATUS WITH DECEASED.

PRESUMPTIVE REVERSIONER—WIDOW—WASTE BY.

PRESUMPTIVE REVERSIONER—WIDOW—WILL BY.

PRESUMPTIVE REVERSIONER—WILL OF LAST MALE OWNER IN FAVOUR OF DEFENDANTS.

PRESUMPTIVE REVERSIONERS—SUIT BY SOME ONLY OF.

RELATIONSHIP OF.

REMOTE REVERSIONER—WIDOW—ADOPTION BY—SUIT TO SET ASIDE.

REMOTE REVERSIONER—WIDOW—ALIENATION BY.

REVERSIONARY CHARACTER OF.

SALE BY, OF INTEREST IN LAST MALE OWNER'S PROPERTY—VALIDITY—SALE AFTER DEATH OF WIDOW.

WIDOW—ADVERSE POSSESSION—DECREE AGAINST WIDOW FOUNDED ON.

WIDOW—ADVERSE POSSESSION AGAINST—EFFECT OF.

WIDOW—ADVERSE POSSESSION AGAINST REVERSIONERS BY.

WIDOW—ALIENATION BY—ATTESTATION OF DEED OF—EFFECT OF.

WIDOW—ALIENATION BY—CONSENT TO.

WIDOW—ALIENATION BY—DIFFERENT ALIENATIONS—SUITS DIFFERENT TO SET ASIDE.

WIDOW—ALIENATION BY—ELECTION TO TREAT, AS GOOD.

WIDOW—ALIENATION BY—ELECTION TO TREAT, AS NULLITY.

WIDOW—ALIENATION BY—INVALID ALIENATION.

WIDOW—ALIENATION BY—POSSESSION OF PROPERTY SUBJECT OF.

WIDOW—ALIENATION BY—RIGHT TO DISPUTE VALIDITY OF—ESTOPPEL.

WIDOW—ALIENATION BY—SETTING ASIDE OF.

WIDOW—COMPROMISE BETWEEN.

WIDOW—DEATH OF—POSSESSION OF LAST MALE OWNER'S PROPERTY ON—SUIT FOR.

WIDOW—DECREE AGAINST—SUIT BY HER TO SET ASIDE, ON GROUND OF FRAUD—DISMISSAL OF.

WIDOW—DECREE FOR OR AGAINST—RES JUDICATA AGAINST REVERSIONERS.

WIDOW—ESTOPPEL AGAINST, PURELY PERSONAL TO HER.

WIDOW—FAMILY ARRANGEMENT BY.

WIDOW—MORTGAGE BY.

WIDOW—RENUNICATION OF CLAIM TO HUSBAND'S ESTATE.

WIDOW—REPRESETATION OF WHOLE ESTATE BY.

WIDOW—REVENUE DUE UPON ESTATE.

WIDOW—SALE BY.

WILL OF LAST MALE OWNER—PROBATE OF—REVOCATION OF—RIGHT TO APPLY FOR—SUIT FOR DECLARATION OF.

Reversioner—Heir of—Sale by widow.

———Execution of deed of, as mookhtar of widow—Effect—T. P. Act, S. 43—Applicability of. *See* HINDU LAW—WIDOW—SALE BY—REVERSIONER'S HEIR—EXECUTION OF DEED OF SALE BY, ETC. **(1892) 19 I. A. 221 (227) = 20 C. 1 (7).**

———Execution of deed of, as mooktar of widow—Right to dispute validity of sale—Estoppel. *See* HINDU LAW—WIDOW—SALE BY—REVERSIONER'S HEIR—EXECUTION OF DEED OF SALE, ETC. **(1892) 19 I. A. 221 (226-7) = 20 C. 1 (6-7).**

HINDU LAW—(*Contd.*)

Reversioner—Heir of—Sale by widow—(*Contd.*)

———Execution of deed of, jointly with her—Effect of, on validity of sale. *See* HINDU LAW—WIDOW—SALE BY—REVERSIONER'S HEIR—EXECUTION OF DEED OF SALE BY, ETC. (1918) 46 I. A. 1 (12-3) = 46 C. 566 (579).

———Suit to set aside, on foot of plaintiff being reversioner's heir—Relief in, on foot of plaintiff being purchaser from such heir—Grant of. *See* HINDU LAW—WIDOW—SALE BY—REVERSIONER'S HEIR—SUIT TO SET ASIDE, ETC. (1892) 19 I. A. 221 (225-6) = 20 C. 1 (5-6).

Reversioner—Possession of last male owner's property.

———Suit for recovery of, on death of widow. *See* HINDU LAW—REVERSIONER—WIDOW—DEATH OF—POSSESSION OF, ETC.

Reversioner—Presumptive reversioner—Contract in reference to expectancy by.

——— *See* HINDU LAW—REVERSIONER—PRESUMPTIVE REVERSIONER—INTEREST OF—CONTRACT IN RESPECT OF.

Reversioner—Presumptive reversioner—Heir of—Sale by widow.

——— *See* UNDER HINDU LAW—REVERSIONER—HEIR OF—SALE BY WIDOW.

Reversioner—Presumptive reversioner—Interest of.

CONTRACT IN RESPECT OF.
FORFEITURE ACT XL OF 1857.
MORTGAGE OF.
NATURE OF—SPES SUCCESSIONIS.
SALE OF.
TRANSFER OF.

CONTRACT IN RESPECT OF.

———Sale—Contract for. *See* HINDU LAW—REVERSIONER—PRESUMPTIVE REVERSIONER—INTEREST OF—SALE OF—CONTRACT FOR.

———*Validity of.*

A Hindu reversioner has no right or interest in *praesenti* in the property which the female owner holds for her life. Until it vests in him on her death, should he survive her, he has nothing to assign or to relinquish, or even to transmit to his heirs His right becomes concrete only on her demise; until then it is mere *spes successionis*. His guardian, if he happens to be a minor, cannot bargain with it on his behalf or bind him by any contractual engagement in respect thereto (39). (*Mr. Ameer Ali.*) AMRIT NARAYAN SINGH *v.* GAYA SINGH.
(1917) 45 I. A. 35 = 45 C 590 (603) = 23 M. L. T. 142 = 22 C. W. N. 409 = 27 C. L. J. 296 = 4 Pat. L. W. 221 = 16 A. L. J. 265 = (1918) M. W. N. 306 = 20 Bom. L. R. 546 = 7 L. W. 581 = 44 I. C. 408 = 34 M. L. J. 298.

———*Widow—Contract with — Binding nature of, on actual reversioner claiming through presumptive reversioner contracting.*

The nearest reversioner of a Hindu widow has during her lifetime only an expectancy or a *spes successionis* and any contract which such expectant heir may enter into with the widow in reference to the expectancy is not binding upon the actual reversioner though the latter may trace his relationship to the owner through the former. (*Lord Davey.*) BAHADUR SINGH *v.* MOHAR SINGH.
(1901) 29 I.A. 1 (8, 9) = 24 A 94 (107 8) = 6 C. W. N. 169 = 4 Bom. L R. 233 = 8 Sar 152 = 12 M. L. J. 56.

HINDU LAW—(*Contd.*)

Reversioner—Presumptive reversioner—Interest of—(*Contd.*)

FORFEITURE ACT XL OF 1857.

———Forfeitability of interest under. *See* FORFEITURE ACT XL OF 1857—FORFEITURE UNDER.
(1899) 22 I A. 139 (150-1) = 17 A. 456 (473).

———Forfeiture under—Effect of, on such interest. *See* FORFEITURE ACT XL OF 1857.
(1895) 22 I. A. 139 (151) = 17 A. 456 (473)

———*Mortgage of—Validity.*

At the date of the mortgage bond of 1877, Hulas Kuar, as the widow and heir of Khairati, the last male owner, was the owner of his estate, but with a restricted power of alienation. Achhan Kunwar was next in succession, and would, if she survived her mother, Hulas Kuar, become her father's heir, and take the estate subject to the same restriction. Enayet, the son of Achhan kunvar, was one of the two male heirs next in succession to the restricted estate who would be full owners in the event of their surviving their grandmother and mother. Enayet was, moreover, a minor. At the date of the mortgage bond of 1881, Hulas Kuar was dead, Achhan was owner of the property for a daughter's estate with restricted power of alienation, and Enayet was one of the heirs apparent.

In 1877 neither Achhan Kunwar nor Enayet (even if he had been of age) could by Hindu law make a disposition of or bind their expectant interests, nor does the deed apply to any but rights in possession; and in 1881 Enayet was equally incompetent to do so, though the bond purports to bind future rights (189). (*Lord Davey*) SHAM SUNDER LAL *v.* ACHHAN KUNWAR. **(1898) 25 I. A. 183 = 21 A. 71 (79, 80) = 2 C.W.N. 729 = 7 Sar. 417.**

NATURE OF—SPES SUCCESSIONIS.

———A Hindu reversioner can have only a contingent estate during the lifetime of the widow of the last male owner of the property (400). (*Sir James Colvile.*) THAKOORAINSAHIBA *v.* MOHUN LALL. **(1867) 11 M. I. A. 386 = 7 W. R 25 = 1 Suth. 681 = 2 Sar. 289.**

———Whatever the estate of a Hindu widow is, it is clear that until the termination of it, it is impossible to say who are the persons who will be entitled to succeed as heirs to her husband. The succession does not open to the heirs of the husband until the termination of the widow's estate. Upon the termination of that estate the property descends to those who would have been the heirs of the husband if he had lived up to and died at the moment of her death, (154). (*Sir Barnes Peacock.*) MONIRAM KOLITA *v.* KERRY KOLITANY. **(1880) 7 I. A. 115 = 5 C. 776 (789-90) = 6 C. L. R. 322 = 4 Sar. 103 = 3 Suth.765.**

———A reversioner has not a vested, but at most a contingent, interest in the property of a deceased Hindu during the lifetime of his widow (22) (*Sir Robert P. Collier.*) RANI ANAND KOER *v.* COURT OF WARDS.
(1880) 8 I. A. 14 = 6 C. 764 (772) = 8 C. L. R. 381 = 4 Sar. 195 = R. & J's No. 63 (OUDH).

———The nearest reversioner of a Hindu widow has during her lifetime only an expectancy or a *spes successionis* (*Lord Davey.*) BAHADUR SINGH *v.* MOHAR SINGH.
(1901) 29 I. A. 1. (8 9) = 24 A. 94 (107) = 6 C. W. N. 169 = 4 Bom. L. R 233 = 8 Sar. 152 = 12 M. L. J. 56.

———Under the Hindu Law the death of the female owner opens the inheritance to the reversioners, and the one most nearly related at the time to the last full owner becomes entitled to possession. In her lifetime, however, the reversionary right is a mere possibility or *spes successionis*. But this possibility is common to them all, for it cannot be predicated who would be the nearest reversioner at the time

HINDU LAW—(*Contd.*)

Reversioner—Presumptive reversioner—Interest of—(*Contd.*)

NATURE OF—SPES SUCCESSIONIS—(*Contd.*)

of her death (128.) (*Mr. Ameer Ali*) VENKATANARAYANA PILLAI *v.* SUBBAMMAL. (1915) 42 I. A. 125 = 38 M. 406 (410-1) = 21 C L. J. 515 = 19 C.W.N. 641 = 17 Bom. L.R. 468 = 17 M. L. T. 435 = 2 L. W. 596 = (1915) M. W. N. 555 = 29 I. C. 298 = 28 M.L.J. 535.

———The law as to the situation of the reversionary heirs is in substance quite clear; there is no vesting as at the date of the last male owner's death and it follows that the questions of who is the nearest reversionary heir or what is the class of reversionary heirs fall to be settled at the date of the expiry of the ownership for life or lives. It is impossible to predicate before the expiry of the ownership for life or lives who is the reversionary heir of the deceased proprietor. A reversionary heir has only those contingent interests which are differentiated little, if at all, from a *spes successionis* (209). (*Lord Shaw*) JANAKI AMMAL *v.* NARAYANASWAMI IYER. (1916) 43 I. A. 207 = 39 M. 634 (637-8) = 20 C. W. N. 1323 = 24 C. L. J. 309 = 14 A. L. J. 927 = 20 M. L. T. 168 = 18 Bom. L.R. 856 = (1916) 2 M. W. N. 188 = 4 L. W. 530 = 37 I. C. 161 = 31 M. L. J. 225.

———A Hindu reversioner has no right or interest in *praesenti* in the property which the female owner holds for her life. Until it vests in him on her death, should he survive her, he has nothing to assign or to relinquish, or even to transmit to his heirs. His right becomes concrete only on her denise; until then, it is mere *spes successionis* (39). (*Mr. Ameer Ali.*) AMRIT NARAYAN SINGH *v.* GAYA SINCH. (1917) 45 I. A. 35 = 45 C. 590 (603) = 23 M. L. T. 142 = 22 C. W. N. 409 = 27 C. L. J. 296 = 4 Pat. L. W. 221 = 16 A. L. J. 265 = (1918) M W.N. 306 = 20 Bom. L. R.546 = 7 L. W. 581 = 44 I. C. 408 = 34 M. L. J. 298.

———During the lifetime of the widow the reversioner has not a vested interest, and has only a *spes successionis*. (*Lord Dunedin.*) RANGASAMI GOUNDEN *v.* NACHIAPPA GOUNDEN. (1918) 46 I. A. 72 = 42 M. 523 (534) = 26 M. L. T. 5 = (1919) M. W. N. 262 = 17 A. L. J. 536 = 21 Bom.L.R. 640 = 23 C. W. N. 777 = 29 C. L. J. 539 = 10 L. W. 105 = 50 I. C. 498 = 36 M. L. J. 493.

———Under the Oudh Estates Act of 1869 the succession to collaterals opens on the death of the widow just as under the ordinary Hindu Law. During her lifetime, the presumptive reversioner has, therefore, no more than an expectancy, and has no interest in the property of the last male owner which he is competent to transfer or bind. (*Sir Lawrence Jenkins.*) HARNATH KUAR *v.* INDAR BAHADUR SINGH. (1922) 50 I. A 69 (74-5) = 45 A. 179 (182-3) = 9 O L.J. 652 = 37 C L. J. 346 = A.I.R. 1922 P.C. 403 = 9 O. & A.L.R. 270 = 27 C. W. N. 949 = 5 P. L. T. 281 = 2 P. L. R. 237 = 33 M. L. T. 216 = 18 L. W. 383 = 26 O. C. 223 = 71 I. C. 629 = 44 M.L. J. 489

———Reversioners possess individually what has been called a *spes successionis*, the bare possibility of succeeding to the estate of the last owner in case the widow dies leaving any one of them surviving entitled to take immediate possession after her, unless, of course, the husband has left the power to her to adopt a son. (*Mr. Ameer Ali.*) MATA PRASAD *v.* NAGESHAR SAHAI. (1925) 52 I.A. 398 (411) = 47 A. 883 = 6 L.R. P.C. 195 = 3 O. W. N. 1 = 28 O. C. 352 = 24 A. L. J. 1 = (1926) M. W. N. 83 = 43 C. L. J. 51 = 13 O. L. J. 19 = 91 I.C. 370 = A. I. R. 1925 P. C. 272 = 50 M. L. J. 18.

HINDU LAW—(*Contd.*)

Reversioner—Presumptive reversioner—Interest of—(*Contd.*)

SALE OF.

———*Contract for—Validity.*

A contract by a Hindu presumptive reversionary heir to sell property to which he would become entitled on the death of the widow, and to transfer it upon possession accruing to him is void.

A contract for the future sale of future expectancies is as much void and unenforecable as an immediate sale thereof. Such a contract connot be allowed to stand as a contract, because it is one to which, not only must specific performance be refused under the T. P. Act, but as to which damages can never be recovered. The purpose of S. 6 (*a*) of the T. P. Act would be defeated if such a contract were allowed to be enforced. (*Lord Sumner.*) ANANDA MOHAN ROY *v.* GOUR MOHAN MULLICK (1923) 50 I.A. 239 (245-6) = 50 C. 929 (935-7) = 21 A. L. J. 718 = A. I. R. (1923) P.C. 189 = 4 Pat. L. T. 609 = (1923) M.W.N. 803 = 25 Bom. L. R. 1269 = 33 M L. T. 365 = 28 C. W. N. 713 = 40 C. L. J. 10 = 74 I. C. 499 = 45 M. L. J. 617.

———*Contract for—Validity—Relinquishment or sale by widow of life interest to reversioner—Effect.*

Quaere as to the validity of a contract by a persumptive reversioner to sell the property of the last male owner in the event of the widow relinquishing here life interst or selling the same to him. (*Lord Sumner.*) ANANDA MOHAN ROY *v.* GOUR MOHAN MULLICK (1923) 50 I. A 239 (245-6) = 4 Pat. L. T. 609 = 50 C. 929 (938) = 21 A.L J. 718 = (1923) M.W.N 803 = 25 Bom. L. R. 1269 = 33 M. L T. 365 = 28 C. W. N. 713 = 40 C. L. J. 10 = 74 I.C. 499 = A.I R. (1923) P. C. 189 = 45 M. L. J. 617.

———*Validity.*

It was objected that, at the time when *G* executed the deed under which the plaintiffs claim he had no right or title to the property in question at all. It appears to be admitted on all hands in the court below that, if he had no title to the property at the time he executed the deed, his subsequently becoming entitled as heir would not make the deed good (505). KALI CHUNDRA CHOWDHRY *v.* SHIB CHUNDRA. (1870) 6 B. L. R. 501 = 15 W. R. 12 = 2 Sar. 621 = 2 Suth. 383.

———Their Lordships are certainly not prepared to affirm that the interest of a person in the estate of a collateral after the death of his (collateral's) widow then alive can be made the subject of a sale (737). (*Sir James W. Colvile.*) BABOO DOOLICHAND *v.* BABOO BRIJ BHOOKUN LAL AWASTE. (1880) 3 Suth. 734 = 6 C. L. R. 528 = Bald. 357.

———*Transfer of—Validity.*

Under the ordinary Hindu Law the succession to collaterals opens on the death of the widow, and it follows that during the widow's lifetime the next reversioner has merely an expectancy, and a transfer of that expectancy is inoperative. (*Sir Lawrence Jenkins.*) HARNATH KUAR *v.* INDAR BAHADUR SINGH. (1922) 50 I. A. 69 (74) = 45 A. 179 (183) = 9 O. L J. 652 = 37 C. L. J. 346 = 9 O. & A. L. R. 270 = 27 C. W. N. 949 = 5 Pat. L. T. 281 = 2 Pat. L.R. 237 = 33 M. L T. 216 = 18 L. W 383 = 26 O. C. 223 = 71 I.C. 629 = A. I. R. (1922) P.C. 403 = 44 M. L. J. 489.

Reversioner—Presumptive reversioner—Minor reversioner—Interest of—Arbitration in regard to.

———*Reference to, by minor's father and guardian—Validity.*

HINDU LAW—(*Contd.*)

Reversioner — Presumptive reversioner— Minor reversioner—Interest of—Arbitration in regard to—(*Contd.*)

A Hindu reversioner has no right or interest *in praesenti* in the property which the female owner holds for her life. Until it vests in him on her death, should he survive her, he has nothing to assign or to relinquish, or even to transmit to his heirs. His right becomes concrete only on her demise; until then it is mere *spes successionis*. His guardian, if he happens to be a minor, cannot bargain with it on his behalf or bind him by any contractual engagement in respect thereto.

Held, therefore, that the action of the father of a Hindu minor presumptive reversoner in referring to arbitration any matter connected with his son's reversionary interest was null and void. (39). (*Mr. Ameer Ali.*) AMRIT NARAYAN SINGH *v.* GAYA SINGH.

(1917) 45 I.A. 35 = 45 C. 590 (603) = 23 M. L. T. 142 = 22 C.W.N. 409 = 27 C.L.J. 296 = 4 Pat. L.W. 221 = 16 A. L. J. 265 = (1918) M. W. N. 306 = 20 Bom. L. R. 546 = 7 L. W. 581 = 44 I. C. 408 = 34 M. L. J. 298.

Reversioner—Presumptive reversioner—Status of.

———*Decision as to—Effect* inter partes—*Deceree not containing declaration—Effect.*

S, claiming to be the nearest reversionary heir of *R*, instituted a suit against the mother of *R*, who had succeeded to his property as his heir, and against alienees of portions of the said property from her. The plaint prayed for a declaration that plantiff was entitled to succeed to the suit property after the death of *R*'s mother, a declaration that the alienations by her were invalid beyond her life, an injunction and the appointment of a receiver. The defendants pleaded, *inter alia*, that was not the nearest reversioner, and that, after the death of *R*'s mother, her daughter and her son would be entitled to succeed to the property in preferrence to *S*. During the course of that litigation, the sister of *R* was made a party defendant and she filed a written statement claiming to be entitled to succeed in preference to *S*. The High Court found that *S* was the nearest reversionary heir after the death of *R*'s mother, that the alienations by *R*'s mother were invalid beyond her life, but that *S* was not entitled to an injunction or the appointment of a receiver. The decree of the High Court declared that the alienations by *R*'s mother were invalid beyond her life and did not bind the reversionary heirs, dismissed the suit in so far as it prayed for an injunction and the appointment of a receiver, but did not contain a declaration that *S* was the nearest reversioner. In a suit between *R*'s sister and *S* in respect of the right to succeed to the property of *R* after his mother's death, *held* that, although the decree in the prior suit did not contain a declaration that *S* was the nearest reversioner, the judgment therein might be and ought to be looked at to see what was decided and that in as much as it had decided that *S* was the nearest reversioner, the decree in the prior suit operated as *res judicata* in his favour. (*Sir Richard Couch.*) SRI RAJA LAKSHMI KANTAIYAMMI *v.* SRI RAJA INUGANTI RAJAGOPAL RAO.

(1898) 25 I. A. 102 = 21 M. 344 = 2 C. W. N. 337 = 7 Sar. 325.

———*Decision as to—Effect of, on actual reversioners not parties.*

In a suit by a presumptive reversioner for a declaration that a will by the widow of the last male owner purporting to transfer his estate to a stranger was invalid for the purpose of transfering the estate, issues were raised and decided in favour of the planitiff as to his position as next reversionary heir to the estate.

HINDU LAW—(*Contd.*)

Reversioner— Presumptive reversioner — Status of—(*Contd.*)

Held that, though the issues had necessarily been raised and decided, they had been raised and decided only between the parties to the suit (the defendants being the widow and the transferee under her will), and that whenever the inheritance opened by the death of the widow, the decision would have settled nothing as to who should succeed. (*Sir Arthur Wilson.*) THAKURAIN JAIPAL KUNWAR *v.* BHAIYA INDAR BAHADUR SINGH.

(1904) 31 I.A. 67 = 26 A. 238 (243-4) = 14 M.L. J. 149 = 8 C.W.N. 465 = 6 Bom.L R. 495 = 7 O.C. 239 = 8 Sar. 625.

———The questions of who is the nearest reversionary heir or what is the class of reversionary heirs fall to be settled at the date of the expiry of the ownership for life or lives. Even when the courts have proceeded, prior to the opening of the succession, to give any declaration, this has heen done for special reasons only, and it is made clear that "Whenever the succession opens by the death of the widow the present decision will have settled nothing as to who should succeed." If a court of law proceeded to make any declaration of right as to who is the reversionary heir of the deceased proprietor such a declaration would be subject to being rendered valueless by the development of events. It would not, after events had developed, be even of authority in regulating or declaring the rights of the reversioner in whose favour such declaration is made as against any other claimant to the character of reversionary heir. *A fortiori* accordingly, a declaration of right granted before the expiry of the ownership for life or lives would appear to be stamped with something in the nature of futility (209). (*Lord Shaw.*) JANAKI AMMAL *v.* NARAYANASAWMY AYER.

(1916) 43 I. A. 207 = 39 M. 634 (637-8) = 20 C. W. N. 1323 = 24 C. L. J. 309 = 14 A. L. J. 927 = 20 M.L.T. 168 = 18 Bom. L. R. 856 = (1916) 2 M.W.N. 188 = 4 L. W. 530 = 37 I.C. 161 = 31 M. L. J. 225.

———Decision of settlement court as to—Effect of, in subsequent civil suit between parties. *See* SETTLEMENT COURT—DECISION OF **(1920) 39 M.L.J. 115 (125-6).**

———*Declaration of—Propriety of—Joint Status of deceased and reversioner—Suit brought for possession on foot of—Finding that deceased was divided member and that his widows were entitled to succeed to him—Decree proper in case of—Declaration of reversionary status of plaintiff in case of.*

The surviving male member of a Hindu family governed by the Mithakshara law brought a suit to recover possession of the share of the deceased member from his widows, alleging that the plaintiff and the deceased were members of a joint Hindu family, and that on the death of the deceased without male issue, the plaintiff became entitled to the entire property by survivorship. The Court found that there had been a partition between the plaintiff and the deceased, under which the latter held his share as separate estate, and that, on his death, his widows were entitled to succeed, and that the plaintiff was only presumptively the reversionary heir next in succession to them. Instead of dismissing the suit, the decree made by the Court, however, after affirming the rights of the widows, went on to declare the right of the plaintiff to succeed upon the death of the survivor of them.

Their Lordships observed that the decree was a somewhat extraordinary one (735). (*Sir James W. Colvile.*) BABOO DOOLI CHAND *v.* BABOO BRIJ BHOOKUN LAL AWASTI.

(1880) 3 Suth. 734 = 6 C. L. R. 528 = Bald. 357.

HINDU LAW—(*Contd.*)

Reversioner—Presumptive reversioner—Status of—(*Contd.*)

———Declaration of—Propriety of—Waste by widow—Suit to restrain—Declaration in. *See* HINDU LAW—REVERSIONER—PRESUMPTIVE REVERSIONER—WIDOW—WASTE BY—SUIT TO RESTRAIN—REVERSIONARY CHARACTER OF PLAINTIFF IN.

———*Declaration of—Suit against widow for—Reversionary character—Onus of proof of—Posthumous son of widow's husband—Existence of—Reversionary character depending upon.*

In a suit for a declaration that the plaintiff was entitled in reversion to an estate which had formerly belonged to *R*, on the death of his widow, plaintiff's title as reversioner depended upon the question whether *R* had a posthumous son. The widow of *R* and those claiming under her, who were the defendants in the action, denied that *R* had any posthumous son.

Held that the burden of proving the plaintiff's title to the estate on the death of *R*'s widow was obviously on the plaintiff. (*Lord Lindley.*) RANI SRIMATI *v.* KHAJENDRA NARAYAN SINGH. **(1904) 31 I. A. 127 = 31 C. 871 (883) = 9 C. W. N. 74 = 8 Sar. 635.**

———*Declaration of—Suit against widow for—Will by deceased in her own favour set up by widow in—Execution of—Onus of proof as to.*

The onus of proving a will to have been duly executed is on the party who sets it up, and not upon the party who is prepared to impeach it.

So *held*, in a case where a reversioner sued to establish his title against the widow of the last male owner alleging that he died intestate, and the widow set up a will by the deceased in her favour. (*Lord Macnaghten.*) SUKH DEI *v.* KEDAR NATH. **(1901) 28 I. A. 186 (188-9) = 23 A. 405 (413) = 5 C. W. N. 895 = 3 Bom. L. R. 704 = 8 Sar. 109.**

———Finding against—Recording of—Propriety of—Suit by him for declaration of invalidity of alienation by widow dismissed in exercise of discretion as to grant of declaratory relief as to alienation. *See* HINDU LAW—REVERSIONER—PRESUMPTIVE REVERSIONER—WIDOW—ALIENATION BY—DECLARATION OF INVALIDITY OF—SUIT FOR. **(1878) 5 I. A. 149 (163) = 4 C. 190 (205).**

Reversioner—Presumptive reversioner—Suit by.

ALLOWED *ex necessitate rei*—REVERSIONARY CHARACTER OF PLAINTIFF.

———*Proof of—Necessity.*

The suit is of a peculiar nature, because it is one brought by a person who, even if his own case were true, might probably never have an interest in the property, inasmuch as he can have only a contingent estate during the lifetime of the widow of the last male owner of the property. Such a suit is permitted simply on the ground of the necessity that the contingent reversioner may be under of protecting his contingent interest. It is, therefore, essential to see that he has such an estate as entitles him to come in in that way—in other words, that he holds the character which he professes to hold (400). (*Sir James W. Colvile.*) THAKOORAIN SAHIBA *v.* MOHUN LALL. **(1867) 11 M. I. A. 386 = 7 W. R. 25 = 1 Suth. 681 = 2 Sar. 289.**

DECISION IN—BINDING CHARACTER OF, AGAINST ACTUAL REVERSIONER.

———*Adoption by widow—Validity of—Suit contesting.*

The suit was brought by the appellant, a Hindu widow, against her daughter-in-law, who was sued in her own right, and also as the guardian of *M*, whom she had adopted under an authority alleged to have been executed by her

HINDU LAW—(*Contd.*)

Reversioner—Presumptive reversioner—Suit by—(*Contd.*)

DECISION IN—BINDING CHARACTER OF, AGAINST ACTUAL REVERSIONER—(*Contd.*)

deceased husband. The object of the suit was to set aside that adoption, and to have it declared invalid. If the adoption was invalid, the appellant, if she survived her daughter-in-law, would become entitled on the death of the latter to the property of her son and that contingent interest was the only *locus standi* which the appellant had in the suit.

Quære as to what the effect of a decree in such a suit might be, whether one in favour of the adoption would be binding against any reversioner except the appellant, or whether, on the other hand, a decision adverse to the adoption would bind the adopted as between himself and anybody except the appellant (84). (*Sir James W. Colvile.*) JUMOONA DASSYA CHOWDHRANI *v.* BAMASOONDERAI DASSYA CHOWDHRANI. **(1876) 3 I. A. 72 = 1 C. 289 (296) = 25 W. R. 235 = 3 Sar. 602 = 3 Suth. 222.**

———*Alienation by widow—Validity of—Suit contesting.*

B, a Hindu, died leaving two widows, and *D*, a daughter by one of them. In 1873, the widows executed a deed whereby, after stating that with the exception of *D* there was no heir of their husband or of themselves, they made a gift to her of certain lands and villages, only retaining to themselves a life interest in part of them. Some of the property was described as mouzahs exclusively acquired by the widows out of their own fund, and the rest was described as having been left by their husband *B*.

D died in 1875, and, in 1876, the plaintiffs, the presumptive heirs of *B*, subject to the interest of the widows, sued the widows and the daughter of *D* for a decision that the deed of December 1873 was null and void as regards the reversionary interests of the plaintiffs, and for a declaration that the properties acquired by the widows were part and parcel of their husband's estate.

The questions for decision in the suit were (1) whether by the release to *D* under the deed of December 1873 the absolute interest became at once vested in her, and therefore the inheritance devolved upon her daughter; and (2) whether properties purchased by the widows out of the profits of their husband's estate became accretions to that estate.

Held that the question of law involved in the case was of such a nature that its decision, though not binding as *res judicata* between the widows and a new reversioner, would be so strong an authority in point as probably to deter either party from disputing it (157). (*Sir Arthur Hobhouse.*) ISRI DUT KOER *v.* MUSSUMAT HANSBUTH KOERAIN. **(1883) 10 I. A. 150 = 10 C. 324 (333) = 13 C. L. R. 418 = 4 Sar. 459.**

———In this case their Lordships referred to the view of the Madras High Court that the dscision in a suit brought by a presumptive reversioner to set aside an alienation by a widow did not operate as a *res judicata* against the contingent reversioners, but, without pronouncing upon the correctness of that view, held that it did not bear upon the question whether, in the event of the death of the presumptive reversioner in a suit brought by him to set aside an alienation by the widow, the next presumable reversioner was or was not entitled to continue the suit (129-30). (*Mr. Ameer Ali.*) VENKATANARAYANA PILLAI *v.* SUBBAMMAL. **(1915) 42 I. A. 125 = 38 M. 406 (411-2) = 21 C. L. J. 515 =**

HINDU LAW—(*Contd.*)

Reversioner—Presumptive reversioner—Suit by—(*Contd.*)

DECISION IN—BINDING CHARACTER OF, AGAINST ACTUAL REVERSIONER—(*Contd.*)

19 C. W. N. 641 = 17 Bom. L. R. 468 = 17 M. L. T. 435 = 2 L. W. 596 = (1915) M. W. N. 555 = 29 I. C. 298 = 28 M. L. J. 535.

———A presumptive reversioner obtained a decree against a Hindu widow and a mortgagee from her declaring that the mortgage and the decree obtained on foot thereof did not affect the property otherwise than for the lifetime of the widow and that neither was binding upon the reversionary body. Subsequently the mortgagee purchased the property in execution of the decree on his mortgage. Later, he made default in payment of his share of revenue of the property; and the appellant, who paid the same, obtained a decree against the mortgagee and purchased the property in execution of his decree.

In a suit brought after the death of the widow by the actual reversioners against the appellant, *held*, that the decree in the presumptive reversioner's suit was binding as *res judicata* as between the parties to the suit. (*Lord Blanesburgh.*) KESHO PRASAD SINGH *v.* SHEO PRAGASH OJHA. **(1924) 51 I. A. 381 (385-7) = 46 A. 831 = 10 O. & A. L. R. 1105 = 40 C. L. J. 461 = 23 A. L J. 168 = 27 Bom. L. R. 130 = 29 C. W. N. 606 = 21 L. W. 295 = 82 I. C. 962 = A. I. R. 1924 P. C. 247 = 47 M. L. J. 824.**

———The decree dismissing a suit brought by a presumptive reversioner during the lifetime of a Hindu widow for a declaration that an alienation made by her is not valid and binding beyond her lifetime, is, in the absence of fraud or collusion, binding upon the actual reversioners. (*Lord Blanesburgh.*) KESHO PRASAD SINGH *v.* SHEO PRAGASH OJHA. **(1924) 51 I. A. 381 (387) = 46 A. 831 = 10 O. & A. L. R. 1105 = 40 C. L. J. 461 = 23 A. L. J. 168 = A. I. R. 1924 P. C. 247 = 27 Bom. L. R. 130 = 29 C. W. N. 606 = 21 L. W. 295 = 82 I. C. 962 = 47 M. L. J. 824.**

———*Waste by widow—Suit to restrain—Decision in.*

A reversionary heir, although having only those contingent interests which are differentiated little, if at all, from a *spes successionis*, is recognised by Courts of Law as having a right to demand that the estate be kept free from waste and free from danger during its enjoyment by the widow or other owner for life. But a reversionary heir thus appealing to the court truly for the conservation and just administration of the property does so in a representative capacity, so that the *corpus* of the estate may pass unimpaired to those entitled to the reversion.

This representation is in law founded upon a different set of considerations from those which would seek to stamp the character of reversionary heir upon one individual. The latter operation attempted during the enjoyment of the life estates would necessarily be premature, and might be futile. The former is justified by the considerations of keeping the estate intact for the persons to whom as reversioners it shall ultimately and at the proper time be determined that the estate shall go (209-10). (*Lord Shaw.*) JANAKI AMMAL *v.* NARAYANASWAMI IYER. **(1916) 43 I. A. 207 = 39 M. 634 (638) = 20 C. W. N. 1323 = 24 C. L. J. 309 = 14 A. L. J. 927 = 20 M. L. T. 168 = 18 Bom. L. R. 856 = (1916) 2 M. W. N. 188 = 4 L. W. 530 = 37 I. C. 161 = 31 M. L. J 225.**

———*Will of last male owner set up by widow—Forgery of—Suit for declaration of.*

Reversioners possess individually what has been called a *spes successionis*, the bare possibility of succeeding to the estate of the last owner in case the widow dies leaving any one of them surviving entitled to take immediate possession after her, unless, of course, the husband has left the power to her to adopt a son. But the *spes* is common to them all; so is the danger by the widow's act against the interests of the reversioners. The right to sue to set aside that common danger is given for obvious reasons of policy and convenience to the person, who, if the widow died at the moment, would take the estate. But the result, favourable or otherwise, affects the reversioners as a body.

The decision in a suit brought by a person in his capacity of the presumptive reversioner of the last male owner's estate for a declaration that a will set up as his was false and fabricated binds all the reversioners.

Explanation VI to S. 11 of C.P.C. of 1908 covers exactly cases of that kind and bars a fresh litigation on the same cause of action. (*Mr. Ameer Ali.*) MATA PRASAD *v.* NAGESHAR SAHAI. **(1925) 52 I.A 398 (411) = 47 A. 883 = 6 L. R. P. C 195 = 3 O. W. N. 1 = 28 O C. 352 = 24 A. L. J 1 = (1926) M. W. N. 83 = 43 C. L. J. 51 = 13 O. L. J. 19 = A. I. R. 1925 P. C. 272 = 91 I. C. 370 = 50 M. L. J. 18.**

DECISION AGAINST PLAINTIFF IN—BINDING CHARACTER OF, ACAINST ANOTHER PRESUMPTIVE REVERSIONER NOT PARTY TO SUIT.

———When, in a suit brought by the four nearest agnates of a deceased Hindu, for a declaration that a gift made by the widow of the deceased was invalid and inoperative beyond her lifetime, a decree dismissing a prior suit brought by two of the plaintiffs only for default was relied upon as a bar, *held*, that the plea could only affect, if at all, those two plaintiffs, and could not exclude the other plaintiffs from obtaining a declaratory decree in the subsequent suit which would have the effect of protecting the reversionary interests of themselves and of their lineal descendants (157). (*Lord Watson.*) MUSSUMMAT CHAND KOER *v.* PARTAB SINGH. **(1888) 15 I. A. 156 = 16 C. 98 (101) = 5 Sar. 243.**

LEGAL REPRESENTATIVE OF PLAINTIFF IN.

———The phraseology of sub-S. 11 of S. 2 of C. P. C. of 1908 is fairly open to the contention that a suit brought by a presumptive reversioner to set aside an adoption or alienation by a widow is brought by him as representing, in his reversionary right, the estate of the last male owner, and that on his death such right devolves upon the next presumable reversioner (131). (*Mr. Ameer Ali.*) VENKATANARAYANA PILLAI *v.* SUBBAMMAL, **(1915) 42 I.A. 125 = 38 M. 406 (413) = 21 C. L. J. 515 = 19 C. W. N. 641 = 17 Bom. L. R. 468 = 17 M.L.T. 435 = 2 L. W. 596 = (1915) M. W. N. 555 = 29 I. C. 298 = 28 M. L. J. 535.**

REMOTE REVERSIONER'S RIGHT TO BE IMPLEADED IN.

———Right of, to conduct of suit on proof of laches on part of presumptive reversioner or of collusion between him and widow. *See* HINDU LAW — REVERSIONER — PRESUMPTIVE REVERSIONER—WIDOW—ADOPTION BY — SUIT TO SET ASIDE—REMOTE REVERSIONER.
(1915) 42 I. A. 125 (132) = 38 M. 406 (413-4).

REVERSIONARY CHARACTER OF PLAINTIFF.

———Proof of—Necessity. *See* HINDU LAW — REVERSIONER — PRESUMPTIVE REVERSIONER — SUIT BY — ALLOWED EX NECESSITATE REI.
(1867) 11 M. I. A 386 (400).

HINDU LAW—(*Contd.*)

Reversioner—Presumptive reversioner—Widow—Adoption by—Suit to set aside.

———Alienation by widow—Suit to set aside — Scope and character of two suits—Binding character of decision in two suits—Distinction. *See* HINDU LAW—REVERSIONER—PRESUMPTIVE REVERSIONER—WIDOW—ADOPTION BY—SUIT TO SET ASIDE—NATURE OF.

(1915) 42 I. A. 125 (129-30) = 38 M. 406 (411-2).

———Decision in—Binding character of, against actual reversioner. *See* HINDU LAW—REVERSIONER—PRESUMPTIVE REVERSIONER—SUIT BY—DECISION IN—BINDING CHARACTER OF, AGAINST ACTUAL REVERSIONER—ADOPTION BY WIDOW **(1876) 3 I.A. 72 (84) = 1 C. 289 (296).**

———*Nature of—Representative suit—Death of plaintiff—Next reversioner's right to continue suit.*

A suit brought in the "lifetime of a female owner for a declaration that an adoption made by her is not valid against the inheritance differs in its scope and character from one brought in her lifetime for a declaration that an alienation effected by her is not binding against the inheritance, inasmuch as the former relates to status and involves the adjudication of a right *in rem*, while the latter raises a question of mere justifiable necessity. But in both "the right to sue" is based on the danger to the inheritance common to all the reversioners which arises from the nature of their rights (128-9).

The Madras High Court has drawn a distinction between a suit brought to challenge an adoption and one to declare an alienation by a qualified owner as not binding beyond the lifetime of the alienor. In the first class of cases it has been recognized that the presumptive reversioner's suit is in a representative character ; in the other, however, chiefly on the ground that the adjudication relating to an alienation in the suit of the presumptive reversioner does not operate as a *res judicata* against the contingent reversioners, it has been held that these have no right to continue an action brought by him. Although, no doubt, there is great difference in the character of the two classes of suits, the position of the plaintiffs in both instances when closely examined will be found, so far as the right of the contingent reversioner to continue the suit on the death of the plaintiff is concerned, to be the same. The test of *res judicata* applied by the Madras High Court seems, therefore, to be irrelevant to the inquiry, whether the contingent reversioner is entitled to continue the action brought by the presumptive reversioner. What has to be considered is whether the "right to sue", in the words of the statute, "survives," and if it does, who can continue the action to obtain the relief that is sought ? (129 30). (*Mr. Ameer Ali.*) VENKATANARAYANA PILLAI *v.* SUBBAMMAL, **(1915) 42 I.A. 125 = 38 M. 406 (411-2) = 21 C. L. J. 515 = 19 C. W. N. 641 = 17 Bom. L. R. 468 = 17 M.L.T. 435 = 2 L.W. 596 = (1915) M. W. N. 555 = 29 I. C. 298 = 28 M. L. J. 535.**

———*Onus on plaintiff in—Adopted son in possession.*

The suit was brought by the appellant, a Hindu widow, against her daughter-in-law who was sued in her own right and also as the guardian of *M*, whom she had adopted under an authority alleged to have been executed by her deceased husband. The object of the suit was to set aside that adoption, and to have it declared invalid. The principal questions in the suit were (1) whether the deceased did execute the alleged authority to adopt ; and (2) whether, if he did so, he was by reason of his age capable of executing such a document.

If the adoption was invalid, the appellant, if she survived her daughter-in-law, would become entitled on the death of

HINDU LAW—(*Contd.*)

Reversioner—Presumptive reversioner—Widow—Adoption by—Suit to set aside—(*Contd.*)

the latter to her son's property ; and that contingent interest was the only *locus standi* which she had in the suit.

Held that, having regard to the nature of the suit, which was one in which the appellant, upon a remote and contingent interest, an interest which would probably never accrue to her, came into court, not only to destroy the title of a person in possession of an estate, but to destroy his civil status, a more than ordinary burden of proof lay upon the appellant (81-2). (*Sir James W. Colvile.*) JUMOONA DASSYA CHOWDHRANI *v.* BAMASOONDERAI DASSYA CHOWDHRANI. **(1876) 3 I A. 72 = 1 C. 289 = 25 W. R. 235 = 3 Sar. 602 = 3 Suth. 222**

———*Remote reversioner—Right of, to be impleaded in suit—Right of, to obtain conduct of suit on proof of laches on plaintiff's part or of collusion between him and widow.*

There is nothing to preclude a remote reversioner from joining or asking to be joined in an action brought by the presumptive reversioner (for a declaration that an adoption or an alienation made by a widow or other female heir is not binding beyond the lifetime of the alienor), or even obtaining the conduct of the suit on proof of laches on the part of the plaintiff or collusion between him and the widow or other female whose acts are impugned (130). Under O. 1, R. 1 of C. P. C. of 1908 (which brings the Indian practice into line with the English rule) the contingent reversioners may be joined as plaintiffs in the presumptive reversioner's suit. The right to relief on the part of the reversioners exists severally in order of succession, and arises out of one and the same transaction impugned as invalid and not binding against them as a body ; and the dispute involves a common question of law, namely, the validity or invalidity of the act challenged as incompetently done (132). (*Mr. Ameer Ali.*) VENKATANARAYANA PILLAI *v.* SUBBAMMAL. **(1915) 42 I. A. 125 = 38 M. 406 (413-4) = 21 C. L. J. 515 = 19 C. W. N. 641 = 17 Bom. L. R. 468 = 17 M. L. T. 435 = 2 L. W. 596 = (1915) M. W. N. 555 = 29 I. C. 298 = 28 M. L. J. 535.**

Reversioner—Presumptive reversioner—Widow—Alienation by.

ADOPTION BY HER—DECLARATION OF INVALIDITY OF—SUITS FOR.
ATTESTATION OF DEED OF.
CHALLENGE OF, DURING LIFETIME OF WIDOW OR AFTER HER DEATH.
CONSENT TO.
DECLARATION OF INVALIDITY OF—SUIT FOR.
ELECTION TO HOLD DEED OF ALIENATION GOOD.
ELECTION TO TREAT, AS GOOD OR AS NULLITY.
EXECUTION OF DEED OF, JOINTLY WITH WIDOW.
INTENDED ALIENATION—SUIT TO RESTRAIN.
INVALID ALIENATION—SUIT IN RESPECT OF—RELIEF APPROPRIATE IN.
POSSESSION OF PROPERTY SUBJECT OF.
SUIT TO SET ASIDE.

ADOPTION BY HER—DECLARATION OF INVALIDITY OF—SUITS FOR.

———Scope and character of—Binding character of decision in—Distinction. *See* HINDU LAW—REVERSIONER—PRESUMPTIVE REVERSIONER—WIDOW—ADOPTION BY—SUIT TO SET ASIDE—NATURE OF.

(1915) 42 I. A. 125 (129-30) = 38 M. 406 (411-2).

ATTESTATION OF DEED OF.

———Effect of. *See* HINDU LAW—REVERSIONER—WIDOW—ALIENATION BY—ATTESTATION OF DEED OF.

HINDU LAW—(*Contd.*)

Reversioner—Presumptive reversioner—Widow—Alienation by—(*Contd.*)

CHALLENGE OF, DURING LIFETIME OF WIDOW OR AFTER HER DEATH.

———*Option as to.*

It is well settled that, though he who may be termed a presumptive reversionary heir has a title to challenge an alienation at its inception, he need not do so, but is entitled to wait till the death of the widow has affirmed his character, a character which up to that date might be defeated by birth or by adoption (86-7.) (*Lord Dunedin.*) RANGASWAMI GOUNDEN *v.* NACHIAPPA GOUNDEN.

(1918) 46 I. A. 72 = 42 M. 523 (538-9) = 26 M. L. T. 5 = (1919) M. W. N. 262 = 17 A. L. J. 536 = 21 Bom. L. R. 640 = 23 C. W. N. 777 = 29 C. L. J. 539 = 10 L. W. 105 = 50 I. C. 498 = 36 M. L. J. 493.

CONSENT TO.

———*See* HINDU LAW—REVERSIONER—WIDOW—ALIENATION BY—CONSENT TO.

DECLARATION OF INVALIDITY OF—SUIT FOR.

———Adoption by widow—Declaration of invalidity of—Suit for—Scope and character of—Binding character of decision in—Distinction. *See* HINDU LAW—REVERSIONER — PRESUMPTIVE REVERSIONER — WIDOW—ADOPTION BY—SUIT TO SET ASIDE—NATURE OF.

(1915) 42 I. A. 125 (129-30) = 38 M. 406 (411-2).

———Decision in—Binding character of, against actual reversioner. *See* HINDU LAW—REVERSIONER—PRESUMPTIVE REVERSIONER—SUIT BY—DECISION IN—BINDING CHARACTER OF, AGAINST ACTUAL REVERSIONER—ALIENATION BY WIDOW.

———*Dismissal of, in exercise of discretion—Reversionary character of plaintiff—Finding against—Recording of, by High Court—Setting aside of, by Privy Council.*

In a suit by a person claiming to be presumptively entitled to succeed to the estate of the last male owner on the death of his widow for a declaration that a deed of alienation executed by her was not binding against the reversioner, the reversionary character claimed by the plaintiff depended upon proof of a koolachar or family custom set up by him. The High Court, which dismissed the suit, found against the plaintiff on the custom set up by him. On appeal by the plaintiff, their Lordships, being of opinion that the case was not one in which in the exercise of their discretion they ought to grant a declaration of the invalidity of the alienation, set aside the finding of the High Court as to the custom set up, because such a finding was unnecessary (163). (*Sir Barnes Peacock.*) TEKAIT DOORGA PERSAD SINGH *v.* TEKAITNI DOORGA KUNWARI. **(1878) 5 I. A. 149 = 4 C. 190 (205) = 3 C. L. R. 31 = 3 Sar. 827 = 3 Suth. 540.**

———*Grant of declaration in—Discretion as to—Discretion not to grant declaration—Grounds for*

In a suit by a presumptive reversioner for a declaration that a deed of alienation executed by the widow of the last male holder in respect of his property is not binding against the reversioner, it is entirely a matter of discretion whether to make any declaration of that kind or to leave the question open until the widow's death (162).

Held that, under the circumstances of the case, their Lordships ought not to make a declaratory decree with reference to the deed of alienation in question (163).

The circumstances relied upon by their Lordships were:—(1) The evidence of necessity for the deed was conflicting and was not such as to enable their Lordships to determine what, if any, portion of the money which formed the consideration for the deed was raised for necessity. A remand of the case for an inquiry on the point was therefore necessary (162).

(2) An inquiry on remand would be attended with considerable expense, and would cause great delay, and if the inquiry should result in a finding favourable to the alienee, the decision might not be final in his favour, because the plaintiff might die in the lifetime of the widow, and the estate might never come to him (163).

(3) There were others who might prove a preferable title to the plaintiff and to the widow, and who, not being parties to the suit, would not be bound by any decision therein (163). (*Sir Barnes Peacock.*) TEKAIT DOORGA PERSAD SINGH *v.* TEKAITNI DOORGA KUNWARI.

(1878) 5 I. A. 149 = 4 C. 190 (204-5) = 3 C. L. R. 31 = 3 Sar. 827 = 3 Suth. 540.

———Improvements effected by alienee—Compensation for—Claim to—Maintainability of, in such suit. *See* HINDU LAW—WIDOW—SALE BY—IMPROVEMENTS EFFECTED BY PURCHASER UNDER—COMPENSATION FOR—CLAIM TO. **(1909) 36 I. A. 103 (113) = 36 C. 780 (798).**

———Nature of—Death of plaintiff pending—Next reversioner's right to be brought on record as legal representative and to continue suit. *See* HINDU LAW—REVERSIONER—PRESUMPTIVE REVERSIONER—WIDOW—ADOPTION BY—SUIT TO SET ASIDE—NATURE OF.

(1915) 42 I. A. 125 (128-30) = 38 M. 406 (411-2).

———*Partial necessity for alienation—Alienation not wholly void but valid against plaintiff to charge estate for binding portion of amount.*

Where, in a suit by a presumptive reversioner for a declaration that a deed of alienation executed by the widow of the last male owner in respect of his property is not binding against the reversioner, it is proved that there was a legal necessity for raising a portion of the money which formed the consideration for the deed, but not the whole of it, the deed would not be wholly void as regards the plaintiff, but would be valid as against him to charge the estate for the amount necessary to be raised (162). (*Sir Barnes Peacock.*) TEKAIT DOORGA PERSAD SINGH *v.* TEKAITNI DOORGA KUNWARI. **(1878) 5 I. A. 149 = 4 C. 190 (204) = 3 C. L. R. 31 = 3 Sar. 827 = 3 Suth. 540.**

———*Partial necessity for alienation—Decree proper in case of—Declaration that reversioner should be put in possession of property on death of widow on payment of portion of purchase-money advanced for necessity.*

In a suit by a reversionary heir for a declaration that a sale by a widow was invalid beyond her lifetime, it was found that part of the consideration for the sale, *viz.*, a sum of Rs. 14 000 was applied in payment of a mortgage subsisting on the estate at the time of the sale, but that the sale was invalid as against the reversionary interest.

The High Court made a decree declaring that the plaintiff should be entitled to recover the property after the death of the widow upon the payment of the Rs 14,000.

While approving of that decree, their Lordships, with a view to render the intention of the Court more clear, recommended the addition to the declaration of the words "and to be put in possession of the said property after the decease of the widow on payment to the purchaser of the sum of Rs 14,000." (17) (*Sir Robert P. Collier.*) MAHOMED SHUMSOOL *v.* SHEWAKRAM. **(1874) 2 I. A. 7 = 14 B. L. R. 226 = 22 W. R. 409 = 3 Sar 405 = 3 Suth. 43.**

———*Refusal of declaration on ground that no consequential relief has been prayed for—Propriety of.*

In a suit by the presumptive reversioners to the estate of a deceased Hindu that an alienation made by the widow of

HINDU LAW—(*Contd.*)

Reversioner—Presumptive reversioner—Widow—Alienation by—(*Contd.*)

DECLARATION OF INVALIDITY OF—SUIT FOR—(*Contd.*)

the deceased does not affect their reversionary interest, the declaration cannot be refused to the plaintiffs on the ground that no consequential relief has been prayed for by them.

A declaration is all that a person in the position of the plaintiffs is entitled to under the law (156). (*Sir Arthur Hobhouse.*) ISRI DUTT KOER *v.* MUSST. HANSBUTTI KOERAIN. **(1883) 10 I. A. 150 = 10 C. 324 (333) = 13 C. L. R. 418 = 4 Sar. 459.**

———Remote reversioner's right to be impleaded in, and to have conduct of, on proof of laches on plaintiff's part or of collusion between him and widow. *See* HINDU LAW—REVERSIONER—PRESUMPTIVE REVERSIONER—WIDOW—ADOPTION BY—SUIT TO SET ASIDE—REMOTE REVERSIONER. **(1915) 42 I. A. 125 (132) = 38 M. 406 (413-4).**

———*Right of.*

Some question has been made at the Bar as to the right of a person who is a presumptive heir in reversion to question such a transaction (an alienation by a Hindu widow of her husband's estate); but their Lordships, if it were necessary to decide the point, would find it extremely difficult to overrule the many cases in which that right has been more or less recognised (224). (*Sir James W. Colvile.*) RAJ LUKHEE DABEA *v.* GOKOOL CHUNDER CHOUDHRY. **(1869) 13 M. I. A. 209 = 12 W. R. P. C. 47 = 3 B. L. R. 57 = 2 Suth. 275 = 2 Sar. 518.**

———*Right of—Conduct precluding—Suit prior to alienation contesting widow's status as lawful wife of deceased if amounts to.*

In a suit by plaintiff, a remote reversioner, for a declaration that an alienation by a Hindu widow of the estate of her husband was not valid beyond her life, it appeared that a nearer reversioner was alive, but that, prior to the date of the alienation in question, he had sued for the recovery of the estate on the ground that the widow had not been lawfully married to the last male owner and was therefore not his legal widow at all and that that suit had been dismissed on the ground that she was the legal widow of the deceased.

Held, that the nearer reversioner had not, by his conduct in bringing that suit, precluded himself from challenging by way of declaration the deed of alienation which at that time was not in existence, and that plaintiff, who was a more remote reversioner, could not maintain his suit. (*Lord Dunedin.*) JHANDU *v.* TARIF. **(1914) 37 A. 45 = 19 C. W. N. 197 = 17 M. L. T. 10 = 21 C. L. J. 26 = 2 L. W. 113 = 17 Bom. L. R. 44 = (1915) M.W.N. 394 = 27 I. C. 892 = 28 M. L. J. 453.**

———*Right to declaration—Deed of alienation comprising original estate and after-purchases by widows—Claim of alienee, in regard to both, that deed passed absolute estate.*

A Hindu died leaving two widows and *D*, a daughter by one of them. The widows executed a deed whereby, after stating that with the exception of *D*, there was no heir of their husband or of themselves, they made a gift to her of certain lands and villages, only retaining to themselves a life interest in part of them. Some of the property was described as mouzahs exclusively acquired by the widows out of their own fund, and the rest was described as having been left by their husband. *D*, died shortly after, leaving a daughter *B*.

The plaintiffs, claiming to be the presumptive heirs of the last male owner, subject to the interest of the widows, thereupon brought a suit against the widows and *B*, for a decision that the deed of gift in favour of *D*, was null and void as regards the reversionary interests of the plaintiffs.

HINDU LAW—(*Contd.*)

Reversioner—Presumptive reversioner—Widow—Alienation by—(*Contd.*)

DECLARATION OF INVALIDITY OF—SUIT FOR—(*Contd.*)

All the defendants contended that the conveyance by coalition with *D's* inheritance gave her an estate transmissible to her heirs.

The learned Judges of the High Court held that the plaintiff's prayer could not be entertained, because it was clearly competent to the widows to convey their own interest; because as regards the last male owner's original property it was not necessary to construe the deed of gift as doing more; and because as regards the after-purchases the widows only conveyed such legal interest as they believed themselves to hold.

Held, differing from High Court, that the plaintiffs were entitled to the declaration sought for (154-5).

Their Lordships are unable to follow the reasoning of the learned Judges of the High Court, even when confined to the last male owner's original estate. The defendants have not met the plaintiffs by saying that by the conveyance *D* got nothing more than the widow's interest; they have contended that by coalition with *D's* inheritance it gave her an estate transmissible to her own heirs. If then the true construction of this transaction be that it passes only the widow's interest, it materially concerns the plaintiffs to have that construction established. In this part of their prayer they ask nothing more favourable to themselves, and as between themselves and the defendants who allege an adverse construction, they are clearly entitled to as much (154-5).

The after-purchases fall under the same observations; and with respect to them two other substantial questions are raised, one of fact and one of law. First, the defendants deny that they were made out of the proceeds of the last male owner's property. Secondly, they contend that such purchases are not to be treated as accretions to the property from the proceeds of which they were made, but belong to the widows who made them (155). (*Sir Arthur Hobhouse.*) ISRI DUT KOER *v.* MUSSUMUT HANSBUTTI KOERAIN. **(1883) 10 I. A. 150 = 10 C. 324 (330-1) = 13 C. L. R. 418 = 4 Sar. 459.**

———*Right to declaration, though finding as to reversionary character of plaintiff involved in declaration.*

Under S. 42 of the Specific Relief Act, where any deed is executed by a Hindu widow, the result of which may be to prejudice the interests of the reversionary heirs, those heirs, though still reversionary and though they may never get any title because events may preclude them from doing so, may sue for a declaration as to the effect of the deed. And they are entitled to such a declaration notwithstanding that it involves a finding that they are reversionary heirs, because that must always be the case where a declaration is made following illustration (*e*) of the section.

The widow and daughter of a deceased Hindu executed a deed of gift purporting to convey the absolute estate in his property to a person who was admittedly a reversionary heir of the deceased. The plaintiffs, claiming to be reversionary heirs of the same degree as the donee, sued for a declaration that the deed was invalid and inoperative beyond the lifetime of the widow and the daughter. It was intended that the deed should operate to confer the whole interest on the donee on the footing that the plaintiffs were of the half-blood only, and could not come in, in competition with the grantee. The real question in the suit was, therefore, simply whether the plaintiffs were reversioners of the half-blood or of the whole-blood. The High Court, concurring with the court below, found that the plaintffs were reversioners of the full-blood and of the same degree as the donee, and

HINDU LAW—(*Contd.*)

Reversioner—Presumptive reversioner—Widow—Alienation by—(*Contd.*)

DECLARATION OF INVALIDITY OF—SUIT FOR—(*Contd.*)

granted a declaration that the deed was invalid and inoperative beyond the lifetime of the widow and the daughter.

Held, that the declaration could not be objected to on the ground that it involved a finding as to the reversionary character of the plaintiffs. (*Lord Parker.*) SAUDAGAR SINGH *v.* PARDIP NARAYAN SINGH.

(1917) 45 I. A. 21=45 C. 510=(1918) M. W. N. 323=23 M. L. T. 31=27 C. L. J. 186=7 L. W. 146=20 Bom. L. R. 509=22 C. W. N. 436=4 P.L.W. 52=16 A. L. J. 61=43 I. C. 484=34 M. L. J. 67.

——Setting aside of deed of sale—Relief appropriate in presumptive reversioner's suit in respect of invalid alienation by widow. *See* HINDU LAW—REVERSIONER—PRESUMPTIVE REVERSIONER — WIDOW — ALIENATION BY—INVALID ALIENATION.

——*Several and separate alienations—Suit in respect of, against alienees—Misjoinder of causes of action—Suit if bad for.*

A reversioner sued during the lifetime of the widow for a declaration of the invalidity as against the reversioners of a number of alienations made by her, making the widow and the various alienees under the several separate alienations defendants.

Held, it was at least very doubtful whether, upon the strictest construction to be placed upon the C. P. C. it could properly be said that there was any misjoinder in the case (113). (*Sir Arthur Wilson.*) RUP NARAIN *v.* GOPAL DEVI. **(1909) 36 I. A. 103=36 C. 780 (798)=10 C. L. J. 58=13 C. W. N. 920=5 M. L. T. 423=11 Bom. L. R. 833=6 A. L. J. 567=3 I. C. 382=93 P. R. 1909=146 P. W. R. 1909=68 P. L. R. 1910=19 M. L. J. 548.**

ELECTION TO HOLD DEED OF ALIENATION GOOD.

——*Act during widow's lifetime amounting to.*

Of course something might be done (by the presumptive reversioner) even before the death of the widow which amounted to an actual election to hold the deed good. (*Lord Dunedin.*) RANGASAMI GOUNDEN *v.* NACHIAPPA GOUNDEN. **(1918) 46 I. A. 72 (86-7)=42 M. 523 (538-9)=26 M. L. T. 5=(1919) M. W. N. 262=17 A. L. J. 536=21 Bom. L. R. 640=23 C. W. N. 777=29 C. L. J. 539=10 L. W. 105=50 I. C. 498=36 M. L. J. 493.**

ELECTION TO TREAT, AS GOOD OR AS NULLITY.

——*See* HINDU LAW—REVERSIONER — WIDOW—ALIENATION BY (1) ELECTION TO TREAT, AS GOOD (2) ELECTION TO TREAT, AS NULLITY.

EXECUTION OF DEED OF, JOINTLY WITH WIDOW.

——*Estoppel as regards right to dispute alienation by reason of—Condition.*

In respect of property held by *M*, a Hindu widow, as the mother and heir of her son, *S*, she executed a sale-deed, in which her daughter, and *H*, her grandson, the son of that daughter, joined. By the sale-deed, *M* conveyed her life-interest in the property, and her daughter and *H* purported to convey their future proprietary interest and right to possession after the death of *M*. After the death of *M*, *H* purchased the properties covered by the sale-deed from the nearest reversionary heirs of *S*. After the death of *H*, his sons sued to recover the properties from the alienees, alleging that the sale was not made for purposes which would make it binding on the reversioners. The

HINDU LAW—(*Contd.*)

Reversioner—Presumptive reversioner—Widow—Alienation by—(*Contd.*)

EXECUTION OF DEED OF, JOINTLY WITH WIDOW—(*Contd.*)

High Court held that as *H* was a party to the sale, his sons were estopped from disputing its validity.

There was absolutely no evidence that the vendees were induced to alter their position in any respect in consequence of *H's* representation contained in the sale-deed. The circumstances of the case abundantly showed that in the whole transaction *H* must have been a mere passive instrument in the hands of his elders, and that his so-called statement could not have materially influenced either the vendor's or the vendee's conduct in the matter.

Held, reversing the High Court, that there was no estoppel under S. 115 of the Evidence Act. (*Mr. Ameer Ali.*) GUR NARAYAN *v.* SHEO LAL SINGH.

(1918) 46 I.A. 1 (13-4)=46 C. 566 (578-9)=17 A.L.J. 66=9 L.W. 335=23 C.W.N. 531=12 Bur. L. T. 122=49 I.C. 1=36 M L.J. 68.

INTENDED ALIENATION—SUIT TO RESTRAIN.

——*Dismissal for default of—Actual alienation subsequent—Suit to set aside—Not barred.*

The dismissal, under S. 102 of C.P.C. of 1882, of a suit brought by the reversionary heirs of a deceased Hindu for a declaratory decree, and for an injunction restraining the deceased's widow from alienating property of the deceased then in her possession, is no bar, under S. 103 of C.P.C. of 1882, to a subsequent suit by them for a declaration that a deed of gift executed by her in respect of a portion of the property in favour of another was invalid and inoperative beyond her lifetime.

The cause of action in the prior suit was a threatened or intended alienation. The cause of action in the present suit is not mere matter of intention, but an alienation by way of gift actually made by the widow. The two grounds of action, even if they had both existed at the time of the prior suit, would have been different. In point of fact, the cause of action for the present suit did not exist at the time of the prior suit; and it is impossible to say that a cause of action, which did not exist at the time when the previous action was dismissed, can be regarded as other than a new cause of action subsequently arising (158). (*Lord Watson.*) MUSSUMMAT CHAND KOER *v.* PARTAB SINGH.

(1888) 15 I.A. 156=16 C. 98 (102)=5 Sar. 243.

INVALID ALIENATION—SUIT IN RESPECT OF—RELIEF APPROPRIATE IN.

——*Declaration of invalidity of alienation against reversionary interest—Setting aside of deed of alienation—Possession of property alienated.*

A deed of gift executed by a Hindu widow conveying property in which she has only a life interest is not wholly void but operative to convey a life estate. The person entitled to succeed to the property after the death of the widow cannot, during her lifetime, ask to have that deed set aside. He or she can only ask for a declaration that the deed does not confer more than the life interest of the widow (53). (*Sir Robert P. Collier*). THAKURAIN RAMANUND KOER *v.* THAKURAIN RAGHUNATH KOER.

(1882) 9 I A. 41=8 C. 769 (783)=11 C.L.R. 149=4 Sar. 316=R. and J's Nos. 67 and 68.

——If a widow, without consent of her husband's heirs, dispose of his property for purposes not sanctioned by law, they are entitled to interfere and prevent any such wrongful alienation by her. If, therefore, she executes a conveyance valid for her own interest but purporting to convey a larger interest to the grantee, it is difficult to see how the reversioner can get any relief except a declaration that the con-

HINDU LAW—(*Contd.*)

Reversioner—Presumptive reversioner—Widow—Alienation by—(*Contd.*)

INVALID ALIENATION—SUIT IN RESPECT OF—RELIEF APPROPRIATE IN—(*Contd*)

veyance is void *pro tanto*. He cannot set the deed aside, because it is partly valid ; nor can it affect the possession, which the widow has a right to keep or to give up to another. A suit by the presumptive reversioner for a declaration that the alienation by the widow does not affect his reversionary interest would seem to be, at least in many cases, the only practical mode of enforcing the heir's right to interfere with a widow's alienation. That such suits are known to the law is clear, for the Limitation Act of 1871 by Art. 124 prescribes the time for bringing a "suit during the life of a Hindu widow by a Hindu entitled to the possession of land on her death, to have an alienation made by the widow declared to be void except for her life." The person "entitled" must mean the presumptive heir who would be entitled if the widow died at that moment. A suit by a presumptive reversioner for a declaration that an alienation by the widow does not affect his reversionary interest is an exception to the rule that a Court shall not make a declaration except in cases in which the plaintiff could if he chose seek some consequential relief (156). (*Sir Arthur Hobhouse.*) ISRI DUTT KOER *v.* MUSSUMUT HANSBUTTI KOERAIN. (1883) **10 I.A. 150** = **10 C. 324 (332-3)** = **13 C.L.R. 418** = **4 Sar. 459.**

———*See* HINDU LAW — REVERSIONER — WIDOW—ALIENATION BY—INVALID ALIENATION.

(1879) **6 I.A. 110 (113).**

POSSESSION OF PROPERTY SUBJECT OF.

———*Suit for—Plaintiff not entitled to possession at date of suit but becoming entitled to possession subsequently—Decree for possession in case of—Propriety.*

A Hindu died leaving a widow and his mother but no male issue. The widow alienated portions of the estate of her husband. Plaintiff, claiming to be the reversionary heir of the deceased and to be entitled to succeed to his estate after the death of his mother, sued to recover possession of the property so alienated. To the suit the mother of the deceased and the alienees under the alienations in question were made parties. The mother died shortly after the institution of the suit. The Courts below found the alienations to be invalid beyond the lifetime of the widow, and, in view of the fact that the mother had died, passed a decree for possession in favour of the plaintiff.

In appeal to the Privy Council it was contended for the alienees that, as, at the time of the suit, the plaintiff was not entitled to possession, his suit, which was one for possession, ought to have been dismissed.

Held, over-ruling the contention, that, as, when the decree gave plaintiff possession, he was then entitled to possession, the objection resolved itself into one of form, not affecting the real merits of the case (193). (*Sir James Colvile.*) KOOER GOOLAB SING *v.* RAO KURUN SING.

(1871) **14 M.I.A. 176** = **10 B.L.R. 1** = **2 Suth. 474** = **2 Sar. 722.**

———*Suit for, against widow and transferees from her—Failure to establish right to immediate possession—Declaration of invalidity of transfers in case of—Propriety.*

Plaintiff claiming to be the nearest reversionary heir of the last male owner of certain property brought a suit for the recovery of the same from a person who claimed to be the last male owner's legal widow and from the transferees of the suit property from her. Plaintiff's case was that the female-defendant was not the last male owner's legal widow at all, and that the transferees-defendants acquired no title to the property conveyed to them. The High Court

HINDU LAW—(*Contd.*)

Reversioner—Presumptive reversioner—Widow—Alienation by—(*Contd.*)

POSSESSION OF PROPERTY SUBJECT OF—(*Contd*).

dismissed the suit on the ground that a nearer reversioner being admittedly alive plaintiff could in no event get possession which he had prayed for. On appeal from the decree of the High Court, plaintiff admitted that the female defendant was the legal widow of the deceased and he could not get possession, but urged that a declaration might be given that the alienation by her to the transferees-defendants was not valid beyond her life.

Held that the plaintiff had only prayed for possession and that the declaration sought for before their Lordships could not be spelt out of the pleadings at all. (*Lord Dunedin.*) JHANDU *v.* TARIF.

(1914) **37 A. 45** = **19 C.W.N. 197** = **17 M.L.T. 10** = **21 C.L.J. 26** = **2 L.W. 113** = **17 Bom L.R. 44** = (1915) **M.W.N. 394** = **27 I.C 892** = **28 M.L.J. 453.**

SUIT TO SET ASIDE.

———*See* HINDU LAW — REVERSIONER—PRESUMPTIVE REVERSIONER — WIDOW—ALIENATION BY—DECLARATION OF INVALIDITY OF.

Reversioner—Presumptive reversioner—Widow—Possession of property from—Suit for recovery of on foot of joint status with deceased.

———Finding that deceased was divided member—Decree proper in case of—Dismissal of suit—Reversionary character of plaintiff—Declaration—Propriety. *See* HINDU LAW — REVERSIONER — PRESUMPTIVE REVERSIONER—STATUS OF—DECLARATION OF—PROPRIETY.

(1880) **6 C.L.R. 528.**

Reversioner—Presumptive reversioner—Widow—Waste by.

CASH REALISED FROM INVESTMENT—RE-INVESTMENT OF PORTION OF—DELAY SHORT IN REGARD TO.

———*Waste if amounts to — Possession of widow if to be disturbed in case of.*

The Bill was filed by a party entitled to property secured during the life of the tenant for life ; and the Bill proceeded on the ground that the property was endangered from the manner in which the tenant for life was dealing with it. The tenant for life was the daughter of the intestate, *H*.

The property at the death of *H* was in Company's paper ; and as long as it could remain in that security, the daughter permitted it so to remain ; but in the month of July, 1853, the Company paid off the loan in which it was invested. The daughter received the amount of the money, which was about Rs. 50,000, and before the Bill in the case was filed (on 15-8-1853), she had invested Rs. 39,000, of the money so received in other Company's paper; and she said, at the time when she put in her answer, in the month of October 1853, that was three months after the date when she received the money, that the remainder of the money was still in her hands uninvested, waiting for an eligible investment.

Held that no case had been made out for interference with the daughter's possession.

Can it be said that the daughter, who, according to the ordinary Hindu custom, keeps in her house a certain portion of the money, having in the course of three months, invested Rs. 39,000, three-fourths, or at least two-thirds, of the money in other securities, was guilty of a devastavit, or showed the slightest intention of committing a devastavit in this respect ? Their Lordships are of opinion that no such case is made out (447). (*Mr. Pemberton Leigh.*) HURRYDOSS DUTT *v.* SREEMUTTY UPPOORNAH DOSSEE

(1856) **6 M.I.A. 433** = **1 Sar. 561.**

HINDU LAW—(*Contd.*)

Reversioner—Presumptive reversioner—Widow—Waste by—(*Contd.*)

DISPOSSESSION OF WIDOW ON GROUND OF.

———*Principles governing — English Equity Courts' Principles as to tenant for life and remaindermen—Inapplicability.*

The principles which are applied in Courts of Equity in England, for securing in the public funds any property to which one person is entitled in possession, and another is entitled in remainder, are not applicable to the case of property in India, where such property is in possession of a Hindu widow (445). (*Mr. Pemberton Leigh.*) HURRYDOSS DUTT *v.* SREEMUTTY UPPOORNA DOSSEE.

(1856) 6 M. I. A. 433 = 1 Sar. 561.

ISSUE AS TO—REFUSAL TO RAISE AND TO TRY.

———*Propriety—Dispositions of property—Case of waste based on—Transferees not impleaded in suit—Object real of suit to obtain decision as to reversionary character of plaintiff.*

The 1st defendant was a daughter of the istimirar Zemindar, and was, as his heir, the Zemindar for the time being of an impartible estate. The second defendant was her son. The plaintiff was the son of a deceased daughter of the istimirar Zemindar, and claimed as the eldest of such grandsons to be entitled, by right of primogeniture, to succeed to the Zemindary as next heir after the death of the 1st defendant. The plaintiff instituted the suit, *inter alia*, to have a declaratory decree passed, establishing his right to succeed to the said Zemindary as next heir after the death of the 1st defendant. The plaint also raised a case of waste against 1st defendant, based upon certain dispositions of property made by her. The property alienated was not, however, specified, nor were the alienees, who were in possession, made parties to the suit.

The trial Judge held that the question of waste ought not to be tried in that suit, and declined to frame an additional issue raising the question. He was of opinion that the real object of the suit was to ascertain whether or not the plaintiff was the proper person to succeed to the Zemindary at the death of the 1st defendant, that, until he established his right as remainderman, he had no title either in possession or expectancy and was not in a position to question the validity of the alienations made by the 1st defendant, and that the question of alienation by the 1st defendant had no place in the suit.

Held that, in view of the frame of the suit, the order of the judge was neither improper nor unreasonable (100-1). (*Sir James W. Colvile.*) KATHAMA NATCHIAR *v.* DORASINGA TEVAR.

(1875) 2 I. A. 169 = 15 B. L. R. 83 = 23 W. R. 314 = 3 Sar. 456 = 3 Suth. 106.

SUIT TO RESTRAIN.

———*Allowed* ex necessitate rei.

The arguments are founded on the right of a reversioner to bring a suit to restrain a widow or other Hindu female in possession from acts of waste, although his interest during her life is future and contingent. Suits of that kind form a very special class, and have been entertained by the Courts *ex necessitate rei* (191). (*Sir James W. Colvile.*) KATHAMA NATCHIAR *v.* DORASINGA TEVAR.

(1875) 2 I. A. 169 = 15 B. L. R. 83 = 23 W. R. 314 = 3 Sar. 456 = 3 Suth. 106.

———Suits by a reversioner to restrain a widow who has succeeded to the estate of her husband from committing acts of waste to the prejudice of those who might succeed to the inheritance on her death form a very special class, and have been entertained by the Courts *ex necessitate rei* (98). (*Sir Lawrence Jenkins.*) SHEOPARSAN SINGH *v.* RAMNANDAN SINGH.

(1916) 43 I. A. 91 = 43 C. 694 (704-5) = 14 A. L. J. 466 = 20 C. W. N. 738 = 18 Bom. L. R. 397 = 23 C. L. J. 621 = (1916) M. W. N. 419 = 20 M. L T 1 = 3 L. W. 544 = 33 I. C. 914 = 31 M. L. J, 77.

HINDU LAW—(*Contd.*)

Reversioner = Presumptive reversioner—Widow—Waste by—(*Contd.*)

SUIT TO RESTRAIN—(*Contd*).

———Decision in—Binding character of, on actual reversioner. *See* HINDU LAW—REVERSIONER—PRESUMPTIVE REVERSIONER—SUIT BY—DECISION IN—BINDING CHARACTER OF, ON ACTUAL REVERSIONER—WASTE BY WIDOW.

(1916) 43 I. A. 207 (209-10) = 39 M. 634 (638).

———*Dispossession of widow in—Conditions.*

It is not sufficient to say that there is one person entitled in possession, and another entitled in remainder, in order to induce the Court to interfere to take the property out of the hands of the individual who is in possession of it; but it is necessary to show that there is danger to the property from the mode in which the party in possession is dealing with it, in which case, and in such case only, the Court will interfere (446). No order can be made for such interference, except in a case in which manifest danger, or risk of danger, is proved to the satisfaction of the Court (447). (*Mr. Pemberton Leigh.*) HURRY DOSS DUTT *v.* SREEMUTTY UPPOORNAH DOSSEE.

(1856) 6 M. I. A. 433 = 1 Sar. 561.

———*Frame of—Question to be raised in.*

A suit by a presumptive reversioner to restrain a widow or other Hindu female in possession from acts of waste must be brought by the reversioner with that object and for that purpose alone, and the question to be discussed is solely between him and the widow. (1) (*Sir James W. Colvile.*) KATHAMA NATCHIAR *v.* DORASINGA TEVAR.

(1875) 2 I. A. 169 (191) = 15 B. L. R. 83 = 23 W. R. 314 = 3 Sar. 456 = 3 Suth. 106.

———(2) (*Sir Lawrence Jenkins.*) SHEOPARSAN SINGH *v.* RAMNANDAN SINGH.

(1916) 43 I. A. 91 (98) = 43 C. 694 (704-5) = 33 I. C. 914 = 14 A. L. J. 466 = 20 C. W. N. 738 = 18 Bom. L. R. 397 = 23 C. L. J. 621 = (1916) M. W. N. 419 = 20 M. L. T. 1 = 3 L. W. 544 = 31 M. L. J. 77.

———*Maintainability—Plaintiff's right to succeed to estate doubtful.*

The 1st defendant was the Zemindar of Shivagunga for the time being, she having taken it as the heir of her father next in succession to the widow. The second defendant was her son and claimed to be entitled to succeed to the Zemindary after the death of his mother. The plaintiff was the son of a predeceased daughter of the last male holder of the estate; he alleged that as the eldest of the daughter's sons of the last male holder he was entitled, by right of primogeniture, to be entitled to succeed to the Zemindary after the lifetime of the 1st defendant. The plaintiff instituted the suit out of which the appeal arose to have his title to succeed to the Zemindary after the lifetime of the 1st defendant declared, and to restrain waste by the 1st defendant.

With regard to the plaintiff's *locus standi* to maintain a suit to restrain waste by the 1st defendant, their Lordships observed as follows: "They are not prepared to say that by shewing that he was a grandson of the istimirar Zemindar, although a doubtful question might thereafter arise between him and the second defendant as to which should succeed to the Zemindary, the plaintiff would not have established

HINDU LAW—(*Contd.*)

Reversioner—Presumptive reversioner—Widow—Waste by—(*Contd.*)

SUIT TO RESTRAIN—(*Contd.*).

a sufficient *locus standi* against the widow, and the right to have her acts of waste restrained for the protection of the estate (192). (*Sir James W. Colvile.*) KATHAMA NATCHIAR *v.* DORASINGA TEVAR. **(1875) 2 I. A. 169 = 15 B. L. R. 83 = 23 W.R. 314 = 3 Sar. 456 = 3 Suth. 106.**

———*Reversionary character of plaintiff in—Declaration of, as against third party—Propriety.*

A presumptive reversioner cannot by bringing a suit to restrain a widow or other Hindu female in possession from acts of waste get, as between him and a third party, an adjudication of title which he could not get without it (191).

The first defendant was a daughter of the istimirar Zemindar and was, as his heir, the Zemindar for the time being of an impartible estate. The second defendant was her son. The plaintiff was the son of a deceased daughter of the istimirar Zemindar, and claimed, as the eldest of such grandsons to be entitled by right of primogeniture, to succeed to the Zemindary as next heir after the death of the first defendant. The plaintiff instituted the suit, *inter alia*, to have a declaratory decree passed, establishing his right to succeed to the said Zemindary as next heir after the death of the first defendant. The plaint also raised a case of waste against the first defendant.

The trial Judge held that the question of waste ought not to be tried in the suit, and rejected an application made by the plaintiff for framing an additional issue on that point. His order was acquiesced in by the plaintiff, and was allowed by him to become final. The Courts below also held that the plaintiff had established no title to relief, and there was no appeal against that finding. The Courts below nevertheless made a decree declaring that as between the plaintiff and the second defendant the plaintiff was the next in succession to the suit Zemindary.

Held, reversing the Courts below, that, even if the plaintiff had proved acts of waste against the widow, which he had not done, that would not have given him a right as against the second defendant to have the question which arose between them determined by a declarator (192)

If the plaintiff had brought his suit to restrain the widow from acts of waste, he might, no doubt, have had to prove, not merely the acts of waste alleged, but a title sufficient to give him a *locus standi* in Court. Assuming that he would establish a sufficient *locus standi* against the widow, and the right to have her acts of waste restrained for the protection of the estate, that would not necessarily give him a right to bring the second defendant into Court in order to obtain a final adjudication of title against him (191-2). (*Sir James W. Colvile.*) KATHAMA NATCHIAR *v.* DORASINGA TEVAR. **(1875) 2 I. A. 169 = 15 B. L. R. 83 = 23 W. R. 314 = 3 Sar. 456 = 3 Suth. 106.**

———A suit by a reversioner to restrain a widow who has succeeded to the estate of her husband from committing acts of waste to the prejudice of those who might succeed to the inheritance on her death must be brought by the reversioner with that object, and for that purpose alone and the question to be discussed is solely between him and the widow. He cannot, by bringing such a suit, get as between him and a third party, an adjudication of title which he could not get without it. (*Sir Lawrence Jenkins.*) SHEOPARSAN SINGH *v.* RAMNANDAN SINGH.

(1916) 43 I. A. 91 (98) = 43 C. 694 (704 5) = 33 I. C. 914 = 14 A. L. J. 466 = 20 C. W. N. 738 = 18 Bom. L. R. 397 = 23 C. L. J. 621 = (1916) M.W.N, 419 = 20 M. L. T. 1 = 3 L. W. 544 = 31 M. L. J. 77.

HINDU LAW—(*Contd.*)

Reversioner—Presumptive reversioner—Widow—Waste by—(*Contd.*)

SUIT TO RESTRAIN—(*Contd.*).

———*Reversionary character of plaintiff in—Declaration of, under prayer for "further relief"—Propriety—Waste—Substantive case of—Failure to make out.*

R, a Hindu, died leaving no male issue but a widow and a mother (defendants 1 and 2) The former was entitled to a Hindu "widow's estate"; the latter was the person entitled to succeed should she survive the former. Only on the expiry of those lives would the estate descend to the next reversionary heir of the deceased. The respondent, as next reversioner, instituted a suit alleging acts of waste and misconduct on the part of the widow in relation to her deceased husband's estate. By his plaint, the respondent prayed for the appointment of a receiver and for an injunction restraining the widow from doing any act injurious to his reversionary interest. The third prayer of the plaint was for "granting such further relief as to the Court may seem fit and proper."

The Court below found against the charges of waste and mismanagement by the widow, and refused either to appoint a receiver or to grant an injunction. Nevertheless, the Sub Judge made an order "that plaintiff is declared to be the next reversionary heir of the deceased *R* after the lifetime of defendants Nos. 1 and 2" (his widow and mother). This was done under the third prayer for "further relief," and the declaration was made because of a dispute as to whether the plaintiff's relationship to the deceased had been made out. The form of the declaration was that the plaintiff was "the next reversionary heir." The High Court affirmed the declaration on appeal.

Held, that such a declaration was unavailing as well as premature, and that the plaintiff was not entitled to it (210-1).

Had waste of, or danger to, the estate been established, the title of the plaintiff to bring those matters before the Court in his representative capacity as a possible reversionary heir would have been allowed and a decree following upon the finding of fact of such waste or danger would have followed. But the whole of that part of the case has failed. The case must accordingly be treated as if the suit had been directed simpliciter to a declaration of the plaintiff's individual right. He was not entitled to such a declaration which would be unavailing as well as premature. It is not legitimate to give a plaintiff, under cover of a request for "further relief," after all the substantial heads of a claim have failed, greater right to obtain a declaration than he would have had if such a declaration had been asked directly, and the claim had been unaccompanied by other claims which proved unfounded (211). (*Lord Shaw.*) JANAKI AMMAL *v.* NARAYANASWAMI AIYER.

(1916) 43 I. A. 207 = 39 M. 634 (638-9) = 20 C. W. N. 1323 = 24 C.L. J. 309 = 14 A. L. J. 927 = 20 M. L. T. 168 = 18 Bom. L. R. 856 = (1916) 2 M W. N. 188 = 4 L. W. 530 = 37 I. C. 161 = 31 M. L. J. 225.

Reversioner—Presumptive Reversioner—Widow—Will by.

———*Declaration of invalidity as against reversionary interest of—Grant of—Rule as to—Discretion of Court.*

I died possessed of a taluqa governed by the Oudh Estate Act of 1869. Under S. 22 (7) of that Act, the first appellant, as the first married of *I's* widows, succeeded to the taluqa. She executed a registered will by which she purported to declare the second appellant, who was her sister's son, as her heir and successor to the estate. The respon-

HINDU LAW—(*Contd.*)

Reversioner—Presumptive reversioner—Widow—Will by—(*Contd.*)

dent, alleging himself to be the next reversionary heir to the estate filed a suit contending that the will was invalid for the purpose of transferring the estate, and asking for a declaratory decree to that effect. The appellants by their written statement pleaded, *inter alia*, that *I* did not die intestate and that the 1st appellant was absolute owner of the estate under an oral will of her husband. The Courts below found the necessary issues in respondent's favour, and granted a declaratory decree as prayed.

On appeal their Lordships observed that if they had been sitting as a Court of first instance they would have felt no little hesitation before making the decree that had been made.

Their Lordships would guard against being thought to lay down that the execution of a will by a limited owner, such as a Hindu widow, as a general rule, affords a sufficient reason for granting a declaratory decree. (*Sir Arthur Wilson.*) THAKURAIN JAIPAL KUNWAR *v.* BHAIYA INDAR BAHADUR SINGH. **(1904) 31 I. A. 67 = 26 A. 238 (242 3) = 8 C.W. N. 465 = 6 Bom. L. R. 495 = 7 O. C. 239 = 8 Sar. 625 = 14 M. L. J. 149.**

Reversioner—Presumptive reversioner—Will of last male owner in favour of defendants.

———*Forgery of—Suit for declaration of—Counter-suit by defendants questioning reversionary character of plaintiff and seeking to establish will—Onus of proof in case of—Order of trial of suits.*

After registration of the will of a deceased Hindu had been refused by the Registrar, persons claiming to be the nearest agnates of the deceased and as such to be entitled in reversion to succeed to the estate of the deceased after the termination of his widow's interest, instituted a suit for a declaration that they held the position of nearest agnates, and that the so called will was not executed in fact, and was, if executed, executed by the testator while in a condition of unsound mind. A counter-suit was brought by the persons setting up the will to have it declared that the will was genuine, and also to have the Registrar enjoined to register the will.

Held that, in such a case, what might be called the natural order would be first to take up the question of whether the parties who were attacking the will had any title to raise the question, because, unless they had such title, that is to say, unless they proved their relationship, they had no right to be heard, whether there was a will or not. (*Lord Dunedin.*) PALCHUR SANKARAREDDI *v.* PALCHUR MAHALAKSHMAMA. **(1922) 17 L. W. 1 (2) = A. I. R. 1922 P. C. 315 = 31 M. L. T. 307 (P.C.) = 27 C. W. N. 414 = 70 I. C 949.**

Reversioner—Presumptive reversioners—Suit by some only of.

———Dismissal of—Effect of, against other presumptive reversioners not parties. *See* HINDU LAW—REVERSIONER—PRESUMPTIVE REVERSIONER — SUIT BY—DECISION AGAINST PLAINTIFF IN.

(1888) 15 I. A. 156 (157) = 16 C. 98 (101).

Reversioner—Relationship of.

———*Evidence of—Widow of last male owner—Admission of relationship by—Effect—Dispute between reversioner and alienee from widow.*

The suit was by persons claiming to be the next-of-kin and heirs of the last male owner of the suit properties for the recovery of the same from the defendants and respondents who claimed title to the properties under a title claimed from *P*, the last male owner's widow, who had been recognised as proprietor of the properties at the settlement of 1847. The defendants denied that the plaintiffs were the heirs of the last male owner.

At the settlement of 1847 (it being uncertain whether *P* had an absolute estate or only a life interest in the property, though she claimed to be absolute owner) she was asked by the Settlement Officer who would be her heirs on her death. Her reply was :—"If the claimants' (plaintiffs' ancestors) " undertake to pay the debt which is due by me on account of revenue, or which may hereafter be due by me, and if they are obedient to me and I am thoroughly satisfied with them, they will be owners of my estate after my death ; but so long as I am alive I have every sort of power in respect of my estate"; and the estate was settled with her, the claimants accepting her conditions. In the record-of-rights showing the shares in the estate as prepared under Regulation IX of 1823 at the time of settlement *P* stated :—" As to the appointment of lambardar the claimants who are own brothers will become the owners of this estate in equal shares, provided they pay the present and future debts and remain obedient to me and one of them whom the Collector will think fit will be appointed lambardar."

The High Court declined to regard the above statement of *P* as an admission of relationship or recognition of the plaintiff's ancestors as her successors.

Held, that the High Court erred in so doing.

These proceedings at least show that the claim of kinship now put forward is not a recent innovation, but was made nearly fifty years before the commencement of the present suit, and was not then seriously controverted, if it was not in terms admitted. The whole proceeding is unintelligible on any other footing. *P* could not designate her successors or bind the reversion after her death. On the other hand, unless the brothers were assumed to be the then heirs of the last male owner, they had no interest in the matter. Whatever was said or done is not of course conclusive upon the respondents or perhaps standing alone, very strong evidence in favour of the appellants ; but it was a recognition on her part both that her husband's heirs (which is the character in which the three brothers claimed) were entitled to succeed her and also that she at any rate was not prepared to contest their claim to be such heirs. (*Lord Davey*). BAHADUR SINGH *v.* MOHAR SINGH. **(1901) 29 I. A. 1 = 24 A. 94 (104-5) = 6 C. W. N. 169 = Bom. L.R. 233 = 8 Sar. 152 = 12 M.L.J. 56.**

———*Letters of Administration—Contested proceedings for—Decision as to relationship in*—Res judicata *in subsequent civil suit if.*

The decision in contentious proceedings for the grant of letters of administration to the estate of a deceased person under Act V of 1881 as to the relationship to the deceased of one of the parties to the proceedings is, under S, 11, C.P.C., a bar to a subsequent civil suit between the same parties raising the same question. (*Lord Darling.*) KALIPADA DE. *v.* DWIJAPADA DAS. **(1929) 31 L. W. 182 = A. I. R. 1930 P. C. 22 = 58 M. L. J. 171.**

———Onus of proof of, in suit to recover last male owner's property on death of widow. *See* HINDU LAW—REVERSIONER— WIDOW— DEATH OF—POSSESSION OF LAST MALE OWNER'S PROPERTY ON—SUIT FOR—TITLE AS NEAREST REVERSIONER.

———*Probate proceedings—Decision as to relationship in*—Res judicata *in subsequent civil suit if.*

On the death of a Hindu, leaving two widows but no male issue, *R* applied for probate of a writing alleged by him to be the last will of the deceased, *R* being described in that writing as the deceased's kartaputra. Caveats were lodged by, amongst others, the plaintiffs, who claimed to be

HINDU LAW—(*Contd.*)

Reversioner—Relationship of—(*Contd.*)

entitled to the estate of the deceased as next reversioners in the event of an intestacy on the death of the deceased's widows. The proceedings thereupon took the form of a suit in which *R* was the plaintiff and the plaintiffs, amongst others, were the defendants. The District Judge held that the plaintiff had failed to prove their interest, and that the will was proved, and granted probate of the will to *R*.

In a suit subsequently instituted by the plaintiffs for a declaration that they were the next reversioners to the estate of the deceased and were entitled to succeed thereto in case of an intestacy after the death of the widows of the deceased, and that as such they were entitled to apply to the Probate Court to get the probate granted to *R* revoked, *Quære* that the issue as to whether the plaintiffs were next reversioners to the estate of the deceased was *res judicata* by reason ot the decision of the Probate Court (98-9). (*Sir Lawrence Jenkins.*) SHEOPARSAN SINGH *v.* RAMNANDAN SINGH. **(1916) 43 I. A. 91 = 43 C. 694 (704) = 20 C. W. N. 738 = 23 C.L.J. 621 = 14 A.L.J. 466 = 18 Bom. L. R. 39 = 20 M.L.T. 1 = (1916) 1 M. W. N. 419 = 3 L. W. 544 = 33 I. C. 914 = 31 M. L. J. 77.**

———*Proof of—Quantum.*

Suit by alleged reversioner to recover properties of last male owner from defendants in possession under leases granted by last male owner's widow. The High Court held, reversing the Court below, that the plaintiff had failed to prove that he was the next reversioner to the last male owner. Its judgment affirmed by Privy Council. (*Mr. Ameer Ali.*) PRATHIVADI BHAYANKARAM *v.* RANGAYYA APPA RAO. **(1912) 18 I.C. 13 = (1913) M.W.N. 191 = 17 C.L.J. 295 = 15 Bom. L.R. 463 = 13 M.L.T. 198.**

———The question was whether the appellent had established that he was an agnatic relation of the deceased *S*, the succession to whose property was in question.

It appeared that, in a proceeding recorded by the Settlement Officer and Deputy Collecter even during the lifetime of *S* and before any question arose as to the succession to the suit property, the appellant's father asserted the same relationship as that set up by the appellant, giving a pedigree which showed the relationship, and that *S* did not deny the relationship alleged. Again, in a proceeding relating to mutation of names by inheritance after the death *S*, the appellant's father asserted the relationship, and in, that proceding, the widow did not deny the relationship alleged, but managed to get mutation on the ground that her husband was separate in estate from the appellant's branch of the family. On other occasions also, the relationship set up by the appellant had been consistently asserted.

Held, on the evidence, reversing the High Court, that appellant had established that he was an agnatic relation of the deceased *S*. (*Sir Richard Couch.*) BEJAI BAHADUR SINGH *v.* BHUPINDAR BAHADUR SINGH. **(1895) 22 I.A. 139 = 17 A. 456 = 6 Sar. 593.**

———*Held*, on the evidence, reversing the High Court, that the plaintiffs had failed to establish that they were the reversionary heirs of *R*'s husband. (*Mr. Ameer Ali.*) BRIJ LAL *v.* INDA KUNWAR. **(1914) 36 A. 187 (193-4) = 18 C.W.N. 649 = 12 A.L.J. 495 = 19 C.L.J. 469 = (1914) M.W.N. 405 = 15 M.L.T. 395 = 1 L.W. 794 = 16 Bom. L R. 352 = 23 I.C. 715 = 26 M.L.J. 442.**

Reversioner—Remote reversioner—Widow—Adoption by—Suit to set aside.

———*Allowing of—Discretion as to—Nearer reversioners—Impleading of—Propriety.*

In a suit to set aside an adoption made by a Hindu widow brought by a remote reversioner alleging the circumstances under which the more distant reversionary heir claims to sue, the Court must exercise a judicial discretion in determining whether the remote reversioner is entitled to sue, and would probably require the nearer reversioner to be made a party to the suit (23). (*Sir Robert P. Collier.*) RANI ANUND KOER *v.* COURT OF WARDS. **(1880) 8 I.A. 14 = 6 C. 764 (773) = 8 C.L.R. 381 = 4 Sar. 195 = R. & J's No. 63 (Oudh).**

———*Decree of Indian Courts allowing—Reversal by P. C. of, on ground of existence of nearer reversioners who had not precluded themselves from suing.*

Where, in a suit by a very remote reversioner, the courts below granted a decree setting aside an adoption made to the last male owner by his widow, notwithstanding the existence of nearer reversioners who did not improperly refuse to institute proceedings to set aside the adoption, who did not collude with the widow or concur in the adoption, and who had not precluded themselves, by their own act or conduct, from suing to set aside the adoption, their Lordships reversed the decrees below and dismissed the suit, on the ground that the plaintiff was not entitled to maintain the suit (23-4) (*Sir Robert P. Collier.*) RANI ANUND KOER *v.* COURT OF WARDS. **(1880) 8 I. A. 14 = 6 C. 764 (773-4) = 8 C. L. R. 381 = 4 Sar. 195 = R. & J's. No. 63 (Oudh).**

———*Dismissal of, on ground of contingent interest of plaintiff not being sufficient to entitle her to maintain suit.*

The suit was brought by the appellant, a Hindu widow, against her daughter-in-law, who was sued in her own right, and also as the guardian of *M*, whom she had adopted under an authority alleged to have been executed by her deceased husband. The object of the suit was to set aside that adoption, and to have it declared invalid. If the adoption was invalid, the appellant, if she survived her daughter-in-law, would become entitled on the death of the latter to her son's property.

Held that that contingent interest, which was the only *locus standi* which she had in the suit, was enough to entitle her to maintain the suit (76). (*Sir James W. Colvile.*) JUMOONA DASSYA CHOWDHRANI *v.* BAMASOONDERAI DASSYA CHOWDHRANI. **(1876) 3 I.A. 72 = 1 C. 289 (293) = 25 W.R. 235 = 3 Sar. 602 = 3 Suth. 222.**

———*Maintainability of—Conditions.*

Although a suit to set aside an adoption made by a Hindu widow may be brought by a contingent reversionary heir, yet, as a general rule, it must be brought by the presumptive reversionary heir, that is to say, by the person who would succeed if the widow were to die at that moment. Such a suit may be brought by a more distant reversioner if those nearer in succession are in collusion with the widow or have precluded themselves from interfering. It cannot be the law that any one who may have a possibility of succeeding on the death of the widow can maintain such a suit, for, if so, the right to sue would belong to every one in the line of succession, however remote. The right to sue must be limited. If the nearest reversionary heir refuses, without sufficient cause, to institute proceedings, or if he has precluded himself by his own act or conduct, from suing, or has colluded with the widow, or concurred in the act alleged to be wrongful, the next presumable reversioner would be entitled to sue (22-3). (*Sir Robert P. Collier.*) RANI ANUND KOER *v.* COURT OF WARDS. **(1880) 8 I. A. 14 = 6 C. 764 (772) = 8 C. L. R. 381 = 4 Sar. 195 = R. & J's. No. 63 (Oudh).**

———*Nearer reversioners—Conduct of, procluding them from suing—Plea of—Privy Council appeal—Maintaina-*

HINDU LAW—(*Contd.*)

Reversioner—Remote reversioner—Widow—Adoption by—Suit to set aside—(*Contd.*)

bility for first time in—Suit brought ignoring them altogether.

A suit to set aside an adoption made by a Hindu widow was brought on behalf of a minor, who was in fact a very remote reversioner, without alleging that there were no others nearer in the line of succession, or that those who were nearer had precluded themselves from suing. The courts below decreed the suit.

On objection taken in the Privy Council to the right of the plaintiff under the circumstances to maintain the suit the plaintiff for the first time contended in argument that the nearer reversioners, whose existence was admitted, had precluded themselves from suing to set aside the adoption.

Held, that the contention could not be given effect to, as it had not been raised in the courts below or even in the respondent's case or reasons in the Privy Council (23). (*Sir Robert P. Collier.*) RANI ANUND KOER *v.* COURT OF WARDS. (1880) 8 I.A. 14 = 6 C. 764 (773) = 8 C. L. R. 381 = 4 Sar. 195 = R. & J's. No. 63 (Oudh).

———Nearer reversioners—Impleading of, in suit — Propriety of. *See* HINDU LAW—REVERSIONER—REMOTE REVERSIONER—WIDOW—ADOPTION BY—SUIT TO SET ASIDE—ALLOWING OF. (1880) 8 I. A. 14 (23) = 6 C. 764 (773).

——— Nearer reversioner — Suit by — Death of plaintiff pending—Remote reversioner's right to be brought on as legal representative and to continue suit. *See* HINDU LAW—REVERSIONER — PRESUMPTIVE REVERSIONER — WIDOW-ADOPTION BY—SUIT TO SET ASIDE—NATURE OF. (1915) 42 I. A. 125 (128-30) = 38 M. 406 (411-2).

———Nearer reversioner—Suit by—Remote reversioner's right to be impleaded in, or to have conduct of, on proof of laches on part of nearer reversioner or of collusion between him and the widow. *See* HINDU LAW—REVERSIONER—PRESUMPTIVE REVERSIONER —WIDOW—ADOPTION BY—SUIT TO SET ASIDE—REMOTE REVERSIONER.
(1915) 42 I. A. 125 (132) = 38 M. 406 (413-4)

Reversioner—Remote reversioner—Widow—Alienation by.

———*Admission and recognition of—Effect of, on its validity.*

A Hindu widow mortgaged her husband's estate by a deed executed in 1873. At that time, she had a daughter and a grand son by that daughter. The mortgage not being for necessity was invalid against the husband's estate. In a suit to enforce the same against the estate in the hands of the grandson, it was contended that the mortgage, even if originally invalid, was validated by another deed executed in 1877 by the widow, the daughter, and the grandson by which they admitted and recognised the deed of 1873. *Held* that the grandson had never been in a position to confirm the mortgage which was therefore not binding upon the estate in his hands (199).

The grandson has never had any present interest in the estate. On the date of the deed of 1877 relied upon for the validation of the mortgage, he was not even an heir-apparent; his mother was then heir-apparent. It is not contended that he ever took upon himself any personal responsibility for the loan, and it is clear that he has never been in a position to confirm the mortgage (199). (*Lord Hobhouse.*) LALA AMARANATH SAH *v.* RANI ACHAN KUAR.
(1892) 19 I. A. 196 = 14 A. 420 (425-6) = 6 Sar. 197.

———*Consent to—Effect of, on validity of alienation.*

The nearest reversioner of a deceased Hindu sued to set aside an alienation of his estate made by his widow on the ground that it had not been made for justifiable purposes.

HINDU LAW—(*Contd.*)

Reversioner—Remote reversioner—Widow—Alienation by—(*Contd.*)

One *J*, a distant relation of the last male owner, had attested the deed of alienation. The learned judges of the High Court upheld the alienation on the strength of the mere fact that *J* was an attesting witness, and must, therefore, be taken to have been a concurring party to the transaction.

It was not proved, though on the other hand it certainly was not disproved, that at the date of the execution of the deed of alienation, *J* was the next heir in reversion. He was unquestionably a very distant relation, and although he took a considerable part in the management of the family of the widow, he was not proved to have been the next heir. It further appeared that at the said time *J* knew that his interest, even if it existed, as next reversioner was, in all probability, likely to be defeated by an adoption made by the widow.

Held, under the circumstances, that *J*'s concurrence, even if proved, would not amount to such a concurrence by the husband's kindred as would be sufficient to set up the deed of alienation or to defeat the plaintiff's claim (229-30). (*Sir James W. Colvile.*) RAJ LUKHEE DEBEA *v.* GOKOOL CHUNDER CHOWDHRY.
(1869) 13 M. I. A. 209 = 12 W. R. (P. C.) 47 = 3 B. L. R. 57 = 2 Suth. 275 = 2 Sar. 518.

———*See also* under HINDU LAW—REVERSIONER—WIDOW—ALIENATION BY—CONSENT TO.

———Nearest reversioner—Suit by, to set aside alienation—Conduct of his precluding—Suit by him prior to alienation contesting widow's status as lawful wife of deceased if amounts to. *See* HINDU LAW — REVERSIONER—PRESUMPTIVE REVERSIONER — WIDOW—ALIENATION BY—DECLARATION OF INVALIDITY OF—SUIT FOR—RIGHT OF. (1914) 37 A. 45.

———Nearer reversioner—Suit by, to set aside alienation—Death of plaintiff pending—Remote reversioner's right to be brought on as legal representative and to continue suit. *See* HINDU LAW— REVESIONER—PRESUMPTIVE REVERSIONER—WIDOW—ADOPTION BY—SUIT TO SET ASIDE—NATURE OF. (1915) 42 I. A. 125 (128-30) = 38 M. 406 (411-2).

———Nearer reversioner—Suit by, to set aside alienation—Remote reversioner's right to be impleaded in, or to have conduct of suit on proof of laches on part of presumptive reversioner or of collusion between him and widow. *See* HINDU LAW—REVERSIONER—PRESUMPTIVE REVERSIONER—WIDOW—ADOPTION BY—SUIT TO SET ASIDE—REMOTE REVERSIONER. (1915) 42 I. A. 125 (132) = 38 M. 406 (413-4).

———*Possession of property subject of, alleging death of nearer reversioner—Allegation found to be false—Decree proper in case of—Dismissal of suit—Declaration of plaintiffs' title and of invalidity of alienation—Propriety of.*

The alleged daughter's sons of a deceased Hindu sued for possession of property appertaining to his estate, alleging the death of their mother and the impropriety of the mortgage and sale of the suit property by their grandmother and mother. The courts below found that the plaintiffs' mother was alive and dismissed the suit as regards the prayer for possession. But they nevertheless by their decrees made a declaration that the plaintiffs were the sons of their alleged mother and that the suit property was not sold for valid purposes.

Held that, on their finding that the plaintiffs' alleged mother was alive, the courts below ought to have wholly dismissed the suit.

The questions as to the paternity of the plaintiffs, and also as to the validity of the alienations were merely argu-

HINDU LAW—(*Contd.*)

Reversioner—Remote reversioner—Widow—Alienation by—(*Contd.*)

mentative steps towards the only decree, *viz.*, possession; they were not presented by the plaintiffs as separate and substantive questions affecting rights other than that of possession of their (alleged) deceased mother's estate. (*Lord Robertson.*) WALIHAN *v.* JOGHESHWAR NARAYAN.

(1907) 35 I. A. 38 = 35 C. 189 = 2 M. L. T. 509 = 7 C. L. J. 44 = 12 C. W. N. 227 = 10 Bom. L. R. 9 = 14 Bur. L. R. 101 = 17 M. L. J. 626.

———*Suit for declaration of invalidity of—Maintainability—Conditions.*

A reversioner in India may have a declaration from a court to the effect that a conveyance by the person presently in possession is only good for the life of that person and is not good as an absolute conveyance of the property against the reversioners. The right to bring such a suit is, however, limited, and, as a general rule, belongs to the presumptive reversionary heir. A reversioner in a more remote degree will be allowed to maintain such a suit only on proof that the nearest reversionary heir has precluded himself in some way by his own conduct or act from suing—as by collusive action with the widow. (*Lord Dunedin.*) JHANDU *v.* TARIF.

(1914) 37 A. 45 = 19 C. W. N. 197 = 17 M. L. T. 10 = 21 C. L. J. 26 = 2 L. W. 113 = 17 Bom. L. R. 44 = (1915) M. W. N. 394 = 27 I. C. 892 = 28 M. L. J. 453.

———It is established that a suit for a declaration that a gift by a Hindu widow is void as against the reversionary heirs of her husband is *prima facie* competent only to the nearest prospective reversioner, and that if a more distant relation claims to sue, he can only maintain his suit by showing that the nearer reversioner has colluded with the widow, or for some similar reason (102-3). (*Lord Phillimore.*) FATEH SINGH *v.* JAGANNATH BAKSH SINGH.

(1924) 52 I. A. 100 = 47 A. 158 = 6 L. R. P. C. 50 = 12 O. L J. 117 = 2 O. W. N. 25 = 27 O. C. 334 = 27 Bom. L. R. 725 = 29 C. W. N. 749 = 23 A. L J. 739 = 22 L. W. 58 = A. I. R. 1925 P. C. 55 = 91 I. C. 280 = 48 M. L. J. 64.

———*Suit for declaration of invalidity of—Maintainability—Nearer reversioner concurring in alienation.*

The suit was by a reversioner to set aside alienations of the last male owner's property made by his deceased widow. The mother of the last male owner was alive at the date of, and was a party to, the suit. The defendants objected that the plaintiff, who was only a remote reversioner, was not competent to question the alienations and to sue to set them aside.

Held, overruling the contention, that, as the mother, the nearest reversioner at the time when the alienations took place, was charged as concurring in them, the next presumable reversioner, the plaintiff, was entitled to question them, and the pendency of her life was not a fatal objection to the institution of the suit (193). (*Sir James W. Colvile.*) KOOER GOOLAB SINGH *v.* RAO KURUN SINGH.

(1871) 14 M. I. A. 176 = 10 B. L. R. 1 = 2 Suth. 474 = 2 Sar. 722.

Reversioner—Reversionary character of.

———*See* HINDU LAW—REVERSIONER—RELATIONSHIP OF.

Reversioner—Sale by, of interest in last owner's property—Validity of—Sale after death of widow.

———Major portion of consideration made payable on vendee's recovering possession of property purchased. *See* CHAMPERTY AND MAINTENANCE—REVERSIONER.

(1908) 35 I. A. 48 (56) = 35 C. 420 (426-7).

HINDU LAW—(*Contd.*)

Reversioner—Widow—Adverse possession—Decree against widow founded upon.

———Effect against reversioners of. *See* HINDU LAW—WIDOW—DECREE AGAINST—EFFECT AGAINST REVERSIONERS OF—LIMITATION—DECREE FOUNDED ON.

Reversioner—Widow—Adverse possession against—Effect of.

———*Law prior to Act* XIV *of* 1859.

It has been held by a Full Bench of the High Court of Calcutta, that in the case of a succession by a reversionary heir after the death of a widow, who takes by inheritance from her husband, and is dispossessed, the period of limitation as against the reversionary heir, in the absence of fraud, is not to be reckoned from the time when he succeeds to the estate but from the time at which it would have been reckoned against the widow if she had lived and brought the suit (9 W. R. 505). The principle of that decision is correct (121).

N. B.—This was under the law prior to Act XIV of 1859. (*Sir Barnes Peacock.*) AUMIRTOLALL BOSE *v.* RAJONEEKANT MITTER. **(1875) 2 I. A. 113 = 15 B. L. R. 10 = 23 W. R. 214 = 3 Sar. 430—3 Suth. 94.**

———*Law prior to* 1858.

Prior to 1858, adverse possession against a widow ranked as adverse possession against the reversioners (803). (*Lord Moulton.*) BIJOY GOPAL MUKERJI *v.* GIRINDRA NATH MUKERJI. **(1914) 41 C. 793 = 18 C. W. N. 673 = 19 C. L. J. 620 = 16 M. L. T. 68 = (1914) M W.N. 430 = 1 L. W. 533 = 16 Bom. L. R. 425 = 12 A. L. J. 711 = 23 I. C. 162 = 27 M. L. J. 123.**

———*Law under later Limitation Acts.*

A testator who died in 1869, leaving two widows, devised the whole residue of his estate to trustee for dharam. One widow died in 1871, and the other died in 1888. After the death of the second widow the heir of the testator sued for a declaration that the devise to dharam was void and for administration. The High Court held that the gift in dharam was invalid and there was an intestacy. The High Court further held that the possession of the trustees for dharam since the testator's death had been adverse as against the widows and the heir but that the plaintiff's claim to the immoveable property was not barred. It was also held that the plaintiff's claim to the moveable property was barred by limitation. On appeal to His Majesty in Council their Lordships held that Art. 141 of the Limitation Act of 1877 applied to the immovable property, and that under it time ran from the death of the second widow, and that, therefore, the plaintiff in the suit was not barred by limitation. It was also held that Art. 120 of the Limitation Act, 1877 applied to the moveable property, and that the right of the plaintiff in the suit to sue under that Article only accrued on the death of the second widow and was, therefore, also not barred. This case is, therefore, conclusive authority for the view that where there has been no decree against the widow or other act in the law in the widow's lifetime depriving the reversionary heir of the right to possession on the widow's death, the heir is entitled, after the widow's death, to rely upon Art. 141 for the purpose of the determination of the question whether the title is barred by lapse of time. (*Vide* Mt. Jaggo Bai *v.* Utsav Lal, Col. 2007, 30 L. W. 60, P. C.)

RUNCHORDAS VANDRAVANDAS *v.* PARVATIBHAI.

26 I. A. 71 = 23 B. 725 = 3 C. W. N. 621 = 1 Bom L R. 607 = 7 Sar. 543.

———*Quaere* whether under Hindu law adverse possession against a widow in possession of an estate for a Hindu widow's interest bars the reversioner. (*Sir John Edge.*) VAITHIALINGA *v.* SRIRANGATH ANNI.

(1925) 52 I.A. 322 (330) = 48 M. 883 = 6 L.R. P.C. 169 =

HINDU LAW—(*Contd.*)

Reversioner—Widow—Adverse possession against—Effect of—(*Contd.*)

42 C. L. J. 563=(1926) M. W. N. 11= 28 Bom. L. R. 173=30 C. W. N. 313= 92 I. C. 85=A.I.R. (1925) P. C. 249=49 M. L. J. 769.

———Where there has been no decree against the widow or other act in the law in the widow's lifetime depriving the reversionary heir of the right to possession on the widow's death, the heir is entitled, after the widow's death, to rely upon Art. 141 of the Limitation Act of 1908 for the purpose of the determination of the question whether the title is barred by lapse of time. To hold otherwise would in effect compel the court in determining a question within the scope of the Article to ignore the express words of the Article. (*Lord Tomlin.*) MT. JAGGO BAI *v.* UTSAVA LAL. (1929) 56 I.A. 267=51 A. 439=27 A L.J 716= 33 C.W.N. 809=10 Pat. L.T. 527=31 Bom. L.R. 891= 6 O.W N. 589=50 C.L.J. 52=117 I.C. 498= (1929) M.W.N. 762=A.I.R. 1929 P.C. 166= 30 L. W. 60=57 M.L.J. 160.

Reversioner—Widow—Adverse possession against reversioners by.

———*See* HINDU LAW—WIDOW—ADVERSE POSSESSION BY.

Reversioner—Widow—Alienation by—Attestation of deed of—Effect of.

———Their Lordships cannot affirm the proposition that the mere attestation by a relative of a deed of alienation by a Hindu widow necessarily imports concurrence. It might, no doubt, be shown by other evidence that when he became an attesting witness he fully understood what the transaction was, and that he was a concurring party to it, but from the mere subscription of his name that inference does not necessarily arise (229). (*Sir James W. Colvile.*) RAJ LUKHEE DABEA *v.* GOKOOL CHUNDER CHOWDHRY. (1869) 13 M. I. A. 209=12 W. R. P. C. 47= 3 B. L. R. 57=2 Suth. 275=2 Sar. 518.

———By a deed executed by a Hindu widow, she proposed to divide her life-interest with her mother-in-law. The deed purported, secondly, to provide for the descent of the inheritance after her death in a line different from that prescribed by law.

Held, that the presumptive reversioner's attestation of such a deed by the widow created no estoppel as against him.

His assent was not necessary to the division of her life-interest by the widow. His assent was useless as regards the second object of the suit. (*Sir Arthur Wilson.*) RUP NARAIN *v.* GOPAL DEVI. (1909) 36 I. A. 103 (112-3)= 36 C. 780 (796-7)=10 C. L. J. 58=13 C. W. N. 920= 5 M. L. T. 423=11 Bom. L. R. 833=6 A L. J. 567= 3 I. C. 382=93 P. R. 1909=14 P. W. R. 1909= 68 P. L. R. 1910=19 M. L. J. 548.

———Mere attestation by a relative does not necessarily import concurrence (70). (*Mr. Ameer Ali.*) HARIKISHEN BHAGAT *v.* KASHI PERSHAD SINGH.
(1914) 42 I.A. 64=42 C. 876 (886 7)=19 C.W.N. 370= 17 M. L. T. 115=2 L. W. 219=(1915) M. W. N. 511= 13 A. L. J. 223=21 C. L. J. 225=17 Bom. L. R. 426= 27 I. C. 674=28 M. L. J. 565.

———Attestation by a reversioner of a deed of alienation executed by a Hindu widow does not of itself either create estoppel or imply consent. If it had been quite impossible for the widow lawfully to dispose of any interest in the property, and it was shown that the witness knew the nature of the deed, more value might be given to his attestation, but by itself it would neither create estoppel nor imply consent (255). (*Lord Buckmaster, L.C.*) BANGA CHANDRA DHUR BISWAS *v.* JAGAT KISHORE CHOWDHURY.
(1916) 43 I. A. 249=44 C. 186 (199)=20 M.L.T. 335=

HINDU LAW—(*Contd.*)

Reversioner—Widow—Alienation by—Attestation of deed of—Effect of—(*Cont.d*)

(1916) 2 M. W. N. 336=4 L. W. 448= 18 Bom. L.R. 868=24 C. L. J. 487=14 A. L. J. 1103= 21 C. W. N. 225=1 Pat. L. W. 1=36 I. C. 420= 31 M. L. J. 563.

———*Alienation by widow as heir of* A—*Claim by attesting reversioner as reversioner of* B—*Maintainability.*

All that a deed executed by a daughter-in-law and a mother-in-law professed to do was to bind the ladies themselves who executed the deed, and the collateral heirs of *S* from whom they claimed to have derived title. The deed did not profess to affect any title coming to them from *W*, the son of *S*. The deed was attested by the presumptive reversioner of *W*, who, and not *S*, was the last male owner of the property dealt with by the deed;

Held that, assuming that the presumptive reversioner effectually assented to the deed, it created no estoppel against him as regards any title derived from *W*.

The document itself must be looked at to see what it was that the reversioner assented to. (*Sir Arthur Wilson.*) RUP NARAIN *v.* GOPAL DEVI.
(1909) 36 I. A. 103 (112-3)=36 C. 780 (797-8)= 10 C. L. J. 58=13 C. W. N. 920=5 M. L. T. 423= 11 Bom. L. R. 833=6 A. L. J. 567=3 I. C. 382= 93 P. R. 1909=146 P. W. R. 1909=68 P. L. R. 1910= 19 M. L. J. 548.

———*Appellate decision upholding alienation on mere ground of—Propriety of—Validity of alienation rested in Court below on sole ground of necessity.*

The nearest reversionary heir of a deceased Hindu sued to set aside an alienation of his estate made by his widow on the ground that it had not been made for justifiable purposes. The deed of alienation itself recited certain purposes for which the alienation was made, but no evidence was adduced by the alienee on that point (all he did being to produce the deed of alienation), and the trial Court held against the validity of the alienation, The deed of alienation had been attested by one *J*, a reversioner, but no point was made of that circumstance in the trial Court, and the plaintiff had no opportunity of examining *J* as to the circumstances under which he became an attesting witness, or what his understanding of the transaction really was. The point was taken on appeal to the High Court, and that Court reversed the Court below and upheld the alienation upon the mere proof, by the production of the deed of sale, that *J* was an attesting witness to it.

Held that the utmost that the High Court ought to have done in that state of things was to remand the case to be re-tried, for the full consideration of that question (228-9).

If anything could have been made of that point, it would have been rather a reason for a remand of the cause, to be tried upon such an issue, than for an immediate decision of the case against the plaintiff (230). (*Sir James W. Colvile.*) RAJ LUKHEE DABEA *v.* GOKOOL CHUNDER CHOWDHRY. (1869) 13 M. I. A. 209= 12 W. R. P. C. 47=3 B. L. R. 57=2 Suth. 275= 2 Sar. 518.

———*Consent to and acquiescence in transaction in addition—Effect.*

Attestation of a deed by itself estops a man from denying nothing whatever except that he witnessed the execution of the deed, and by itself it does not show that he consented to the transaction which the document effects.

Where it appeared, however, that a reversioner not only witnessed the execution of a mortgage by a Hindu widow, but consented to the transaction, and took an active part in the consultations which resulted in the mortgage, *held* that

HINDU LAW—(*Contd.*)

Reversioner—Widow—Alienation by—Attestation of deed of—Effect of—(*Contd.*)

he must be held to have consented to and acquiesced in the mortgage being given and that he was estopped from denying its validity. (*Sir Lancelot Sanderson.*) BHAGWAN SINGH *v.* UJAGAR SINGH. **(1927) 47 C. L. J. 189 = 107 I. C. 20 = 30 Bom. L. R. 267 = 29 Punj. L. R. 182 = 32 C. W. N. 538 = I. L. T. 40 L 49 = 27 L. W. 672 = 26 A.L. J. 553 = (1928) M. W N. 933 = A. I. R. 1928 P. C. 20 = 54 M. L. J. 254 (260).**

———*Validity of alienation on ground of—Plea in appeal of—Maintainability—Necessity justifying alienation—Plea in Court below only of—Failure to make out.*

In a suit by a presumptive reversioner to set aside an alienation by a Hindu widow of her husband's property, the alienee did not either in his pleadings or in the issues raise the question that the deed of alienation had been attested by a reversioner, that such attestation implied a concurrence by him in the alienation, and that such concurrence either supplied the want of proof of the existence of debts of the deceased and the necessity of the sale, or was a consent equivalent to such proof. His case even at the trial was that the sale had been made for particular purposes, and was therefore binding on the reversioners; but he gave no evidence of that. *Held* that, under such circumstances, it would not be competent for the High Court on appeal for the first time to entertain the new plea and to remand the case for the trial of the same (229-30). (*Sir James W. Colvile.*) RAJ LUKHEE DABEA *v.* GOKOOL CHUNDER CHOWDHRY. **(1869) 13 M. I. A. 209 = 12 W. R. P. C. 47 = 3 B. L. R. 57 = 2 Suth. 275 = 2 Sar. 518.**

Reversioner—Widow—Alienation by—Consent to.

———(*See also* UNDER HINDU LAW—WIDOW—FAMILY ARRANGEMENT).

ATTESTATION OF DEED OF ALIENATION WHEN AMOUNTS TO.

———*See* HINDU LAW—REVERSIONER — WIDOW—ALIENATION BY—ATTESTATION OF DEED OF.

CONSIDERATION—CONSENT FOR, OF ALL THEN NEAREST REVERSIONERS—EFFECT OF.

———*Right of their heirs to dispute alienation—Estoppel.*

A Hindu widow who had succeeded to an estate and other property absolutely owned by her husband sold the whole of the estate to her son-in-law by a number of sale-deeds executed at different dates, each in respect of a portion of the estate. A few years after the execution of those deeds, deeds of relinquishment for valuable consideration, ratifying the said sale-deeds and agreeing not to dispute their validity were executed by all the then nearest reversionary heirs, being the only living reversioners in the line of the common ancestor of themselves and the deceased owner of the estate. In a suit instituted after the death of the widow by the sons of the persons who executed the deeds of relinquishment and ratification for the recovery of the estate and other moveable property, *held* that the consent of the executants of the said deeds was sufficient, that it was immaterial that it was given after the execution of the sale-deeds and that the plaintiffs were bound by the consent of their fathers, through whom they claimed and could not dispute the vaiidity of the sale-deeds. (*Sir Andrew Scoble.*) BAJRANGI SINGH *v.* MANOKARNIKA BAKSH SINGH. **(1907) 35 I. A. 1 (15-16) = 30 A. 1 (21) = 12 C. W. N. 74 = 9 Bom. L. R. 1348 = 6 C L. J. 766 = 3 M. L. T. 1 = 5 A.L.J. 1 = 11 O.C. 78 = 17 M. L. J. 605.**

HINDU LAW—(*Contd.*)

Reversioner—Widow—Alienation by—Consent to—(*Contd.*)

EFFECT OF.

———An alienation by a Hindu widow, which would not otherwise be legitimate, may become so if made with the consent of her husband's kindred. The exception in favour of alienation with the consent may be due to a presumption of law that where that consent is given the purpose for which the alienation is made must be proper (551). (*Lord Justice Turner.*) COLLECTOR OF MASULIPATAM *v.* CAVALY VENCATA NARRIANAPAH. **(1861) 8 M. I. A. 529 = 2 W. R. 61 = 1 Suth. 476 = 1 Sar. 820.**

———Their Lordships do not mean to impugn those authorities which lay down that an alienation of her husband's estate made by a Hindu widow may become valid by the consent of the husband's kindred, but the kindred in such case must generally be understood to be all those who are likely to be interested in disputing the transaction. At all events, there should be such a concurrence of the members of the family as suffices to raise a presumption that the transaction was a fair one, and one justified by Hindu law. That it can be a presumption of law in the sense of "*presumptio juris et de jure*" their Lordships do not think. It is, no doubt, an element to be taken into consideration, and deserving of considerable weight in the estimation of all the evidence of the transaction (228). (*Sir James W. Colvile.*) RAJ LUKHEE DABEA *v.* GOKOOL CHUNDER CHOWDHRY. **(1869) 13 M. I. A. 209 = 12 W. R. P. C. 47 = 3 B. L. R. 57 = 2 Suth. 275 = 2 Sar 518.**

———An alienation by a Hindu widow which would not otherwise be legitimate may become so if made with the consent of her husband's kindred. (*Sir Andrew Scoble.*) BAJRANGI SINGH *v.* MANOKARNIKA BAKSH SINGH. **(1907) 35 I A. 1 = 30 A. 1 (17, 21) = 12 C. W. N. 74 = 9 Bom. L. R. 1348 = 6 C. L. J. 766 = 3 M. L. T. 1 = 5 A. L. J. 1 = 11 O. C. 78 = 17 M. L. J. 605.**

———It has always been a feature of Hindu law as administered by this Board to attach great weight to the sanction by expectant reversioners of an alienation of property by a Hindu woman as affording evidence that the alienation was under circumstances which rendered it lawful and valid (805). (*Lord Moulton.*) BIJOY GOPAL MUKERJI *v.* GIRINDRA NATH MUKERJI. **(1914) 41 C. 793 = 18 C. W. N. 673 = 19 C. L. J. 620 = 16 M. L T, 68 = (1914) M. W. N. 430 = 1 L W. 533 = 16 Bom. L. R. 425 = 12 A. L. J. 711 = 23 I. C. 162 = 27 M. L. J. 123.**

———The requirement of the law (that necessity must be proved to make a charge created by a Hindu widow or an alienation effected by her binding on the reversioners) may be fulfilled by proving the consent or concurrence of the reversioners to the transaction (69). (*Mr. Ameer Ali*). HARIKRISHEN BHAGAT *v.* KASHI PERSHAD SINGH. **(1914) 42 I. A. 64 = 42 C. 876 (886-7) = 19 C. W. N. 370 = 17 M. L. T. 115 = 2 L. W. 219 = (1915) M. W. N. 511 = 13 A. L. J. 223 = 21 C. L. J. 225 = 17 Bom. L. R. 426 = 27 I. C. 674 = 28 M. L. J. 565.**

———An alienation by a Hindu widow may be fortified by the consent of reversionary heirs. What is the effect of such consent? If the alienation be total, and the reversionary heirs be the nearest, it falls within the first division, *viz.*, surrender. When the alienation of the whole or part of the estate is to be supported on the ground of necessity, then, if such necessity is not proved aliunde and the alienee does not prove inquiry on his part and honest belief in the necessity,

HINDU LAW—(*Contd.*)

Reversioner—Widow—Alienation by—Consent to—(*Contd.*)

EFFECT OF—(*Contd.*)

the consent of such reversioners as might fairly be expected to be interested to dispute the transaction will be *held* to afford a presumptive proof which, if not rebutted by contrary proof, will validate the transaction as a right and proper one. Such consent does not give force *per so* to the alienation. This must be the true view if the matter be considered on principle. For, first, if mere consent, as such, of the reversioner could validate alienation, then the rule as to total surrender would be an idle rule, and secondly, mere consent could only validate on the theory that the reversioner together with the widow represented the whole estate. But that is impossible unless the reversioner has a vested interest, whereas it is settled that he has only a *spes succession is*. (*Lord Dunedin.*) RANGASAMI GOUNDAN *v.* NACHIAPPA GOUNDAN, **(1918) 46 I. A. 72 = 42 M. 523 (534 6) = 26 M. L. T. 5 = (1919) M. W. N. 262 = 17 A. L. J. 536 = 21 Bom. L. R. 640 = 23 C. W. N. 777 = 29 C. L. J. 539 = 10 L. W. 105 = 50 I C. 498 = 36 M. L. J. 493.**

EXECUTION OF DEED OF ALIENATION AS WIDOW'S MOOKHTAR—CONSENT BY REASON OF.

———*Life interest of widow—Deed conveying only.*

A Hindu widow, who had inherited the estate of her husband, gave a power of attorney to *J*, her husband's uncle and presumptive reversioner to his estate, authorising him to sell her husband's share on her behalf. Pursuant to the power *J* executed a sale-deed in respect of the said share, which sale-deed stated that the vendors (*N*, the mother of the deceased being also a party to the deed) " put the vendee in possession of the share sold instead of us, like ourselves" and that " the vendee has become an absolute owner of the share sold from the date of the sale." The deed was signed as follows :—" by wife, and *N*, mother, heirs of *K* " (the deceased) " by the pen of *J*, Sarbarakar and Mukhtar."

There was no evidence that *J* was benefited by the sale or that there was any inducement for him to concur in it so as to forego his reversionary right.

Held that the estate of the wife alone passed by the deed and that the reversionary interest was not affected by it.

It was not so clear that more than the beneficial interest of the widow in the property passed by the deed that *J* must be taken to have consented to its passing. (*Sir Richard Couch.*) JIVAN SINGH *v.* MISRI LAL.
(1895) 23 I.A. 1 = 18 A. 146 = 6 Sar. 675 = 6 M. L. J. 47.

EX POST FACTO CONSENT.

———*Sufficiency of.*

It is immaterial that a reversioner's consent to an alienation by a Hindu widow is given after the execution of the deed of alienation. *Omnis ratihabitio retrotrahitur et mandato priori acquiparatur.* (16) (*Sir Andrew Scoble.*) BAJRANGI SINGH *v.* MANOKARNIKA BAKHSH SINGH.
(1907) 35 I. A. 1 = 30 A. 1 (21) = 12 C. W. N. 74 = 9 Bom. L. R. 1348 = 6 C. L. J. 766 = 3 M. L. T. 1 = 5 A. L. J. 1 = 11 O. C. 78 = 17 M. L. J. 605.

MANAGER OF JOINT FAMILY—CONSENT BY.

———*Son of manager born subsequently—Right of, to dispute alienation—Estoppel.*

Where the managing member of a joint Hindu family consented to and acquiesced in a mortgage executed by a Hindu widow, *held* that his son, who was not then born, was not entitled to contest the validity of the mortgage, inasmuch as at the time when it was executed he had no interest in the family property, and his father, in acquiescing in the execution of the mortgage, was acting not only on behalf of himself, but also on behalf of all the members of the family who were alive at that time. The son was,

HINDU LAW—(*Contd.*)

Reversioner—Widow—Alienation by—Consent to—(*Contd.*)

MANAGER OF JOINT FAMILY—CONSENT BY—(*Contd.*)

therefore, precluded from challenging the validity of the mortgage in question, and the contention that he was not so estopped, because he did not claim through his father, but as a member of a joint Hindu family to which the Mithakshara law applied, had, in the circumstances of the case, no force. (*Sir Lancelot Sanderson.*) BHAGWAN SINGH *v.* UJAGAR SINGH. **(1927) 47 C.L.J. 189 = 107 I.C. 20 = 30 Bom.L.R. 267 = 29 Punj.L.R. 182 = 32 C.W.N. 538 = I L.T. 40 L. 49 = 27 L.W. 672 = 26 A.L.J. 553 = (1928) M.W.N. 933 = A.I R. 1928 P.C. 20 = 54 M. L. J. 254 (260).**

MORTGAGE INTENDED TO CHARGE WIDOW'S INTEREST ONLY—CONSENT TO.

———Reversionary interest if affected by. *See* HINDU LAW—REVERSIONER—WIDOW—MORTGAGE BY—CONSENT TO. **(1914) 42 I. A. 64 (70) = 42 C. 876 (886).**

PRESUMPTION OF NECESSITY FROM—CONDITION OF.

———*Knowledge of effect of consent—Intelligent intention to consent to such effect—Necessity.*

It is not a case in which all the kindred of Khairati, the last male owner, assented or could assent to the mortgage bonds by the widow of Khairati, and the circumstances are not such as to raise any presumption from such concurrence as there was of Achhan Kunwar, the daughter of Khairati, and Enayet, her son, that the transaction was a fair one or one justified by Hindu law. In order to raise such a presumption the consent of the deceased's kindred to his widow's or daughter's alienation must be shown to be given with a knowledge of the effect of what they were doing, and an intelligent intention to consent to such effect (189). (*Lord Davey.*) SHAM SUNDER LAL *v.* ACHHAN KUNWAR. **(1898) 25 I. A. 183 = 21 A. 71 (80) = 2 C. W. N. 729 = 7 Sar. 417.**

PROOF OF—NATURE OF, REQUIRED.

———When a "stringent equity", arising out of an alleged consent by the reversioners is sought to be enforced against them, such consent must be established by positive evidence that upon an intelligent understanding of the nature of the dealings they concurred in binding their interests ; and such consent should not be inferred from ambiguous acts or be supported by dubious oral testimony (70). (*Mr. Ameer Ali.*) HARI KISHEN BHAGAT *v.* KASHI PERSHAD SINGH. **(1914) 42 I. A. 64 = 42 C. 876 (886-7) = 19 C. W. N. 370 = 17 M. L. T. 115 = 2 L. W. 219 = (1915) M.W.N. 511 = 13 A. L. J. 223 = 21 C L J. 225 = 17 Bom L. R. 426 = 27 I. C. 674 = 28 M. L. J. 565.**

VALIDATION OF ALIENATION BY—PERSONS WHOSE CONSENT NECESSARY FOR.

———Their Lordships do not mean to impugn those authorities which lay down that an alienation of her husband's estate made by a Hindu widow may become valid by the consent of the husband's kindred, but the kindred in such case must generally be understood to be all those who are likely to be interested in disputing the transaction. At all events, there should be such a concurrence of the members of the family as suffices to raise a presumption that the transaction was a fair one, and one justified by Hindu law (228). (*Sir James W. Colvile.*) RAJ LAKHEE DABEA *v* GOKOOL CHUNDER CHOWDHRY.
(1869) 13 M. I. A. 209 = 12 W. R. P. C. 47 = 3 B. L. R. 57 = 2 Suth. 275 = 2 Sar. 518.

———Ordinarily the consent of the whole body of persons constituting the next reversion should be obtained, though there may be cases in which special circumstances may

HINDU LAW—(*Contd.*)

Reversioner—Widow—Alienation by—Consent to—(*Contd.*)

VALIDATION OF ALIENATION BY—PERSONS WHOSE CONSENT NECESSARY FOR—(*Contd.*)

render the strict enforcement of this rule impossible. (*Sir Andrew Scoble.*) BAJRANGI SINGH *v.* MANOKARNIKA BAKHSH SINGH. **(1907) 35 I. A. 1 = 30 A. 1 (17, 21) = 12 C. W. N. 74 = 9 Bom. L. R. 1348 = 6 C. L. J. 766 = 3 M. L. T. 1 = 5 A. L. J. 1 = 11 O. C. 78 = 17 M. L. J. 605.**

———The consent of such reversioners as might fairly be expected to be interested to dispute the transaction will be held to afford a presumptive proof which, if not rebutted by contrary proof, will validate the transaction as a right and proper one. (*Lord Dunedin.*) RANGASAMI GOUNDEN *v.* NACHIAPPA GOUNDEN. **(1918) 46 I. A. 72 = 42 M. 523 (534-6) = 26 M.L.T. 5 = (1919) M.W.N. 262 = 17 A. L. J. 536 = 21 Bom. L. R. 640 = 23 C. W. N. 777 = 29 C. L. J. 539 = 10 L. W. 105 = 50 I. C. 498 = 36 M. L. J. 493.**

———When the consent of the husband's kindred is relied upon for the validity of alienations effected by the widow "the kindred in such case must generally mean all those who are likely to be interested in disputing the transaction. At all events there should be such a concurrence of the members of the family as suffices to raise a presumption that the transaction was a fair one and one justified by Hindu law' (70). (*Mr. Ameer Ali.*) HARIKISHEN BHAGAT *v.* KASHI PERSHAD SINGH. **(1914) 42 I.A. 64 = 42 C. 876 (886-7) = 19 C.W.N. 370 = 17 M. L. T. 115 = 2 L.W. 219 = (1915) M. W. N. 511 = 13 A. L. J. 223 = 21 C. L. J. 225 = 17 Bom. L. R. 426 = 27 I. C. 674 = 28 M. L. J. 565**

Reversioner—Widow—Alienation by—Different alienations—Suits different to set aside.

———*Not barred under Or. 2, R. 2, C. P. C.*

Plaintiffs, the reversionary heirs of a deceased Hindu, first brought a suit against various defendants to impeach certain alienations made by the widow and mother of the deceased. They were alienations by which the inheritance, subject to the interests of those persons, was transferred to certain foster-sons, or near relations, or defendants of the two ladies so as to exclude the remoter heirs. Plaintiff then brought another suit to set aside a mortgage which had been granted by those ladies to the respondent's ancestor before the alienations which were the subject of the prior suit. In the description of the property, which was the subject of the first suit, three of the villages forming part of that property were subject to the mortgage in question in the second suit, and the name of the mortgagee was mentioned. It appeared, however, that the causes of action in the two cases were essentially different; in the one case, the widow and mother, assuming an absolute power of disposition, had granted the inheritance in portions of the estate to the defendants in the first suit. In the other case, the issue was, whether they had duly exercised the limited power which belonged to a Hindu female having a Hindu female's right of inheritance in the estate, of charging the estate for certain definite purposes.

Held, reversing the Court below, that the second suit was not barred under S. 7 of C. P. C. of 1859 (197-9).

The object of the first suit was perfectly distinct from that which is the object of the second suit, which is to have these mortgages declared invalid as against the person who has in the former suit established his title to the possession of the estate as heir, on the ground that they were securities, which those who granted them had not the power to grant as incumbrances upon the inheritance (198). (*Sir James W. Colvile.*) RAO KURUN SING *v.* NAWAB MAHOMED FYZ ALI KHAN. **(1871) 14 M. I. A. 187 = 10 B.L.R. 1 = 2 Suth. 474 = 2 Sar. 722.**

HINDU LAW—(*Contd.*)

Reversioner—Widow—Alienation by—Different Alienations—Suits different to set aside—(*Contd.*)

Reversioner—Widow—Alienation by—Election to treat, as good.

———(*See also* HINDU LAW—WIDOW—ALIENATION BY—VOID OR VOIDABLE).

———*Effect of.*

If a reversioner, after he became in titulo to reduce the estate to possession and knew of the alienation by the widow, did something which showed that he treated the alienation as good, he would lose his right of complaint. This may be spoken of, though scarcely accurately, as ratification. In some cases, it has been expressed as an election to hold the deed good (86). (*Lord Dunedin.*) RANGASAMI GOUNDEN *v.* NACHIPPA GOUNDEN. **(1918) 46 I. A. 72 = 42 M. 523. (538-9) = 26 M. L. T. 5 = (1919) M. W. N. 262 = 17 A. L. J. 536 = 21 Bom. L. R. 640 = 23 C. W. N. 777 = 29 C. L. J. 539 = 10 L. W. 105 = 50 I. C. 498 = 36 M. L. J. 493.**

———Lease invalid by widow—Election to treat, as good—Evidence of. *See* HINDU LAW—WIDOW—LEASE BY INVALID LEASE. **(1897) 24 I. A. 164 = 25 C. 1.**

———*Mortgage from alienee—Taking of, by reversioner during widow's lifetime—Election by reason of.*

A Hindu widow, who had succeeded to the estate of her childless son, executed a deed of gift in favour of *R*, the then nearest reversionary heir, in respect of parts of such estate. *R* entered into possession, but died prior to 1896, and was succeeded by his two nephews, *A* being one of them. In 1896, the nephews executed a mortgage bond in favour of the appellant mortgaging 4/15ths share of Mitta K on the recital that they held 2/15ths in respect of the deed of gift executed by the widow.

The widow died in 1907, leaving the appellant, the respondent before the Privy Council, and *A* (who had died before the appeal to the Privy Council) as the reversionary heirs then entitled to the estate. In a suit brought immediately after the death of the widow by the appellant against *A* and the respondent for the recovery of, *inter alia*, 1/15 of Mitta K, *held* that by taking the mortgage the plaintiff could not be held to have elected to treat the deed by the widow as valid because (1) the deed comprised property to which the mortgagors were entitled in their own right and they were more than sufficient security for the mortgage amount, and (2) the plaintiff did not know at the time that he would ever become a reversioner entitled to question the validity of the deed (37). (*Lord Dunedin.*) RANGASAMI GOUNDEN *v.* NACHIAPPA GOUNDEN. **(1918) 46 I.A. 72 = 42 M. 523 (538-9) = 26 M. L. T. 5 = (1919) M. W. N. 262 = 17 A. L. J. 536 = 21 Bom. L. R. 640 = 23 C. W. N. 777 = 29 C. L. J. 539 = 10 L. W. 105 = 50 I. C. 498 = 36 M. L. J. 493.**

———*Ratification express—Acts treating alienation as binding—Election by.*

The reversioners may either singly or as a body be precluded from exercising their right to avoid an alienation by the widow in excess of her powers either by express ratification or by acts which treat it as valid and binding (402). (*Lord Sinha.*) RAMGOUDA ANNAGOUDA *v.* BHANSAHEB. **(1927) 54 I. A. 396 = 46 C. L. J. 267 = 4 O. W. N. 876 = 39 M. L. T. 250 = 29 Bom. L. R. 1380 = 32 C.W.N. 88 = 105 I. C. 708 = A. I. R 1927 P. C. 227 = 53 M. L. J. 350.**

HINDU LAW—(*Contd.*)

Reversioner—Widow—Alienation by—Election to treat, as nullity.

———*Intervention of Court unnecessary—Suit to recover possession of property alienated—Commencement of—Sufficiency of.*

A reversioner may at his pleasure treat an unauthorised alienation by a widow as a nullity without the intervention of any Court, and he shows his election to do so by commencing an action to recover possession of the property alienated (92). (*Lord Davey.*) BIJOY GOPAL MUKERJI *v.* KRISHNA MAHISHI DEBI. **(1907) 34 I. A. 87 = 34 C. 329 (333 4) = 2 M. L. T. 133 = 5 C. L. J. 334 = 11 C. W. N. 424 = 9 Bom. L.R. 602 = 4 A. L. J. 329 = 9 Sar. 216 = 17 M. L. J. 154.**

———Intervention of Court unnecessary. *See* HINDU LAW—DAUGHTER—COMPROMISE BY—FATHER'S ESTATE.
(1923) 51 I. A. 145 (152) = 47 M. 81.

Reversioner—Widow—Alienation by—Invalid alienation.

———*Setting aside of—Declaration that it does not affect reversionary interest—Relief appropriate.*

In a suit brought by the reversionary heir of a deceased Hindu to recover portions of the deceased's estate from the defendant, who claimed title to the same under the deceased's widow, the plaint also prayed for the cancellation of two documents which had been executed by the widow. The court below found that those two documents operated to bind only the widow's life interest and could not affect the reversionary interest, and by its decree set aside those two documents.

Held that the decree of the court below in setting aside the deeds must be considered to have in effect decided no more than that plaintiff was entitled to recover notwithstanding those documents, without in any degree compromising any rights which other parties might have under them (113). (*Sir Robert P. Collier*) RAJ BAHADUR SINGH *v.* ACHUMBIT LAL. **(1879) 6 I. A. 110 = 6 C. L. R. 12 = 4 Sar. 15 = Bald, 203 = 3 Suth. 598.**

———*See also* HINDU LAW—REVERSIONER—PRESUMPTIVE REVERSIONER—WIDOW—ALIENATION BY—INVALID ALIENATION.

———Setting aside of—Necessity—Election to treat it as nullity without intervention of court—Sufficiency of—What amounts to. *See* HINDU LAW—REVERSIONER—WIDOW—ALIENATION BY—ELECTION TO TREAT, AS NULLITY.

Reversioner—Widow—Alienation by—Possession of property subject of.

———Suit for. *Ses* UNDER HINDU LAW—REVERSIONER—WIDOW—DEATH OF—POSSESSION OF LAST MALE OWNER'S PROPERTY ON.

Reversioner—Widow—Alienation by—Right to dispute validity of—Estoppel.

———Execution of deed of alienation jointly with widow—Estoppel by reason of. *See* HINDU LAW—REVERSIONER—PRESUMPTIVE REVERSIONER—WIDOW—ALIENATION BY—EXECUTION, ETC.
(1918) 46 I. A. 1 (13-4) = 46 C. 566 (578 9.)

———Family arrangement—Alienation by way of—Benefit under—Reversioners taking—Estoppel as against him and his heirs. *See* UNDER HINDU LAW—WIDOW—FAMILY ARRANGEMENT BY.

———*Mortgage from vendee during widow's lifetime—Taking of, by reversioner—Estoppel by reason of.*

A Hindu widow who had succeeded to the estate of her childless son executed a deed of gift in favour of *R*, the then

HINDU LAW—(*Contd.*)

Reversioner—Widow—Alienation by—Right to dispute validity of—(*Contd.*)

nearest reversionary heir, in respect of parts of such estate. *R* entered into possession, but died prior to 1896 and was succeeded by his two nephews, *A* being one of them. In 1896, the nephews executed a mortgage bond in favour of the appellant before their Lordships mortgaging 4/15ths share of mitta K on the recital that they held 2/15 in respect of the deed of gift executed by the widow.

The widow died in 1907, leaving the appellant, the respondent before their Lordships, and *A* (who had died before the appeal to their Lordships) as the reversionary heirs then entitled to the estate. In a suit brought immediately after the death of the widow by appellant against *A* and the respondent for the recovery of, *inter alia*, 1/15 of mitta *K*, *held* that the appellant was not precluded from challenging the deed of gift by the widow on the ground of estoppel in respect of his conduct in taking the mortgage as above set forth (85).

There is here no room for the doctrine of estoppel. Of estoppel by record or by deed obviously there is none. The plaintiff has not, by any act of his, led the respondents to think that something was true, and then to act on that belief. Bajranji's case, even if it had been decided on the ground of estoppel, was distinguishable because the plaintiff never consented to the deed, nor is his claim traced through *R* even in the matter of descent (85-6.) RANGASAMI GOUNDEN *v.* NACHIAPPA GOUNDEN. **(1918) 46 I. A. 72 = 42 M. 523 (537-9) = 26 M. L. T. 5 = (1919) M. W. N. 262 = 17 A. L. J. 536 = 21 Bom.L.R. 640 = 23 C.W.N. 777 = 29 C. L. J. 539 = 10 L, W. 105 = 50 I. C. 498 = 36 M. L. J. 493.**

———*See also* HINDU LAW—REVERSIONER—WIDOW—ALIENATION BY.

(1) Attestation of deed of & (2) Consent to.

Reversioner—Widow—Alienation by—Setting aside of.

———Necessity - Declaration that it does not affect reversionary interest—Sufficiency of. *See* HINDU LAW—REVERSIONER—WIDOW—ALIENATION BY—INVALID ALIENATION—SETTING ASIDE OF.

———*Necessity—Life interest—Deed of alienation conveying only.*

Where it appeared that according to the admitted construction of a document executed by a Hindu widow in favour of a third party, the widow conveyed by it no more than she had, which was but a life interest, *held* that the document was innocuous, and that it was immaterial to the reversioner whether it was set aside or not (113). (*Sir Robert P. Collier*) RAJ BAHADUR SINGH *v.* ACHUMBIT LAL. **(1879) 6 I. A. 110 = 6 C. L. R. 12 = 4 Sar. 15 = Bald. 203 = 3 Suth. 598.**

———Suit for—Necessity—Election to treat it as nullity without intervention of Court—Sufficiency of—What amounts to. *See* HINDU LAW—REVERSIONER—WIDOW—ALIENATION BY—ELECTION TO TREAT, AS NULLITY.

Reversioner—Widow—Compromise between.

———*Validity of—Onus of proof on reversioner of—Effect of compromise—Conveyance of property in favour of reversioner if effected.*

In a case where a widow entered into a razinamah with her husband's brother, whereby the property in question was to be left in the custody and management of the brother-subject to a certain allowance to the widow, it was contend, ed that from the evidence in the case, the effect of the razinamah was to convey the property immediately to the reversioner, the widow being understood to say, "Take the pro-

HINDU LAW—(*Contd.*)

Reversioner—Widow—Compromise between—(*Ctd.*)

perty at once, and give me only the stipulated maintenance."

Held, that the effect of the parol evidence was to be considered in so far only as it determined the position of the parties at the time of the razinamah; and that the relation of the parties in the case was such, that a transaction between them should be closely scanned, and that a document obtained by the chief male member of a family from a purdah woman should receive a strict construction. The language in the razinamah did not import a conveyance.

The brother might have thought it desirable to obtain management to prevent waste; or the widow might have been disposed to be relieved of the cares of management; while the allowance falling so far short of the income might be referable to the obligation on the part of a Hindoo widow to live the life of a recluse, or to the necessity for providing funds against risk of season, or for religious duties. (*Sir Lawrence Peel.*) SOOKABOYE AMMAL *v.* LUTCHMI AMMAL, **(1869) 13 W. R. P, C. 3 = 2 Suth. 282.**

Reversioner—Widow—Death of—Possession of last male owner's property on—Suit for.

(*See also* UNDER HINDU LAW — WIDOW — SALE BY—REVERSIONER.)

ADOPTION INVALID OF DEFENDANT TO LAST MALE OWNER—DECLARATION OF INVALIDITY OF.

———*Prayer for—Necessity.*

In a suit by a reversionary heir to recover possession of the property of the last male owner after the death of the latter's widow, it is unnecessary for the plaintiff to claim a declaration that the defendant who claims to be the adopted son of the last male owner but whose adoption is invalid, had not been valid'y adopted to him. The plaintiff is entitled to brush aside the invalid adoption of the defendant and sue for the possession to which he has a right. (*Lord Phillimore.*) KALYANADAPPA *v.* CHANBASAPPA.

(1924) 51 I. A. 220 (225, 235) = 48 B. 411 = 28 C. W. N. 666 = 22 A. L, J. 508 = 26 Bom.L.R. 509 = 10 O.&A.L.R. 1114 = A.I.R. 1924 P.C. 137 = (1924) M.W.N. 414 = 34 M.L.T. 111 = 20 L.W. 109 = 11 O.L.J. 181 = 79 I.C. 971 = 46 M.L.J. 598.

ALIENEE FROM WIDOW—SUIT AGAINST.

———*Alienation made to satisfy decree against her—Challenging of decree by reversioner—Necessity—Debt basis of decree legally chargeable on estate.*

A decree for a debt obtained againt a Hindu widow is, against the Crown claiming by escheat, *res inter alios acta*. The Crown, suing in such right to recover property alienated by the widow to satisfy such decree debt is, therefore, in a very different position from one who, coming into court to get rid of a decree binding upon him, has to allege and prove that it was frandulently or collusively obtained, or is open to some other definite objection, and this is so even in a case in which it was found that the debt sued for against the widow was of a nature to be fairly and legally chargeable upon the estate (554). (*Lord Justice Turner.*) COLLECTOR OF MASULIPATAM *v.* CAVALY VENCATA NARRAINAPAH. **(1861) 8 M. I. A. 529 = 2 W. R. 61 = 1 Suth. 476 = 1 Sar. 820.**

———*Parties defendants in—Alienee's undivided sons if necessary.*

In a suit by a reversioner to recover property improperly alienated by a Hindu widow, the alienee and his sons were made parties defendants. Their Lordships observed: *H* (the

HINDU LAW—(*Contd.*)

Reversioner—Widow—Death of—Possession of last male owner's property on—Suit for—(*Contd.*)

ALIENEE FROM WIDOW—SUIT AGAINST—(*Contd.*)

alienee) is the principal defendant, but his sons have been impleaded in the action, as they are joint in estate and living in commensality with him, and are, therefore, necessary parties (68). (*Mr. Ameer Ali.*) HARI KISHEN BHAGAT *v.* KASHI PERSHAD SINGH. **(1914) 42 I. A. 64 = 42 C. 876 (884) = 19 C. W. N. 370 = 17 M L. T. 115 = 2 L. W. 219 = (1915) M. W. N. 511 = 13 A L. J. 223 = 21 C. L. J. 225 = 17 Bom. L. R. 426 = 27 I C. 674 = 28 M L. J. 565.**

———Portion of purchase-money advanced by him for binding purposes—Provision for, in decree setting aside sale—Necessity. *See* HINDU LAW—WIDOW—SALE BY—REVERSIONER — POSSESSION OF PROPERTY SOLD—SUIT FOR—DECREE ALLOWING.

———*Setting aside, or declaration of invalidity, of alienation—Prayer for—Necessity.*

A reversioner may sue to recover possession of the property improperly alienated by a Hindu widow. It is not necessary for him to pray in such a suit for a declaration that the alienation is inoperative as against him. There is, in fact, nothing for the court either to set aside or cancel as a condition precedent to the right of action of the reversionary heir (92). (*Lord Davey.*) BEJOY GOPAL MUKERII *v.* KRISHNA MAHISHI DEBI. **(1907) 34 I. A. 87 = 34 C. 329 (334) = 2 M. L. T. 133 = 5 C. L. J. 334 = 11 C. W. N. 424 = 9 Bom. L. R. 602 = 4 A. L. J. 329 = 9 Sar. 216 = 17 M. L. J. 154.**

DEFENDANT CLAIMING TO BE ADOPTED SON OF WIDOW.

———*Proof of sonship of.*

The appellant sued to recover possession of an estate of which one *H* was formerly the owner. The first defendant was the Collector of the District who had the management of the suit estate for the Court of Wards, and he acted as guradian of the 2nd defendant, a minor when the suit was instituted. The claim was that the plaintiff, a collateral relation, was the heir, and that the 2nd defendant was not the son, or heir, of *H*. And the main question for decision in the appeal was whether or not the 2nd defendant was the son of *H*.

Held, affirming the High Court, that the appellant had failed to prove that the minor was not the son of *H* and that the respondent had succeeded in proving that he was. (*Sir Richard Couch.*) PALAKDHARI SINGH *v.* COLLECTOR OF GORAKHPUR. **(1892) 15 A. 261 = 6 Sar. 378.**

DELAY IN INSTITUTING.

———*Effect.*

It is true that there has been considerable delay in the institution of this suit (by a reversioner to recover on the death of a Hindu widow the property of her husband alleged to have been improperly alienated by her), and this delay appears the greater because of the length of time that elapsed before the reversion fell in. But it is not usual for a reversioner to sue during the lifetime of the widow and in fact this suit is within time. The delay that has occurred since the widow's death has been reasonably explained as attributable to the pendency of another suit and the lack of means to meet the expenses of the litigation (722) —per High Court. (*Lord Moulton.*) SRIMUTTY MANO KARANI DEBI *v.* HARIPADA MITTER.

(1914) 18 C. W. N. 718 = 24 I. C. 311.

HINDU LAW—(*Contd.*)

Reversioner—Widow—Death of—Possession of last male owner's property on—Suit for—(*Contd.*)

DISMISSAL OF, ON GROUND OF EXISTENCE OF NEARER REVERSIONER—CUSTOM ENTITLING HIM TO SUCCEED EQUALLY WITH NEARER REVERSIONER—SUIT SUBSEQUENT BASED ON.

———*Maintainability.*

The appellants with others filed a suit against *H*, a Hindu widow, *J*, in whose favour *H* had executed a gift deed conveying her husband's property, and one *G*. The appellants alleged that they and *G* were the presumptive heirs of *H*'s husband, and prayed for a declaration that the deed of gift executed by *H* in favour of *J* might be declared void and illegal against them. The defendants pleaded that the appellants were not equal in degree with *G*, and that *G* was the nearest reversioner and the only person entitled to dispute the deed of gift. To that the appellants replied by saying that, if *G* were the nearer heir, he had precluded himself from suing.

In that state of the pleadings *H* died. Thereupon the appellants made an application in the suit setting forth the death of the widow and claiming that they had become entitled to institute a suit for possession, and that in order to show their right it had become necessary to mention certain additional averments of fact in the plaint. The additional averments they wanted to make were (1) allegation of a family custom by which the appellants were in equal degree with *G* and were entitled to succeed equally with him and (2) a statement as to the death of the widow *H*. The new relief they sought to claim was a decree for possession of a ten anna share in the property. The application to amend the plaint by adding the allegations averring the family custom was rejected on the ground that it was an attempt to introduce a new case. The appellants admitted that, apart from custom, they were one degree more remote than *G*,and that, if they could not make the case of a family custom, their suit must fail. Their suit was accordingly dismissed with costs and that dismissal was allowed to become final.

In a suit subsequently brought by the appellants against *J* and the representative in interest of *G* for possession of one half of the property covered by the said deed of gift, founding their title on family custom, *held* that the claim based on the family custom was barred under S. 11, Expl. IV of C. P. C. of 1908.

When the appellants brought their first suit they had to show their title to impeach the widow's gift. For this purpose they had to show either that they were some at least of the nearest reversionary heirs, or that the only nearer reversionary heir had colluded with the widow. In their plaint they did not rely on collusion which they only introduced in their replication. Taking, however, that view of the pleadings which is most favourable to them and treating them as relying equally on both grounds of claim, it is now clear that they can only make out a claim to be some of the next reversioners on the footing of the family custom, and that the allegation of that custom therefore was an allegation which "might and ought to have been made" within the meaning of Expl. IV. Or, to put it in another way. One of the alternative cases on which they were basing their title to sue was their nearness of kin, and to prove their neareness of kin it was essential to aver the family custom. They claimed as next heirs, and their claim was dismissed. They cannot fight it over again (105.) (*Lord Phillimore.*) FATEH SINGH *v.* JAGANNATH BAKSH SINGH.

(1924) 52 I. A. 100 = 47 A. 158 = 6 L. R. P. C. 50 = 12 O.L.J. 117 = 2 O.W.N. 25 = 27 O.C. 334 = 27 Bom.L.R. 725 = 29 C. W. N. 749 = 23 A. L. J. 739 = 22 L. W. 58 = A.I.R. 1925 P. C. 55 = 91 I. C. 280 = 48 M. L. J. 64.

HINDU LAW—(*Contd.*)

Reversioner—Widow—Death of—Possession of last male owner's property on—Suit for—(*Contd.*)

LIMITATION LAW APPLICABLE TO

———*Law in force at date of suit—Law in force when right accrued—Suit not barred under latter not barred by reason of former.*

The suit, which was instituted in September 1858. was brought by the plaintiff, the only son of a daughter of *R*, to recover *R*'s property. *R* died in 1824. without a son, leaving a widow and three daughters. The widow died in March 1835. It was found that the possession of *R*'s estate by the defendants, who represented *R*'s brothers, was not adverse to *R*'s widow. but that limitation began to run against the plaintiff's mother, and that neither she nor the plaintiff ever had possession of any portion of his maternal granfather's estate or of the rents or income thereof.

Held, that the period of limitation must be calculated according to the old law (the law prior to Act XIV of 1859), and that under that law the periods during which the plaintiff and his mother were respectively under the disability of minority must be deducted (123). (*Sir Barnes Peacock.*) AMIRTOLLALL BOSE *v.* RAJONEEKANT MITTER.

(1875) 2 I.A. 113 = 15 B. L. R. 10 = 23 W.R. 214 = 3 Sar. 430 = 3 Suth. 94.

MORTGAGE VALID BY WIDOW—DEFENDANT MORTGAGEE UNDER—DECREE PROPER IN CASE OF.

———*Dismissal of suit without prejudice to plaintiff's right to redeem mortgage.*

In a suit by the Crown claiming by escheat to recover possession of the property of a deceased Hindu after the death of his widow, it was found that there was due from the widow to the father of the appellant in respect of advances for which she would have been entitled to alienate the estate, as against the next heirs of her husband, if such there had been, the sum of Rs. 48,000 odd, that that sum was duly charged upon the estate by a mortgage bond executed by the widow in favour of the appellant ; and that the appellant was entitled to a declaration to the above effect and to the effect that he was entitled to hold the suit property against the Crown as a security for so much of the said sum and of the interest thereon as remained unpaid

Held, that the above declaration was fatal to the Crown's claim to immediate possession of the suit property, but that it would leave an equity of redemption in the Crown, and that in strictness, therefore, the Crown's suit should stand dismissed, without prejudice to the right of the Crown (if it should so think fit) to assert its equity of redemption in a suit properly framed for that purpose (636, 638). (*Sir James W. Colvile.*) CAVALY VENCATA NARRAINAPAH *v.* COLLECTOR OF MASULIPATAM. **(1867) 11 M.I.A. 619 = 10 W. R. P. C. 47 = 2 Suth. 103 = 2 Sar. 338.**

NEARER HEIRS—DEFENCE PLEA OF EXISTENCE OF.

———Failure to prove—Effect—Plaintiff held in prior litigation to be nearest. *See* EJECTMENT SUIT — HINDU LAW—REVERSIONER—ASSIGNEE FROM—SUIT BY.

(1925) 23 L. W. 75.

PARTIES—PLAINTIFFS IN.

———*Members of family not entitled as reversioners — Joinder of—Propriety.*

The plaintiffs sued for declarations of their right to inherit certain properties in the possession of the defendants on the ground that they were the reversionery heirs of the last male owner of the properties who was governed by the law of the Mithakshara.

There were 59 plaintiffs, and nearly twenty other parties in addition to the persons in possession were joined *pro*

HINDU LAW—(*Contd.*)

Reversioner—Widow—Death of—Possession of last male owner's property on—Suit for—(*Contd.*)

PARTIES—PLAINTIFFS IN—(*Contd.*)

forma, as being members of the family, though they advanced no claims. The case was not one of the joint property of a Hindu family. If the case were proved, some one person or some few, standing in the same degree of genealogical propinquity, would alone succeed, but the scheme of the action was to bring into court a large number of persons, more or less remotely akin in blood, in the hope of ousting the defendants by a mass attack, and afterwards to assign the fruits of victory to the parties entitled by further litigation *inter se*.

Held, that such a joinder of parties was objectionable.

Such a plan is inconvenient and is much to be condemned. It is not a mere question of swollen expenses, which might be cured by an order to pay costs thrown away. The court, as well as the opposite party, is embarrassed, and the issues are obscured. (*Lord Sumner.*) MEWA SINGH *v.* BASANT SINGH. **(1918) 9 L. W. 416 (418) = 24 M. L. T. 429 = 28 C. L. J. 530 = 46 I.C. 540 = 1 P. W. R. 1919 = 21 Bom. L. R. 232 = 28 P. L. R. 1919.**

TITLE AS NEAREST REVERSIONER—PROOF OF—ONUS ON PLAINTIFF.

———*See* EJECTMENT SUIT—HINDU LAW — REVERSIONER — SUIT BY, FOR POSSESSION OF LAST MALE OWNER'S PROPERTY. **(1918) 9 L. W. 416 (421-2.)**

———Defendant claiming to be adopted son of last male owner—Each denying relationship of other. *See* EJECTMENT SUIT—HINDU LAW—RAVERSIONER — SUIT BY, AGAINST OTHER PERSON CLAIMING TO BE ADOPTED SON, ETC. **(1890) 17 I.A. 159 (162) = 18 C. 201 (205-6.)**

———Defendant claiming to be adopted son of last male owner—Title of—Inquiry into, unnecessary. *See* EJECTMENT SUIT—HINDU LAW—REVERSIONER—SUIT BY, AGAINST PERSON CLAIMING TO BE, ETC. **(1928) 56 I. A 21 = 52 M. 175.**

———Defendant claiming to be widow of last male owner. *See* EJECTMENT SUIT—HINDU LAW—REVERSIONER—SUIT BY, FOR POSSESSION OF LAST MALE OWNER'S PROPERTY—WIDOW OF LAST MALE OWNER. **(1866) 10 M. I. A. 511 (528) & (1901) 29 I.A. 1 = 24 A. 94 (107).**

———*Defendant's title—Weakness of, immaterial.*

The plaintiffs-respondents were the reversionary heirs of a deceased Hindu. They alleged that as such heirs they were entitled to succeed to the properties, moveable and immoveable, of the deceased on the death of his widow. The appellant was the brother's daughter of the widow. She claimed title to the suit properties under a deed of gift executed by the widow in her favour. She contended that the plaintiffs-respondents were not in any event entitled to succeed to the suit properties on the death of the widow. The plaintiffs, therefore, instituted the suit out of which the appeal arose with the object (1) of being confirmed in the possession of the various parcels of immoveable property which were specified in the plaint, (2) of recovering certain moveable property which was under attachment, (3) of having the deed of gift set up by the appellant cancelled and set aside; and (4) of avoiding the title which the appellant was then understood to claim by virtue of an alleged adoption by the widow of the last male owner.

Held that, in view of the nature and object of the suit, a finding that the deed of gift set up by the appellant had not been established would not determine the cause and that the respondents must still show a title to the relief which they claimed (169-70.)

HINDU LAW—(*Contd.*)

Reversioner—Widow—Death of—Possession of last male owner's property on—Suit for—(*Contd.*)

TITLE AS NEAREST REVERSIONER—PROOF OF—ONUS ON PLAINTIFF—(*Contd.*)

If the appellant were suing to recover possession of the property from the respondents by virtue of the deed of gift a finding against it would of course determine the cause (169-70). (*Sir James W. Colvile.*) MUSSUMAT THAKOOR DEYHEE *v.* RAI BALUK RAM. **(1866) 11 M.I.A. 139 = 10 W R. P. C. 3 = 21 I.J.N. S. 106 = 2 Suth. 49 = 2 Sar. 231.**

TITLE OF LAST MALE OWNER TO PROPERTY SUED FOR—PROOF OF.

———*Onus of plaintiff — Defendant setting up widow's title.*

The suit was by the reversionary heir of a deceased Hindu to recover property alleged to have appertained to the estate of the deceased. The defendant, who claimed the property under a will or other document by the widow of the deceased, denied that the property belonged to the deceased.

Held, that the onus was on the plaintiff to prove that the suit property belonged to the deceased, and that, in the absence of evidence one way or the other, his claim should fail. (*Sir Edward Fry.*) DEWAN RAN BIJAI BAHADUR SINGH *v.* INDRAPAL SINGH. **(1899) 26 I.A. 226 = 26 C. 871 = 4 C. W. N. 1 = 2 Bom. L. R. 1 = 7 Sar. 578.**

Reversioner—Widow—Decree against—Suit by her to set aside, on ground of fraud—Dismissal of,

———Reversioner's suit in respect of same property after death of widow—Maintainability. *See* HINDU LAW—WIDOW—DECREE AGAINST — SUIT BY HER TO SET ASIDE, ETC. **(1914) 41 I.A. 267 (272) = 42 C. 244 (249 50.)**

Reversioner—Widow—Decree for or against—Res Judicata against reversioners.

———Conditions. *See* HINDU LAW—WIDOW—DECREE FOR OR AGAINST.

Reversioner—Widow—Estoppel against, purely personal to her.

———*Effect against reversioners of.*

Where it appeared that a Hindu widow was estopped from denying the validity of the adoption by her of the respondent to her husband, *held* that the estoppel was purely personal to the widow, and did not bind any one who claimed by an independent title (148). (*Lord Robson.*) RANI DHARAM KUNWAR *v.* BALWANT SINGH. **(1912) 39 I.A. 142 = 34 A. 398 (404) = 16 C.W.N. 675 = 12 M. L. T. 95 = 9 A L.J. 730 = 14 Bom. L. R. 485 = (1912) M. W. N. 641 = 16 C. L. J. 60 = 15 I. C. 673 = 23 M. L. J. 200.**

Reversioner—Widow—Family arrangement by.

———*See* HINDU LAW—WIDOW—FAMILY ARRANGEMENT BY.

Reversioner—Widow—Mortgage by.

———*See* HINDU LAW—WIDOW—MORTGAGE BY.

Reversioner—Widow—Renunciation of claim to husband's estate.

———*Effect against reversioner of.*

The renunciation by a Hindu widow of her rights and her claims to the estate of her husband does not bind the reversioner (17). (*Mr. Ameer Ali.*) NAND RANI KUNWAR *v.* INDRA KUNWAR. **(1926) 54 I. A. 5 = 1 Luck. 583 = (1927) M. W. N. 21 = 4 O. W. N, 80 = 31 C. W. N. 485 = 45 C. L. J. 282 = 100 I. C. 485 = 25 L. W. 751 = A. I. R. 1927 P. C. 8 = 52 M. L. J. 497.**

HINDU LAW—(*Contd.*)

Reversioner—Widow—Representation of whole Estate by.

———*Theory of.*

The reversioner together with the widow does not represent the whole estate, because, during the lifetime of the widow, the reversioner has not a vested interest, and has only a *spes successionis*. (*Lord Dunedin.*) RANGASAMI GOUNDEN *v.* NACHIAPPA GOUNDEN.

(1918) 46 I. A. 72 = 42 M. 523 (534) = 26 M. L. T. 5 = (1919) M W. N. 262 = 17 A. L. J. 536 = 21 Bom. L. R. 640 = 23 C. W. N. 777 = 29 C L J. 539 = 10 L. W. 105 = 50 I. C. 498 = 36 M. L. J. 493.

Reversioner—Widow—Revenue due upon estate.

———Wilful default to pay—Reversioner paying—Right of, to reimbursement out of life profits of widow. *See* HINDU LAW—WIDOW—REVENUE DUE UPON ESTATE—WILFUL DEFAULT TO PAY—REVERSIONER, ETC.

(1867) 11 M. I. A. 241 (267).

Reversioner—Widow—Sale by.

———*See* HINDU LAW—WIDOW—SALE BY.

Reversioner—Will of last male owner—Probate of—Revocation of—Right to apply for—Suit for declaration of.

———*Maintainability—Decision of probate court holding that plaintiff had no right to oppose grant of probate—Effect.*

The appeal arose out of a suit instituted by the plaintiffs for a declaration that they were the next reversioners to the estate of one *B*, deceased, and as such were entitled to apply to the Probate Court to get the probate of an alleged will of *B*, granted to one *R*, revoked.

It appeared that, on the application of *R*, for grant of probate of the said will of *B*, caveats were lodged by, *inter alia*, the plaintiff; that, after contest and evidence taken, it was held in the probate proceedings that the plaintiffs had failed to prove their interest to oppose the application for probate, and that the will was proved; and that probate was accordingly ordered to be given to *R*.

Held, that *B*'s, will having been affirmed in a court exercising appropriate jurisdiction, the propriety of that decision could not be impugned by a court exercising any other jurisdiction; and that, while that will stood, the plaintiffs were not clothed with a legal character or title which would authorise them to ask for the declaratory decree sought by their plaint (97-8). ((*Sir Lawrence Jenkins.*) SHEOPARSAN SINGH *v.* RAMNANDAN SINGH.

(1916) 43 I. A. 91 = 43 C. 694 (704 5) = 33 I. C. 914 = 14 A. L. J. 466 = 20 C. W. N. 738 = 18 Bem. L.R. 397 = 23 C. L. J. 621 = (1916) M. W. N. 419 = 20 M. L. T. 1 = 3 L. W. 544 = 31 M. L. J. 77.

Right by birth.

———Ancestral Property—Right by birth in. *See* HINDU LAW—ANCESTRAL PROPERTY—RIGHT BY BIRTH IN.

———Ancestral Property—Right by birth of son in. *See* HINDU LAW—JOINT FAMILY—FATHER—ANCESTRAL PROPERTY—SON'S RIGHT BY BIRTH IN.

———Grandfather—Self-acquired immoveable property of—Right by birth of grandson in. *See* HINDU LAW—JOINT FAMILY—GRANDFATHER—SELF-ACQUIRED IMMOVEABLE PROPERTY OF. **(1867) 12 M. I. A. 1 (39).**

———*Mithakshara—Right under, up to third generation.*

Under the Mithakshara, rights are created by birth up to the third generation, *viz.*, son, grandson, and great-grandson (210). (*Mr. Ameer Ali.*) MASIT-ULLAH *v.* DAMODAR PRASAD. **(1926) 53 I. A. 204 = 48 A. 518 = (1926) M. W. N. 816 = 3 O. W. N. 721 = 25 A. L. J. 1 =**

HINDU LAW—(*Contd.*)

Right by birth—(*Contd.*)

28 Bom. L. R. 1402 = 44 C. L. J. 321 = 24 L. W. 551 = 7 Pat. L. T. 815 = 31 C. W. N. 293 = A. I. R. 1926 P. C. 105 = 98 I. C. 1031 = 51 M. L. J. 792.

———Partition — Right to—Connection between. *See* HINDU LAW — JOINT FAMILY—PARTITION—ANCESTRAL PROPERTY—PARTITION OF—RIGHT TO,

(1887) 15 I. A 51 (64) = 10 A. 272 (287).

Self-acquisition.

ANCESTRAL PROPERTY OR.
EDUCATION.
FATHER—SELF-ACQUISITIONS OF.
FATHER—SON—PROPERTY PURCHASED BY FATHER IN NAME OF.
GAINS OF SCIENCE.
INHERITED PROPERTY IF.
JOINT FAMILY PROPERTY OR.
JOINT FAMILY PROPERTY OR—PRESUMPTION—ONUS OF PROOF—RULE AS TO—NON-MEMBER OF FAMILY AND A CHRISTIAN
LEARNING.
MANAGER OF JOINT FAMILY.
MEMBER OF JOINT FAMILY—ELDEST MEMBER.
MEMBER OF JOINT FAMILY—PROPERTY ACQUIRED BY.
MEMBERS OF JOINT FAMILY—JOINT FAMILY PROPERTY AND SELF-AQUISITIONS—BLENDING OF.
NON-MEMBER OF JOINT FAMILY AND A CHRISTIAN—PROPERTY OF.
SON—PROPERTY PURCHASED BY FATHER IN NAME OF.
THROWING INTO COMMON STOCK OF.
TRANSFER INTER VIVOS TO JOINT FAMILY OF.

ANCESTRAL PROPERTY OR.

———Test. *See* HINDU LAW—ANCESTRAL PROPERTY—SELF-ACQUISITION.

EDUCATION.

———Property acquired by member of joint family by means of. *See* HINDU LAW—JOINT FAMILY—MEMBER OF—LEARNING.

FATHER—SELF-ACQUISITIONS OF.

———*See* HINDU LAW—JOINT FAMILY—FATHER—SELF-ACQUISITIONS OF.

FATHER—SON—PROPERTY PURCHASED BY FATHER IN NAME OF.

———*See* HINDU LAW—JOINT FAMILY—FATHER—SON—PURCHASE IN NAME OF—NATURE OF PROPERTY PURCHASED.

GAINS OF SCIENCE.

———*See* HINDU LAW—JOINT FAMILY—MEMBER OF—LEARNING.

INHERITED PROPERTY IF.

———Collateral—Maternal grandfather—Inheritance from. *See* HINDU LAW—JOINT FAMILY—JOINT FAMILY PROPERTY—SELF ACQUISITION—INHERITED PROPERTY.

JOINT FAMILY PROPERTY OR.

———*See* HINDU LAW—JOINT FAMILY—JOINT FAMILY PROPERTY—SELF-ACQUISITION.

JOINT FAMILY PROPERTY OR—PRESUMPTION—ONUS OF PROOF—RULE AS TO—NON-MEMBER OF FAMILY AND A CHRISTIAN.

———*Applicability to property of.*

Plaintiff and his brothers formed a joint Hindu family. They had a sister who married a Christian. After the mar-

HINDU LAW—(*Contd.*)

Self-acquisition—(*Contd.*)

JOINT FAMILY PROPERTY OR— PRESUMPTION—ONUS OF PROOF—RULE AS TO NON-MEMBER OF FAMILY AND A CHRISTIAN—(*Contd.*)

riage, the sister's husband went to live in his wife's village. He died leaving the appellant, a minor about four year's old, his son and sole heir to the property which he had inherited from his father. After his death, mother and child (appellant) went to live with the child's uncles. From that time onwards the uncles treated the minor's property in the same way as their own family property; they cultivated it and treated the produce as joint property. The position remained unchanged even after the appellant attained his majority; individual members adventured, the proceeds going to a common fund. About 5 years after the appellant attained his majority, the half interest of his paternal uncle in the ancestral property was purchased from that uncle's son, the purchase price being paid for out of the common fund, the sale deed being, however, taken in the name of the appellant.

In a suit for partition brought by the plaintiff, *held*

(1) that the onus was on the plaintiff to establish that the property which the appellant had as a minor inherited from his father was partible and he had an interest in it, and that he had not discharged that onus;

and (2) that, with regard to the share subsequently purchased, any presumption as to the joint nature of the purchase which might arise from the joint nature of the funds which went for the purchase was sufficiently rebutted by the fact that during the appellant's minority the rest of the family had undoubtedly received proportionately greater advantage from the appellant's separate property, and the evidence that they desired to recognise that by acquiring the second half for the appellant himself.

The case is not one of an original member of a Hindu family becoming a convert, but electing to retain his interest in the family property on the old footing. Here a definite cession to a Hindu family of property which originally did not belong to the family by a non-member of the family who was a Christian has to be proved. (*Lord Atkin.*) PEDDI REDDI JOGI REDDI *v.* CHINNABBI REDDI.

(1928) 56 I.A. 6 = 52 M. 83 = 49 C.L.J. 98 = 31 Bom. L. R. 264 = 114 I.C. 5 = I.D. (1929) P.C. 45 = 33 C.W.N. 233 = 29 L.W. 86 = (1929) M W.N. 43 = A.I.R. 1929 P.C. 13 = 56 M.L.J. 165.

LEARNING.

———Property acquired by member of joint family by means of. *See* HINDU LAW—JOINT FAMILY—MEMBER OF—LEARNING.

MANAGER OF JOINT FAMILY.

———Property acquired by. *See* HINDU LAW—JOINT FAMILY—MANAGER OF—SELF-ACQUISITIONS OF.

MEMBER OF JOINT FAMILY—ELDEST MEMBER.

———Property in name of. *See* HINDU LAW—JOINT FAMILY—MEMBER OF—ELDEST MEMBER.

MEMBER OF JOINT FAMILY—PROPERTY ACQUIRED BY.

———*See* HINDU LAW—JOINT FAMILY—MEMBER OF—SELF-ACQUISITIONS OF.

MEMBERS OF JOINT FAMILY—JOINT FAMILY PBOPERTY AND SELF-ACQUISITIONS—BLENDING OF.

———Effect of—Evidence of. *See* HINDU LAW—JOINT FAMILY—MEMBERS OF—JOINT FAMILY PROPERTY AND SELF-ACQUISITIONS.

(1923) 50 I.A. 173 (178) = 50 C 439 (444).

HINDU LAW—(*Contd.*)

Self-acquisition—(*Contd.*)

NON-MEMBER OF JOINT FAMILY AND A CHRISTIAN—PROPERTY OF.

———Presumption as to property in name of member of joint family—Inapplicability of. *See* HINDU LAW—SELF-ACQUISITION—JOINT FAMILY PROPERTY OR—PRESUMPTION—ONUS OF PROOF.

(1928) 56 I.A. 6 = 52 M. 83.

SON—PROPERTY PURCHASED BY FATHER IN NAME OF.

———*See* HINDU LAW—JOINT FAMILY—FATHER—SON—PURCHASE IN NAME OF — NATURE OF PROPERTY PURCHASED.

THROWING INTO COMMON STOCK OF.

———Conditional offer for—Non-acceptance of—Effect. *See* HINDU LAW—JOINT FAMILY—MEMBER OF—SELF-ACQUISITIONS OF—THROWING INTO COMMON STOCK OF—CONDITIONAL OFFER FOR.

(1917) 45 I.A. 41 (45-6) = 45 C. 666 (675-6).

———Conveyance for — Necessity. *See* HINDU LAW—JOINT FAMILY—MEMBER OF—SELF-ACQUISITION OF—THROWING INTO COMMON STOQK OF—CONVEYANCE FOR. **(1867) 11 M.I.A. 223 (239 40).**

———Effect of—Property if can be taken out of common stock again. *See* HINDU LAW—JOINT FAMILY—MEMBER OF—SELF-ACQUISITIONS OF—THROWING INTO COMMON STOCK OF—EFFECT OF. **(1917) 45 C. 733 (744).**

———Father—Self-acquisitions of — Throwing into common stock of. *See* HINDU LAW—JOINT FAMILY—FATHER—SELF-ACQUISITIONS OF—THROWING INTO COMMON STOCK OF.

———*Findings concurrent as to—Privy Council's interference with.*

(*Sir John Edge.*) METHARAM RAMRAKHIOMAL *v.* REWACHAND RAMRAKHIOMAL.

(1917) 45 I.A. 41 (46) = 45 C. 666 (676) = 16 A.L.J. 281 = 20 Bom. L.R. 566 = (1918) M.W.N. 587 = 22 C.W.N. 377 = 4 Pat. L.W. 197 = 22 M.L.T. 218 = 7 L.W. 361 = 27 C.L.J. 345 = 44 I.C. 269 = 34 M.L.J. 327.

———Manager—Self-acquisitions of—Throwing into common stock of. *See* HINDU LAW — JOINT FAMILY—MANAGER — SELF-ACQUISITIONS OF—THROWING INTO COMMON STOCK OF.

———Member of joint family — Self-acquisitions of—Throwing into common stock of. *See* HINDU LAW—JOINT FAMILY—MEMBER OF—SELF-ACQUISITIONS OF—THROWING INTO COMMON STOCK OF.

———Members of joint family—Blending by, of joint family property and self-acquisitions— Effect of— Evidence of. *See* HINDU LAW—JOINT FAMILY—MEMBERS OF—JOINT FAMILY PROPERTY AND SELF-ACQUISITIONS.

TRANSFER INTER VIVOS TO JOINT FAMILY OF.

———What amounts to—Oudh talookdar— Property got as self-acquisition under sunnud—Transfer of. *See* OUDH ESTATES ACT OF 1869—SS. 11, 14 AND 15.

(1876) 3 I.A. 259 (277).

Settlement.

———*See* SETTLEMENT.

Son.

———Ancestral property—Rights in. *See* HINDU LAW—JOINT FAMILY—FATHER—ANCESTRAL PROPERTY—SON'S RIGHT BY BIRTH IN.

———*Anxiety for—Reason for.*

According to the religious tenets of the Hindoos, a man's state, after death, his deliverance from a place of suffering

HINDU LAW—(*Contd.*)

Son—(*Contd.*)

called "Put"—depends upon his leaving a son to perform certain rites and ceremonies after his death (425-6). (*Mr. Pemberton Leigh*). HURADHUN MOOKURJIA *v.* MUTHORANATH MOOKURJIA. **(1849) 4 M.I.A. 414 = 7 W.R. P.C. 71 = 1 Suth. 213 = 1 Sar. 375.**

———Aurasa son—Gift to person described as—Donee not in fact an aurasa son—Validity of gift in case of. *See* HINDU LAW—GIFT—AURASA SON.
(1899) 26 I.A. 83 (89-90) = 22 M. 383 (390-1).

———*Ceremonial competence—Age of—Attainment of—What amounts to.*

A died leaving a widow *H* and a son *L* surviving him. *L* died a minor and unmarried, but he was 15 or 16 years of age when he died. After his death, *H* adopted the son of a relative of her late husband. The validity of the adoption was contested on the ground that, as *L* survived his father and attained the age of ceremonial competence, there was no occasion or justification for any adoption.

There was no proof that *L* had attained ceremonial competence in fact, or that he ever acted or was treated as having attained it. The Sub-Judge, himself a learned Hindu, considered it to be clear that *L* had not attained such competence, as he died a minor and unmarried, and the High Court came to the same conclusion.

Their Lordships were not prepared to say that *L* had attained such competence in the absence of evidence or authority to that effect and to hold the adoption made by *H* invalid on that ground (237). (*Lord Lindley.*) VERABHAI AJUBHAI *v.* BAI HIRABA. **(1903) 30 I.A. 234 = 27 B. 492 = 7 C.W.N. 716 = 5 Bom. L.R. 534 = 8 Sar. 508.**

———*Ceremonial competence—Age of attainment of.*

There does not appear to be any fixed age at which a Hindu child attains ceremonial competence (237). (*Lord Lindley.*) VERABHAI AJUBHAI *v.* BAI HIRABA.
(1903) 30 I. A. 234 = 27 B. 492 = 7 C. W. N. 716 = 5 Bom. L. R. 534 = 8 Sar. 508.

———*Ceremonial Competence—Minor un-married son dying at* 15 *or* 16 *if attains.*

Held, affirming the court below, that a boy who died a minor and un-married at the age of 15 or 16 had not attained ceremonial competence (237). (*Lord Lindley.*) VERABHAI AJUBHAI *v.* BAI HIRABA.
(1903) 30 I. A. 234 = 27 B. 492 = 7 C. W. N. 716 = 5 Bom. L. R. 534 = 8 Sar. 508.

———Existence of—Importance attached by Hindus to. *See* HINDU LAW—ADOPTION—ANXIETY OF CHILDLESS HINDU FOR. **(1858) 7 M. I. A. 54 (64).**

———Father— For cases between father and son. *See* HINDU LAW—JOINT FAMILY—FATHER.

———Father's purchase in name of—Benami or not. *See* HINDU LAW—JOINT FAMILY—FATHER—SON—PURCHASE, ETC.

———First-born son. *See* UNDER HINDU LAW—INHERITANCE—SONS—FIRST-BORN SON.

———Inheritance. *See* HINDU LAW—INHERITANCE—SON AND SONS.

———Legal capacity to continue the line—Attainment of full—What amounts to. *See* HINDU LAW—ADOPTION—ADOPTED SON—LEGAL CAPACITY ETC.
(1918) 45 I. A. 156 (161-2) = 41 M. 855 (859-60).

———Legal representative of father defendant in suit—Liability of—Nature and extent of. *See* HINDU LAW—JOINT FAMILY—FATHER—DECREE AGAINST—EXECUTION OF—STAY OF. **(1875) 2 I. A. 219 (232).**

HINDU LAW—(*Contd.*)

Son—(*Contd.*)

———Maintenance of. *See* HINDU LAW—JOINT FAMILY—FATHER—SON—MAINTENANCE OF.

———Maturity—Age of—Attainment of sufficient—What amounts to—Effect of. *See* HINDU LAW—ADOPTION—ADOPTED SON—MATURITY.
(1906) 33 I. A. 145 (154-5) = 29 M. 382 (389).

———Religious ceremonies—Capacity to perform—Adopted son—Capacity of—Distinction. *See* HINDU LAW—RELIGIOUS CEREMONIES. **(1920) 12 L. W. 556 (560).**

———Self-acquisitions of—Throwing into common stock of, with father. *See* HINDU LAW—JOINT FAMILY—FATHER—SON. **(1907) 34 I. A. 65 (70-1) = 29 A. 244 (255-6).**

———*Spiritual purposes of—Exhaustion of—Lapse of several successive heirs—Effect.*

After the lapse of several successive heirs, all the spiritual purposes of a son would, according to the largest construction of them, be exhausted (310). (*Lord Kingsdown.*) MUSST. BHOOBUN MOYEE DEBIA *v.* RAM KISHORE ACHARJ CHOUDHRY. **(1865) 10 M. I. A. 279 = 3 W. R. P. C. 15 = 1 Suth. 574 = 2 Sar. 111.**

———*Twelve classes of—All obsolete except the legitimately born and the adopted.*

Whatever may have been the position and rights hetween themselves of the twelve possible sons of a Hindu in very remote times, all of those twelve sons, except the legitimately born and the adopted are long since obsolete. (*Sir John Edge.*) NAGINDAS BHUGWANDAS *v.* BACHOO HURKISSONDAS. **(1915) 43 I. A. 56 (67) = 40 B. 270 (287) = 14 A. L. J. 185 = 3 L. W. 259 = 19 M. L. T. 193 = 20 C. W. N. 702 = (1916) 1 M. W N. 258 = 18 Bom. L. R. 172 = 32 I. C. 403 = 23 C. L. J. 395 = 30 M. L. J. 193.**

Sraddh.

———Performance of—Evidence of—Purohit—Evidence of—Value of. *See* EVIDENCE—SRADDH.
(1869) 12 M. I. A. 91 (97).

———*Performance of—Maternal uncle of father—Right of.*

Mr. Forsyth, indeed, argued strongly against the right of the appellant (the maternal uncle of the father of the deceased) to inherit, on the assumption that he was not entitled to offer the funeral oblations. But is this assumption well founded ? There is evidence, the uncontradicted evidence of the family priest and others, that the appellant did, in point of fact, perform the sraddh of the deceased, and he seems, in the judgment of the priest, properly to have performed that function in the absence of any nearer kinsman. It is, however, unnecessary to determine whether the act of the appellant was regular or not. The issue in this case is not between two competing kinsmen, but between a kinsman of the deceased and the Crown (462). (*Sir James W. Colvile.*) GRIDHARI LALL ROY *v.* GOVERNMENT OF BENGAL. **(1868) 12 M. I. A. 448 = 10 W. R. P. C 31 = 1 B. L. R. P. C. 44 = 2 Suth. 159 = 2 Sar. 382.**

Stridhan.

WHAT IS.
TEXTS RELATING TO.
AYAUTAKA STRIDHAN.
INHERITED PROPERTY IF.
WIDOW—STRIDHAN OF.
WIFE.

HINDU LAW—(*Contd.*)

Stridhan—(*Contd.*)

WHAT IS.

———*Different views as to.*

During the voluminous discussions, ancient and modern, which have arisen with regard to the separate property of women under Hindu law, its qualities, its kinds, and its lines of descent, the question has constantly been found in the forefront, what is stridhan? The Bengal School of lawyers have always limited the use of the term narrowly, applying it exclusively, or nearly exclusively, to the kinds of woman's property enumerated in the primitive sacred texts. The author of the Mithakshara and some other authors seem to apply the term broadly to every kind of property which a woman can possess, from whatever source it may be derived. Their Lordships do not propose to dwell upon this particular question. It may perhaps be regarded as one mainly of phraseology, not necessarily Involving, however it be answered, much distinction in the substance of the law (205-6). (*Sir Arthur Wilson.*) SHEO SHANKAR LALL *v.* DEVI SAHAI. **(1903) 30 I. A. 202 = 25 A. 468 (472) = 7 C. W. N. 831 = 5 Bom. L. R. 828 = 8 Sar. 465 = 13 M. L. J. 330.**

TEXTS RELATING TO.

———(*Lord Robson.*) DEBI MANGAL PRASAD SINGH *v.* MAHADEO PRASAD SINGH. **(1912) 39 I.A. 121 (126-8) = 34 A. 234 (239-41) = 11 M. L.T. 217 = 9 A. L. J. 263 = 16 C. W. N. 409 = 14 Bom L. R. 220 = 15 C. L. J. 344 = 14 I. C. 1000 = 23 M. L. J. 462.**

AYAUTAKA STRIDHAN.

———*What is—Sister married—Property given by brother to.*

Property given by a brother to his sister when married becomes what is called her "Ayautaka Stridhan." (*Lord Davey.*) BASANTA KUMARI DEBI *v.* KAMIKSHYA KUMARI DEBI. **(1905) 32 I A. 181 = 33 C. 23 (27) = 2 C. L J. 238 = 10 C. W. N. 1 = 7 Bom. L. R. 904 = 2 A. L. J. 810 = 9 Sar. 1 = 15 M. L. J. 320.**

———*Succession to—Daughter—Husband—Preference.*

There being no son of Soondari Debi, the original respondent, as her only unmarried daughter, was entitled to succeed to her "Ayautaka Stridhan" as her sole heiress. Her husband would only be entitled to succeed as heir in default of issue and certain other relatives (183). (*Lord Davey.*) BASANTA KUMARI DEBI *v.* KAMIKSHYA KUMARI DEBI. **(1905) 32 I. A. 181 = 33 C. 23 (27) = 2 C. L. J. 238 = 10 C. W. N. 1 = 7 Bom. L. R. 904 = 2 A. L. J. 810 = 9 Sar. 1 = 15 M. L. J. 320.**

INHERITED PROPERTY IF.

———*Immoveable property.*

Quaere: whether immoveable property acquired by a woman by inheritance is "woman's property." (*Sir Barnes Peacock.*) BRIJ INDAR BAHADUR SINGH *v.* RANEE JANKI KOER. **(1877) 5 I. A. 1 (15) = 1 C. L. R. 318 = 3 Sar. 763 = Bald. 148 = 3 Suth. 474 = R. & J.'s No. 48.**

———*Male—Property inherited from.*

Decided cases place it beyond doubt that property inherited by a woman from a male is not her absolute property, and passes on her death, not to her stridhan heirs, but to the heirs of the male person from whom she inherited it (206). (*Sir Arthur Wilson.*) SHEO SHANKAR LAL *v.* DEBI SAHAI. **(1903) 30 I. A. 202 = 25 A. 468 (473) = 7 C. W. N. 831 = 5 Bom. L. R. 828 = 8 Sar. 465 = 13 M. L. J. 330.**

———Under the Benares law, what a woman takes by inheritance from a male she takes not absolutely, but for a qualified estate alienable only under the conditions applicable to such an estate (218 9). (*Sir Arthur Wilson.*) LAL SHEO PERTAB BAHADUR SINGH *v.* ALLAHABAD BANK, LTD. **(1903) 30 I. A. 209 = 25 A. 476 (491-2) = 7 C. W. N. 840 = 5 Bom. L. R. 883 = 8 Sar. 535 = 13 M. L. J. 336.**

HINDU LAW—(*Contd.*)

Stridhan—(*Contd.*)

INHERITED PROPERTY IF—(*Contd.*)

———*Woman—Property inherited from.*

Under the Hindu law of the Benares school, property which a woman has taken by inherltance from a female is not her Stridhan in such a sense that on her death it passes to her Stridhan heirs in the female line to the exclusion of males. (*Sir Arthur Wilson.*) SHEO SHANKAR LAL *v.* DEBI SAHAI. **(1903) 30 I. A. 202 = 25 A.468 = 7 C. W. N. 831 = 5 Bom. L. R. 828 = 8 Sar. 465 = 13 M. L. J. 330.**

———Under the Benares law, what a woman has inherited from a woman she does not hold as her absolute and inalienable estate, but for a qualified estate, with reverter after her death to the heirs of her predecessor-in-title (219).

Quaere: whether the case is different in those parts of Bombay which are governed by the Mayukha (219). (*Sir Arthur Wilson.*) LAL SHEO PERTAB BAHADUR SINGH *v.* ALLAHABAD BANK, LTD. **(1903) 30 I. A. 209 = 25 A. 476 (492-3) = 7 C. W. N. 840 = 5 Bom. L. R. 883 = 8 Sar. 535 = 13 M. L. J. 336.**

WIDOW—STRIDHAN OF.

———*Alienation of—Power of.*

That she (the widow of the deceased) was entitled to dispose of her separate property, or Stridhun, consisting of whatever was given to her by her husband, or her husband's family, or any part of her own family, whether moveable or immoveable, by adopting an heir of her own, appears to have been sufficiently established (250). (*Mr. Justice Bosanquet.*) RAJUNDER NARAIN RAE *v.* BIJOY GOVIND SINGH. **(1839) 2 M. I. A. 181 = 1 Moo. P. C. 117 = 1 Sar. 175.**

———*Alienation by will of—Power of—Extent of.*

The testamentary power of a Hindu widow over her Stridhan is commensurate with her power of disposition over it in her life-time, and both are absolute. VENKATA RAMA RAO *v.* VENKATA SURIYA RAO. **(1880) 2 M. 333 = 8 C. L. R. 304 = 4 Sar. 209.**

———Moveable property gifted by husband during married life—Immoveable property purchased by her with, after husband's death—Nature of. *See* HINDU LAW—HUSBAND AND WIFE—WIFE—MOVEABLE PROPERTY GIFTED BY HUSBAND, ETC. **(1880) 2 M. 333.**

———*Succession to—Co-widow—Husband's brother or brother's son—Preference—Mayukha law.*

Held that, according to the Hindu law of inheritance to property in the island of Bombay, a co-widow is entitled to succeed to the property of a widow dying without issue in preference to her husband's brother or brother's son.

Construction of the Mayukha, c. iv, S. 10, placita 28 and 30. (*Lord Davey.*) BAI KESSERBAI *v.* HUNSRAJ MORARJI. **(1906) 33 I. A. 176 (196-7) = 30 B. 431 (442-3) = 10 C. W. N. 802 = 4 C. L. J. 9 = 8 Bom L. R. 446 = 3 A. L. J. 484 = 1 M. L. T. 211 = 16 M. L. J. 446.**

———*Succession to—Co-widow—Husband's brother or brother's son—Preference—Mithakshara law.*

Under the Mithakshara law, a co-widow is entitled to succeed to the property of a widow dying without issue in preference to her husband's brother or brother's son. The material texts of the Mithakshara are c. ii, S. 11, placita 8, 9 and 11. (*Lord Davey.*) BAI KESSERBAI *v.* HUNSRAJ MORARJI. **(1906) 33 I. A. 176 (187 8) =**

HINDU LAW –(*Contd.*)

Stridhan—(*Contd.*)

WIDOW—STRIDHAN OF—(*Contd.*)

30 B. 431 (442-3)=10 C. W. N. 802=4 C. L. J. 9=8 Bom. L. R. 446=3 A. L. J. 484=1 M. L. T. 211=16 M. L. J. 446.

———*Succession to—Daughter—Exclusion of—Custom of—Proof of.*

A custom of the tribe was set up and relied upon to the effect that the property of a Bissein could be inherited only by a Bissein, and that it descended to collateral male heirs in preference to a daughter. There was no sufficient evidence to prove the custom set up. Beyond all doubt there was no such custom proved as regards the separate or absolute property of a woman (16-7). (*Sir Barnes Peacock.*) BRIJ INDAR BAHADUR SINGH *v.* RANI JANKI KOER.

(1877) 5 I. A. 1=1 C. L. R. 318=3 Sar. 763=Bald. 148=3 Suth. 474=R & J.'s No. 48.

———*Succession to—Daughter—Co-widow's daughter's son—Husband's male heirs—Preference—Mithakshara law.*

Under the Mithakshara law, the separate or absolute property of a widow descends to her daughter in preference to the son of the daughter of her rival wife, and the remote male heirs of her husband (17). (*Sir Barnes Peacock.*) BRIJ INDAR BAHADUR SINGH *v.* RANEE JANKI KOER.

(1877) 5 I. A. 1=1 C. L. R. 318=3 Sar. 763=Bald. 148=3 Suth. 474=R. & J.'s No. 48.

———*Succession to—Right of, depends on nature of marriage—Marriage not shown to be in an unapproved form—Right in case of.*

The devolution of Stridhan from a childless widow is regulated by the nature of the marriage. And when there is nothing to show that a widow was not married according to one of the four approved forms, her Stridhan would, according to the Mithakshara, go to the collateral heirs of her husband. (*Sir James Colvile.*) MUSSUMAT THAKOOR DEYHEE *v.* RAI BALUK RAM.

(1866) 11 M. I. A. 139 (175-6)=10 W. R. P. C. 3=2 I.J.N.S. 106=2 Suth. 49=2 Sar. 231.

WIFE.

———*Absolute estate in property of—Husband's right to cut down.*

Where a Hindu wife is entitled to an absolute estate in certain property, her husband cannot cut down her interest to a life interest by any dowl which he might make (81). MOHIMA CHUNDER ROY *v.* DURGA MONEE.

(1875) 3 Suth. 79=23 W. R. 184=3 Sar. 452.

———Husband—Immovable property gifted by—Stridhan if—Alienation of property—Wife's power of—Devolution of property after her death—Mode of. *See* HINDU LAW—GIFT—WIFE—GIFT TO—IMMOVEABLE PROPERTY.

(1928) 55 I. A. 180=50 A. 375.

———*Husband— Immoveable property granted by— Stridhan if—Husband's control over it.*

Quaere: whether if a grant of immoveable property was made absolutely in favour of a Hindu lady in her husband's lifetime the property would be her peculiar property, over which her husband would have no dominion or control (15). (*Sir Barnes Peacock.*) BRIJ INDAR BAHADUR SINGH *v.* KANEE JANKEE KOER. **(1877) 5 I. A. 1=1 C. L. R. 318=3 Sar. 763=Bald 148=3 Suth. 474=R. & J.'s No. 48.**

———Husband—Money gifted by—Immoveable property purchased by wife with—Nature of—Alienation of—Wife's power of. *See* HINDU LAW—HUSBAND AND WIFE—WIFE—IMMOVEABLE PROPERTY PURCHASED BY, ETC.

(1873) 19 W, R. 292.

HINDU LAW—(*Contd.*)

Stridhan—(*Contd.*)

WIFE—(*Contd.*)

———Husband—Moveable property gifted by—Nature of—Alienation—Wife's power of. *See* HINDU LAW—GIFT—WIFE—GIFT TO—MOVEABLE PROPERTY—GIFT BY HUSBAND OF.

(1873) 19 W, R. 292.

———Second marriage of husband—Property given to first wife an occasion of—Nature of. *See* HINDU LAW—GIFT—WIFE—GIFT TO—SECOND MARRIAGE OF HUSBAND. **(1887) 15 I. A. 29 (33)=10 A. 197 (203-4).**

Survivorship.

———Co-widows inheriting husband's estate—Survivorship between *See* HINDU LAW—WIDOW—CO-WIDOWS.

———Daughters inheriting father's estate—Survivorship between. *See* HINDU LAW—DAUGHTER—INHERITANCE—DAUGHTERS SUCCEEDING TO FATHER'S ESTATE BY—ESTATETAKEN BY. **(1875) 2 I.A. 113 (125-7).**

———Doctrine of—Applicability of, to obstructed inheritance. *See* HINDU LAW—INHERITANCE—OBSTRUCTED INHERITANCE--SURVIVORSHIP DOCTRINE, ETC.

(1902) 29 I. A. 156 (165-6)=25 M. 678 (687-8).

———Heirship—Ordinary title by—Survivorship varying from—Custom of—Proof of—Necessity. *See* HINDU LAW—IMPARTIBLE ESTATE—SUCCESSION—SURVIVORSHIP—HEIRSHIP—ORDINARY TITLE BY.

(1869) 12 M. I. A. 523 (541.)

———Illegitimate son—Legitimate brother—Survivorship to. *See* HINDU LAW—ILLEGITIMATE SON—SURVIVORSHIP TO, ETC. **(1890) 17 I. A. 128=18 C. 151.**

———Illegitimate sons between sons of same father by different mothers—Joint family between—Nature of—Survivorship in case of. *See* HINDU LAW—ILLEGITIMATE SON—JOINT FAMILY, ETC.

(1861) 8 M. I. A. 400 (420.)

———Impartible Estate—Joint ancestral estate. *See* HINDU LAW—IMPARTIBLE ESTATE--JOINT FAMILY PROPERTY—ESTATE FORMING.

———Inheritance—Survivorship. *See* HINDU LAW—INHERITANCE.

———*Joint Family—Members of—Coparcenaryship between, and survivorship following upon it—Separately acquired property of member in such family—Principle inapplicable to.*

According to the principles of Hindu law, there is coparcenaryship between the different members of a united family, and survivorship following upon it. There is community of nterest and unity of possession between all the members of the family, and upon the death of any one of them the others may well take by survivorship that in which they had during the deceased's lifetime a common interest and a common possession. But the law of partition shows that as to the separately acquired property of one member of a united family, the other members of that family have neither community of interest nor unity of possession. The foundation, therefore, of a right to take such property by survivorship fails, and there are no grounds for postponing the widow's right to any superior right of the coparceners in the undivided property (611). (*Lord Justice Turner.*) KATAMA NATCHIAR *v.* THE RAJAH OF SHIVAGANGA.

(1863) 9 M. I. A. 539=2 W. R. P. C. 31=1 Suth. 520=2 Sar. 25.

———Maternal grandfather—Impartible estate inherited by daughter's son from—Survivorship as regards—Right of—Another daughter's son if has. *See* HINDU LAW—DAUGHTER'S SON—MATERNAL GRANDFATHER—IMPARTIBLE ESTATE INHERITED FROM—SURVIVORSHIP, ETC.

(1896) 23 I. A. 128=19 M. 451.

HINDU LAW—(*Contd.*)

Survivorship—(*Contd.*)

———Maternal grandfather—Property of—Succession to, by sons of a daughter living as a joint Hindu family—Survivorship between. *See* HINDU LAW—DAUGHTER'S SON—MATERNAL GRANDFATHER—PROPERTY OF—SUCCESSION TO, ETC. **(1902) 29 I. A. 156 (163-6) = 25 M. 676 (686-8).**

———*Partition—Rights of—Connection between.*

The theory which would restrict the preference of the co-parceners over the widows to partible property is not only founded upon an intelligible principle, but reconciles the law of inheritance with the law of partition. These laws are so intimately connected that they may almost be said to be blended together; and it is surely not consistent with this position that co-parceners should take separate property by descent, when they take no interest in it upon partition (611-2). (*Lord Justice Turner.*) KATAMA NATCHIAR *v.* THE RAJAH OF SHIVAGUNGA. **(1863) 9 M. I. A. 539 = 2 W. R. P. C. 31 = 1 Suth. 520 = 2 Sar. 25.**

———It is the right to partition which determines the right to take by survivorship; and where there is no partition the survivor takes. (*Lord Lindley.*) RAJA CHELIKANI VENKAYAMMA GARU *v.* RAJA CHELIKANI VENKATARAMANAYAMMA. **(1902) 29 I. A. 156 (164-5) = 25 M. 678 (687) = 7 C. W. N. 1 = 4 Bom. L. R. 657 = 8 Sar. 286 = 12 M. L. J. 299.**

———*Property which can be held only by one person—Right of survivorship in.*

The truth is, the title to the Throne and the Royal lands is, as in this case, one and the same title; survivorship cannot obtain in such a possession from its very nature, and there can be no community of interest; for claims to an estate in lands, and to rights in others over it, as to maintenance, for instance, are distinct and inconsistent claims (541). (*Lord Chelmsford.*) NEELKISTO DEB BURMONO *v.* BEERCHANDAR THAKOOR. **(1869) 12 M. I. A. 523 = 12 W. R. P. C. 21 = 3 B. L. R. P. C. 13 = 2 Suth. 243 = 2 Sar. 523.**

———*Right of—Condition—Failure of male issue.*

The law of survivorship, which is the consequence of parcenership amongst Hindus, would come in only on failure of the heirs (420). (*Lord Kingsdown.*) MYNA BOYEE *v.* OOTARAM. **(1861) 8 M. I. A. 400 = 2 W. R. 4 = 2 M. H. C. R. 196 = 1 Suth. 452 = 1 Sar. 797**

———If this case could rightly be viewed as one governed by the ordinary presumption in Hindu law, that family property is joint, and by the ordinary law of the place where this Talook was situate, as to the devolution by survivorship under such failure of male issue as occurred in this case, the decision of it would be attended with no difficulty (514). (*Lord Cairns.*) SRI GAJAPATHI RADHIKA PATTA MAHA DEVI GARU *v.* SRI GAJAPATHI NILAMANI PATTA MAHA DEVI GARU. **(1870) 13 M. I. A. 497 = 14 W. R. P. C. 33 = 6 B. L. R. 202 = 2 Suth. 365 = 2 Sar. 601.**

———Right of—Disqualification at the time when right accrues—Effect. *See* HINDU LAW—DAUGHTER—INHERITANCE—DAUGHTERS SUCCEEDING TO FATHER'S ESTATE BY—ESTATE TAKEN BY. **(1875) 2 I. A. 113 (125-7).**

———*Right of—Transfer of, before it accrues—Validity of—T. P. Act, S. 6 (a)—Principle of—Applicability.*

Quaere: whether an agreement between two daughters (legatees under their father's will) by which each daughter gives up in favour of the sons of the other the interest to which she would, under the will, be entitled by the operation of the *jus accrescendi* in the moiety given to her sister in the event of her sister predeceasing her, would be void on the ground that it is a transfer of a mere expectancy. (*Lord Blanesburgh.*) JOY DURGA DASI *v.* SAROJ RANJAN SINHA. **(1929) 57 M. L. J. 794 (799-800) = 33 C.W.N. 1117 = 30 L.W. 494 = 50 C.L.J. 481 = A.I.R. 1929 P C. 214.**

———Will—Legatees under—Right of survivorship of one of, in case of the other predeceasing her—Transfer of, during lifetime of other—Validity of—T. P. Act, S. 6 (*a*)—Principle of—Applicability of. *See* HINDU LAW—SURVIVORSHIP—RIGHT OF—TRANSFER OF, BEFORE IT ACCRUES. **(1929) 57 M. L. J. 794 (799-800).**

Transaction contrary to strict and natural view of—Text prohibiting—Absence of—Inference from.

———Against, and not in favour of, validity of transaction. *See* HINDU LAW—AUTHORITIES—TRANSACTION CONTRARY TO ETC. **(1927) 54 I. A. 248 (264-5) = 50 M. 508.**

Transfer of property.

———*See* UNDER HINDU LAW—PROPERTY.

Trust.

———(*See also* HINDU LAW—WILL—TRUST).

———*English law notion of—Unknown in Hindu Law.*

A trust in the sense in which the expression is used in English law, is unknown in the Hindu system, pure and simple (311). (*Mr. Ameer Ali.*) VAIDYA VARUTHI THIRTHA *v.* BALUSAMI AIYAR. **(1921) 48 I. A. 302 = 44 M. 831 (839) = (1921) M. W. N. 449 = (1922) P. C. 123 = 15 L. W. 78 = 30 M. L. T. 66 = 26 C. W. N. 537 = (1922) Pat. 245 = 20 A. L. J. 497 = 24 Bom. L. R. 629 = 65 I. C. 161 = 41 M. L. J. 346.**

———*Trust estate—Creation by will of—Validity.*

It was argued that the will is void by reason of its being founded upon the creation of an estate in trustees, absorbing the whole interest in the property, and out of which the interests of the beneficiaries are to be fed. It was maintained that an estate, to be held in trust, can have no existence by the Hindu law, and that, as the foundation of the will fails, the whole superstructure must fall (70-1).

Their Lordships are unable to give any effect to this argument against the admissibility of a trust. It is obvious that property, whether moveable or immoveable, must for many purposes be vested, more or less absolutely, in some person or persons for the benefit of other persons, and trusts of various kinds have been recognised and acted upon in India in many cases (71).

Implied trusts were recognised and established by this Board in the case of a benamee purchase; and in cases of a provision for charity or for other beneficent objects, such as the professorship provided for by the will under consideration, where no estate is conferred upon the beneficiaries and their interest is in the proceeds of the property the creation of a trust is particularly necessary (71-2).

Hence the argument that there cannot be a trust estate is not tenable (72). (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDRO MOHUN TAGORE. **(1872) Sup. I. A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.**

WIDOW—

(*N.B.*—Cases not found under this head will be found under Hindu Law—Reversioner).

ACCUMULATIONS OF—ACCRETION TO HUSBAND'S ESTATE OR ABSOLUTE PROPERTY OF WIDOW.

HINDU LAW—(*Contd.*)

Widow—(*Contd.*)

ACCUMULATIONS OF—DEVOLUTION OF, WHEN NOT DISPOSED OF BY WIDOW.
ADOPTION BY.
ADVERSE POSSESSION AGAINST.
ADVERSE POSSESSION BY.
AGENT OF.
ALIENATION BY.
ARRANGEMENT BY.
BEQUEST TO.
BOND BY.
BUSINESS OF HUSBAND.
CHARGE CREATED BY.
COMPROMISE BY.
CO-WIDOWS.
DEBT OF.
DEBT OF HUSBAND.
DECREE AGAINST.
DEED BY—WILL OR APPOINTMENT OF HEIR PRESENT AND IRREVOCABLE.
ESTATE OF.
ESTOPPEL AGAINST.
EX POST FACTO ACTS—CHARGING OF ESTATE BY, WITH OBLIGATIONS NOT ORIGINALLY BINDING UPON IT.
FAMILY ARRANGEMENT BY.
GIFT BY.
GIFT TO.
HUSBAND.
INHERITANCE TO HUSBAND—ESTATE GOT BY.
INHERITANCE TO HUSBAND—RIGHT OF.
JOINT STATUS OF HUSBAND—PRESUMPTIVE REVERSIONER'S SUIT FOR POSSESSION AGAINST WIDOW ON FOOT OF—FINDING THAT DECEASED WAS DIVIDED MEMBER.
LEASE BY,
MAINTENANCE.
MANAGER OF JOINT FAMILY—POSITIONS OF.
MORTGAGE—PORTION OF ESTATE SUBJECT TO—REVENUE DUE UPON.
MORTGAGE BY.
OUDH ESTATE.
PARTITION WITH HUSBAND'S CO-PARCENERS.
PERSON DEALING WITH.
POWER-OF-ATTORNEY BY—EXECUTION OF.
PROPERTY IN POSSESSION OF—HUSBAND'S OR WIDOW'S OWN.
RELEASE IN FAVOUR OF FEMALE PRESUMPTIVE REVERSIONER BY.
RENUNCIATION OF CLAIM TO HUSBAND'S ESTATE BY.
RESIDENCE OF.
REVENUE DUE UPON ESTATE—WILFUL DEFAULT TO PAY.
REVERSIONER'S SUIT FOR POSSESSION ON DEATH OF.
SALE BY.
SETTLEMENT RECORD—RECORD OF NAME IN REGARD TO PORTION OF JOINT PROPERTY IN.
STRIDHAN OF.
SUIT AGAINST.
SUIT BY.
SURRENDER BY.
TRADE OF HUSBAND.
WASTE BY.
WILL BY, BEQUEATHING HUSBAND'S ESTATE.

Widow—Accumulations of—Accretion to husband's estate or absolute property of widow.

EVIDENCE AS TO.
INCOME HELD IN SUSPENSE IN HANDS OF WIDOW IF.
INCOME NOT ACTUALLY RECEIVED BY WIDOW IF.

HINDU LAW—(*Contd.*)

Widow—Accumulations of—Accretion to husband's estate or absolute property of widow—(*Contd.*)

INCOME OF ESTATE TO WHICH ALONE WIDOW ENTITLED IF.
LAW AS TO.
LIFE ESTATE WITH POWER TO APPROPRIATE PROFITS—HUSBAND'S DEED GIVING WIDOW A—PROCEEDS OF ESTATE IN CASE OF.
PRESUMPTION AS TO.
QUESTION AS TO—PRIVY COUNCIL APPEAL—PERMISSIBILITY FOR FIRST TIME IN.
TEST AS TO.
TRESPASSER—PROPERTY IN POSSESSION OF WIDOW AS—MESNE PROFITS OF—PURCHASES WITH.

EVIDENCE AS TO.

———*Adopted son of husband—Person put forward and treated by widow as, but whose adoption was subsequently held to be invalid—Will by widow giving whole property to.*

N, who died without male issue, had inherited some property and had purchased some. On his death, his widow, who succeeded to his estate, had purchased a good deal of property, consisting, amongst others, of houses and lands. The widow left by will all the property which she had power to dispose of to one *P*.

P claimed to be the adopted son of *N*. In a suit brought by a person claiming to be the reversionary heir of *N* and to be entitled to succeed to the property of *N* on the death of his widow in default of the adoption of *P*, the Privy Council ultimately held, however, that *P* was not the adopted son of *N*, and declared the right of the plaintiff therein on the death of the widow of *N* to succeed to his property. The Privy Council remitted the cause to the High Court to make the necessary inquiries to ascertain, *inter alia*, what part of the property claimed by the plaint was the estate of *N*. In the course of that inquiry the question arose whether the houses and lands purchased by the widow of *N* formed part of his estate. It was found as a fact that the said properties were purchased by the widow out of the proceeds of her husband's estate. It was nevertheless contended that they did not form increments to the husband's estate, but belonged to the widow absolutely, and were at her absolute disposal, because she had evinced an intention to sever them from the husband's estate, and to treat them as made in her own right.

Held, on the facts, that the intention of the widow was, not to sever the purchases from her husband's estate and to treat them as acquired in her own right, but to treat them as increments to her husband's estate, and that they, therefore, formed part of *N's* estate.

In the present case their Lordships are of opinion that the widow, who always maintained the validity of *P's* adoption as heir to her deceased husband and treated him as entitled to succeed to her husband's property, must be presumed to have intended to make her purchases as accretions to that property; nor do they see any evidence to rebut this presumption. It is true that she made a will in her son's favour, but it contains no specific gift of the property in question, and might well have been intended to apply to any property of her own which may have belonged to her as her Stridhan. That the property in question was understood by *P* himself to be part of *N's* estate is shown by the pleadings in the original suit (in which his adoption was declared invalid), in which he claimed it as the adopted son and heir of *N* (372). (*Sir Robert P. Collier.*) GONDA KOOER *v.* KOOER OODEY SINGH.

(1874) 14 B. L. R. 159 = 3 Sar. 370 = 2 Suth. 975.

———*Gift of original estate and of after-purchases to same person to carry out intentions of husband.*

HINDU LAW--(*Contd.*)

Widow—Accumulations of—Accretion to husband's estate or absolute property of widow—(*Contd.*)

EVIDENCE AS TO—(*Contd.*)

Held, on the facts, that the High Court was right in deciding that the purchased properties were accretions to the husband's property.

There are circumstances here which would indicate that it was the intention of the widows to keep the estate entire and that they did not intend that the husband's estate and the subsequently purchased properties should go in a different line of succession, because their act, in what they did with regard to the defendant, was to make a gift to him of the whole of the property and professing to do it so as to, what seems to be called, carry out the intentions of the husband and found a thakoorbari, with which the estate would be connected. The transaction appears to indicate that their intention was not to create separate estates, one to go in one way, and another in another, but to keep the whole as one entire property; and applying what is said in the case of Isridut Koer to the present case, there do not appear to be circumstances which would shew that there was any other intention than that the purchased property should be accretions to the inherited property (66). (*Sir Richard Couch.*) BABU SHEO LOOCHUN *v.* BABU SAHEB SINGH.
(1887) 14 I. A. 63 = 14 C. 387 (394) = 5 Sar. 1.

———*Investment of permanent nature—Widow placing fund in.*

The circumstance that a Hindu widow entitled to a fund absolutely placed it in investments of a permanent nature would not alone justify the inference that she wished it to revert to her husband's heirs or add the fund to the estate devolving on her husband's heirs (24). (*Lord Shand.*) SOWDAMINEE DOSSEE *v.* ADMINISTRATOR-GENERAL OF BENGAL. **(1892) 20 I.A. 12 = 20 C. 433 (442 3) = 6 Sar. 272.**

———*Lands in which husband was share-holder to a larger extent—Shares of—Accumulations consisting of—No distinction made between original estate and after-purchases—Conveyance of parts of both to same person.*

B, a Hindu, died leaving two widows and *D*, a daughter by one of them. On 21-12-1873, the widows executed a deed whereby, after stating that with the exception of *D*, there was no heir of the husband or of themselves, they made a gift to her of certain lands and villages, only retaining to themselves a life interest in part of them. Some of the property was described as mowzahs exclusively acquired by the widows out of their own fund, and the rest was described as having been left by their husband *B*.

D, died in 1875, and, in 1876, the plaintiffs brought a suit for a decision that the deed of December 1873 was null and void as regards the reversionary interests of the plaintiffs, and for a declaration that the properties acquired by the widows were part and parcel of their husband's estate.

The properties acquired by the widows were found to have been purchased by them out of the profits of their husband's estate, and the question arose whether they were accretions to that estate.

Held, reversing the High Court, and restoring the Sub-Judge, that the after-purchases were accretions to the original estate, and that they were inalienable by the widows for any purpose which would not justify alienation of that original estate (161).

In this case the properties in question consist of shares of lands in which the husband was a share-holder to a larger extent. They were purchased within a short time after his death in 1857. No attempt to alienate them was made till 1873. The object of the alienation was not the need or the personal benefit of the widows, but a desire to change the succession, and to give the inheritance to the heirs of one of themselves in preference to their husband's heirs. Neither

HINDU LAW—(*Contd.*)

Widow—Accumulations of—Accretion to husband's estate or absolute property of widow—(*Contd.*)

EVIDENCE AS TO—(*Contd.*)

with respect to this object, nor apparently in any other way, have the widows made any distinction between the original estate and the after-purchases. Parts of both are conveyed to *D*, immediately, and parts of both are retained by the widows for life. These are circumstances which, in their Lordships' opinion, clearly establish accretion to the original estate, and make the after-purchases inalienable by the widows for any purposes which would not justify alienation of that original estate (161). (*Sir Arthur Hobhouse.*) ISRI DUT KOER *v.* MUSSUMUT HANSBUTHI KOERAIN.
(1883) 10 I. A. 150 = 10 C. 324 (337) = 13 C. L. R. 418 = 4 Sar. 459.

———*Tenant rights in husband's estate—Purchase of, partly with savings and partly by release of arrears of rent—Effect.*

Where, owing to difficulties which had arisen in connection with the occupiers of her husband's estate, a Hindu widow bought their tenant rights in part by the release of the arrears of rent due by them and in part by a payment of cash from out of the accumulated savings from the income of her husband's estate, *held*, that the tenant rights so acquired would be an obvious accretion to the husband's property which, if it were possible for her to segregate, would require an unequivocal act for the purpose.

Where the deed by which the widow purported to sell property so acquired recited the necessities of debts and the costs of litigation as a justification for the sale, *held further*, that the recitals afforded strong evidence of the fact that the widow knew that the property dealt with by her was her husband's property. (*Lord Buckmaster.*) NABAKISHORE MANDAL *v.* UPENDRAKISHORE MANDAL.
(1921) 15 L. W. 417 = 20 A. L. J. 22 = 26 C. W. N. 322 = (1922) P. C. 39 = 35 C. L. J. 116 = (1922) M. W. N. 95 = 24 Bom. L. R. 346 = L. R. 3 P. C. 77 = 30 M. L. T. 234 = 3 Pat. L. T. 311 = 65 I. C. 305 = 42 M. L. J. 253 (256-7).

INCOME HELD IN SUSPENSE IN HANDS OF WIDOW IF.

———It is not possible to lay down any sharp definition of the line which separates accretions to the husband's estate from income held in suspense in the hands of the widow, as to which she has not determined whether or no she will spend it (160-1). (*Sir Arthur Hobhouse.*) ISRI DUT KOER *v.* MUSSUMUT HANSBUTTI KOERAIN.
(1883) 10 I. A. 160 = 10 C. 324 (337) = 13 C. L. R. 418 = 4 Sar. 459.

INCOME NOT ACTUALLY RECEIVED BY WIDOW IF.

———*N*, the last male owner of the Medur estate, died a minor and unmarried on 4-8-1895. The Court of Wards had taken charge of the estate during his minority and continued to be in charge of it until December, 1895, when a Receiver, appointed by a Civil Court, having jurisdiction, took possession of it. The estate contained to be in charge of Receivers, duly appointed, until after 1902. Part of the estate consisted of Government Promissory notes which the Court of Wards had held in respect of moneys received from the Medur estate before 4-8-1895, the date of the death of *N*, and of moneys paid into the Bank by the Receivers and Government Promissory Notes and other securities in which moneys derived from the Medur estate were invested under the control of the civil court for the benefit of those who might be entitled to the estate. On the death of *N*, his natural mother became entitled to the estate and its appurtenances for the period of her life. She died on 9-3-1899,

Held, that *V*, had a right to receive the income derived from the Medur estate from the death of her son, *N*, on

HINDU LAW—(*Contd.*)

Widow—Accumulations of—Accretion to husband's estate or absolute property of widow—(*Contd.*)

INCOME NOT ACTUALLY RECEIVED BY WIDOW IF —(*Contd.*)

4-8-1895, until her own death on 9-3-1899, less the expenses of collecting it and less such expenses as were necessarily incurred in maintaining the Medur estate; and that that income included any interest which was paid or payable upon any Government promissory notes which the Court of Wards might have held in respect of moneys received from the Medur estate beforc 4-8-1895, and any interest paid or payable by banks in respect of such part or parts of her income which during her life the bank or banks had received on deposit or otherwise, and that, though, if *V* had actually received that income, she might have added it to the Medur estate as an accretion, yet, as she did not so receive it, it remained at her absolute disposal by will or otherwise, and on her death it was part of her estate which was applicable for the payment of such legacies as she might bequeath by her will (222). (*Sir John Edge,*) VENKATADRI APPA RAO *v.* PARTHASARATHY APPA RAO. **(1925) 52 I.A. 214 = 48 M. 312 = 23 A.L.J. 261 = 6 L. R. P. C. 82 = 27 Bom. L. R. 823 = (1925) M. W. N. 441 = 3 Pat. L. R. 208 = 29 C. W. N. 989 = A. I. R. (1925) P. C. 105 = 87 I. C. 324 = 48 M. L. J. 627.**

INCOME OF ESTATE TO WHICH ALONE WIDOW ENTITLED IF.

———Corpus *taken by another under husband's will—Investment of income by widow in Government securities—Effect.*

The will of a deceased Hindu did not specifically dispose of the income of the estate for a period of 8 years from the date of the testator's death. The widow of the testator maintained that it was intestate succession falling to her as her husband's widow and heiress. *S*, the brother of the testator, and the person to whom the general estate, real and personal of the testator, was disposed of by the will and who had the entire administration of the testator's estate for the said period of 8 years, originally contested the widow's claim to the said income. Afterwards he, however, conceded her claim, and an agreement was entered into between him and the widow by which she received a sum of Rs. 2,89,000 from *S* and relinquished her claim to the said income. That sum she received as income of her husband's estate to which she, as his widow and heiress, was absolutely entitled. By the same deed of argeement she relinquished other claims also on payments made by *S* in satisfaction thereof. The several sums payable and paid under that deed amounted in the aggregate to Rs. 4,75,450, and the payment was made in currency notes of various amounts.

Out of the sum of Rs. 2,89,000 of accumulated income the widow paid away about Rs. 20,502 for law and other costs, and with the balance, as well as with the other sums above-mentioned received from her brother-in-law, she purchased Indian Government promissory notes yielding interest payable half-yearly. She survived for about 20 years after the date of the agreement, and, a few months before her death, she executed a deed of settlement and trust, by which she transferred to the Administrator-General of Bengal as trustee the securities in which she had invested the sum received as the eight years of accumulated income from her husband's estate, after deducting costs and charges and also other Indian Government Promissory Notes for Rs. 10,600, being part of the interest which had accrued on the securities originally bought, which had not been spent by her in the meantime. The purposes of the trust were generally the payment to herself or for her use of the

HINDU LAW—(*Contd.*)

Widow—Accumulations of—Accretion to husband's estate or absolute property of widow—(*Contd.*)

INCOME OF ESTATE TO WHICH ALONE WIDOW ENTITLED IF—(*Contd.*)

interest or dividends of the securities during her life, and after her death a provision that the securities should be held in trust for *G*, her grandson, and his heirs and assigns, for his and their absolute use and benefit.

Held, affirming the Courts below, that, assuming that the savings of a Hindu widow must be presumed to have been made for the benefit of her husband's estate, there was no room for any such presumption in the circumstances of the case, that the widow had never indicated any intention to make the eight years' income received by her part of her husband's estate for the benefit of his heirs, and that she had therefore absolute power to alienate and dispose of the securities in question (23-5).

The *corpus* of the estate never came to the widow, but was taken by *S* under the will, and the income to which the widow succeeded was separated from it, and became and was dealt with as an entirely separate fund. To use the words of Mr. Justice Trevelyan in reference to the widows' position: "There was no estate of her husband's in her hands for her to augment." She did nothing to indicate an intention to make the fund received, or the interest on it, part of her husband's estate which was in other hands, or to justify the inference that she wished it to revert to her husband's heirs. Having received the money in currency notes which yielded no return and the keeping of which was attended with much risk, she at once placed it, as any prudent person would do, in securities, investing it in Government promissory notes yielding regular interest but which were negotiable instruments transmissible by mere indorsation. It is important also to observe that the other funds which she received from *S* were invested precisely in the same way and at the same time, and that for purposes of investment, therefore, the fund in dispute was not kept separate, but was mingled with her general personal means, and she seems to have used the interest and income of the whole indiscriminately for her maintenance, and spent the greater part of it. It may be further mentioned that, while her trust settlement, by which she conveyed the income in question, was executed in 1886, this deed superseded an earlier testamentary deed of 1882, which she cancelled in 1886, in which she distinctly records her view that she had received the fund as her absolute property, and had placed it in Government securities "for my own absolute benefit, and without any intention or desire to make the same or any part thereof accumulations to the estate of the said *N*, "(her husband)" but on the contrary, with the full intention of having, retaining and exercising full and uncontrolled dominion by will, deed, or otherwise over the same and every part thereof" (23-4). (*Lord Shand.*) SOWDAMINEE DOSSEE *v.* ADMINISTRATOR-GENERAL OF BENGAL. **(1892) 20 I. A. 12 = 20 C. 433 (442-3) = 6 Sar. 272.**

LAW AS TO.

———It has been argued that, assuming the purchases to have been made by the widow out of the proceeds of her husband's estate, nevertheless, they do not form increments to that estate, but belong to the widow absolutely and are at her absolute disposal, either by gift in her lifetime or by will. The principal authority relied upon in support of that contention is 9 M. I. A. 123. That case cannot, however, be regarded as a conclusion, or even a direct authority upon the question. (*Sir Robert P. Collier.*) GONDA KOOER *v.* KOOER OODEY SINGH. **(1874) 14 B. L. R. 159 = 3 Sar. 370 = 2 Suth. 975.**

HINDU LAW—(*Contd.*)

Widow — Accumulations of — Accretion to husband's estate or absolute property of widow—(*Contd.*)

LAW AS TO—(*Contd.*)

———*Test.*

In deciding the question whether purchases made by a Hindu widow in possession of her husband's estate as his heir out of the profits of such estate are accretions to the husband's estate, the difficulty is enhanced, if not created, by the later current of decision, which gives to the widow a more free and complete usufruct of her husband's property than is accorded to her by the texts and earlier decisions (157-8).

The question was agreed at the bar as though it were necessary to divide all the property of a widow into two classes; one being her stridhan, and the other her husband's estate over which she has the widow's right and no more. But the very question is, whether, having regard to the widow's freedom in enjoying her husband's property, and to her established right to alienate her own interest in it, she has not a kind of property the nature of which must remain undecided till her disposal of it or her death. It is impossible to read Mr. Justice Ainslie's forcible argument, without feeling that it is difficult to specify the point of time at which the widow loses her control over the unexpended portion of her income from her husband's estate. If she may spend or give away the whole, may she not put some by? If she saves one year or month, may she not spend those savings the next year or month? If she may save and spend again, may she not place her savings so as to get some income from them? And so on through all the steps of the *sorites* (158).

The cases shewing that a widow's savings from her husband's estate are not her stridhan are not authorities on this question. If she has made no attempt to dispose of them in her lifetime, there is no dispute but that they follow the estate from which they arose. The dispute arises when the widow, who might have spent the income as it accrued, has in fact saved it and afterwards attempts to alienate it (158).

After a review of the authorities on the point, their Lordships observed: This is the state of the authorities, and their Lordships think it must be taken as adverse to the claim made on behalf of the widow. It is not possible to lay down any sharp definition of the time which separates accretions to the husband's estate from income held in suspense in the hands of the widow, as to which she has not determined whether or no she will spend it. As before said, they feel the force of Mr. Justice Ainslie's reasoning on this point (160-1). (*Sir Arthur Hobhouse.*) ISRI DUT KOER *v.* MUSSUMUT HANSBUTTI KOERAIN.

(1883) 10 I. A. 150 = 10 C. 324 (334-7) = 13 C. L. R. 418 = 4 Sar. 459.

LIFE ESTATE WITH POWER TO APPROPRIATE PROFITS—HUSBAND'S DEED GIVING WIDOW A— PROCEEDS OF ESTATE IN CASE OF.

———*Accretion to estate or absolute property of widow.*

In a case in which, under a deed executed by a Hindu in favour of his wife, an estate for life was given to her, with a power to appropriate the profits, and a vested remainder on her death was given to his adopted son, *held* that the wife would have the power of making whatever use she chose of the proceeds of her estates; and that if she bought land or personal property with them, that land and that property would be hers, and would devolve on the person who represented her (259-60, 262). (*Sir Robert P. Collier.*) MUSSUMAT BHAGBUTTI DAEE *v.* CHOWDRY BHOLANATH THAKOOR. **(1875) 2 I. A. 256 = 1 C. 104 = 24 W. R. 268 = 3 Suth. 186 = 3 Sar. 528.**

HINDU LAW—(*Contd.*)

Widow — Accumulations of — Accretion to husband's estate or absolute property of widow—(*Contd.*)

PRESUMPTION AS TO.

———A Hindu widow's savings from her husband's estate are not her stridhun. If she has made no attempt to dispose of them in her lifetime, there is no dispute but that they follow the estate from which they arose (158). (*Sir Arthur Hobhouse.*) ISRI DUT KOER *v.* MUSSUMUT HANSBUTTI KOERAIN. **(1883) 10 I. A. 150 = 10 C. 324 (334-5) = 13 C. L. R. 418 = 4 Sar. 459.**

———Where a widow comes into possession of the property of the husband, and receives the income, and does not spend it but invests it in the purchase of other property, their Lordships think that, *prima facie*, it is the intention of the widow to keep the estate of the husband as an entire estate, and that the property purchased would, *prima facie*, be intended to be accretions to that estate. There may be, no doubt, circumstances which would show that the widow had no such intention, that she intended to appropriate the savings in another way (66). (*Sir Richard Couch.*) BABU SHEOLOCHUN SINGH *v.* BABU SAHEB SINGH.

(1887) 14 I. A. 63 = 14 C. 387 (393-4) = 5 Sar. 1.

———*Quaere* whether the savings of a Hindu widow must be presumed to have been made for the benefit of her husband's estate (23). (*Lord Shand.*) SOWDAMINEE DOSSEE *v.* ADMINISTRATOR-GENERAL OF BENGAL.

(1892) 20 I. A. 12 = 20 C. 433 (442) = 6 Sar. 272.

———A widow may so deal with the income of her husband's estate as to make it an accretion to the corpus. It may be that the presumption is the other way. But at the outside it is a presumption and it is a question of fact to be determined, if there is any dispute, whether a widow has or has not so dealt with her property. (*Lord Phillimore.*) RAJA OF RAMNAD *v.* SUNDARA PANDIYASAMI TEVAR.

(1918) 46 I. A. 64 (71) = 42 M. 581 (588) = 17 A. L. J. 153 = 23 C. W. N. 549 = 29 C. L. J. 551 = 25 M. L. T. 400 = 10 L. W. 322 = (1919) M. W. N. 511 = 21 Bom. L. R. 885 = 49 I. C. 704 = 36 M. L. J. 164.

———It is said that the property sold had been acquired by the widow out of her stridhan, and that consequently she was quite free to deal with it as she thought best. Now there can be no doubt that whatever stridhan she possessed was due to the accumulated savings from the income of the property which she received from her husband's estate, and though it is true that when that property had been received it would be possible for her so to deal with it that it would remain her own, yet it must be traced and shown to have been so dealt with, and in this case there is no sufficient evidence of this having been done. (*Lord Buckmaster.*) NABAKISHORE MANDAL *v.* UPENDRAKISHORE MANDAL.

(1921) 15 L.W. 417 = 20 A. L. J. 22 = 26 C. W. N. 322 = (1922) P. C. 39 = 35 C. L. J. 116 = (1922) M. W. N. 95 = 24 Bom. L. R. 346 = L. R. 3 P. C. 77 = 30 M. L. T. 234 = 3 Pat. L. T. 311 = 65 I. C. 305 = 42 M. L. J. 253 (256).

———*Applicability of—Income of estate separated from corpus—Widow entitled to former as on intestate succession—Latter given away by husband's will to another.*

There is no room for the presumption, if any there is, that the savings of a Hindu widow have been made for the benefit of her husband's estate, in a case in which the *cospus* of the estate never came to the widow, but was taken by the brother of the testator under his will, and the income to which the widow succeeded was separated from it, and became and was dealt with as an entirely separate fund. In such a case there is no estate of her husband's in the widow's hands for her to augment (23-4). (*Lord Shand,*) SOWDAMINEE DOSSEE *v.* ADMINISTRATOR-GENERAL OF BENGAL. **(1892) 20 I. A. 12 = 20 C. 433 (442) = 6 Sar. 272.**

HINDU LAW—(*Contd.*)

Widow—Accumulations of — Accretion to husband's estate or absolute property of widow—(*Contd.*)

PRESUMPTION AS TO—(*Contd.*)

———*Evidence rebutting—Intention of widow to sever accumulations from husband's estate and to treat them as her own—Evidence of, if sufficient.*

It has been argued that, even if the presumption be that purchases made by a Hindu widow out of the proceeds of her husband's estate are increments to the husband's estate, it may be rebutted by clear proof of her intention to sever them from that estate, and to treat them as made in her own right, whereupon she acquires the power to dispose of them.

Quaere as to the effect of a distinct intention or the part of the widow to appropriate to herself, and to sever from the bulk of the estate such purchases as she had made, with the view of conferring them on her own heirs (372). (*Sir Robert P. Collier.*) GOUDA KOOER *v.* KOOER OODEY SINGH. **(1874) 14 B.L R. 159 = 3 Sar. 370 = 2 Suth. 975.**

QUESTION AS TO—PRIVY COUNCIL APPEAL—PERMISSIBILITY FOR FIRST TIME IN.

A Hindu widow, who had sued for the recovery of arrears of annuity payable to her husband under an agreement, died during the pendency of the suit. Shortly afterwards the next reversioner sold his rights including the widow's claim to the arrears of allowances to a person who applied, on the strength of the said assignment, to be brought on record as legal representative in place of the widow. The defendant, though he raised several objections to the assignee being brought on record, did not urge that the assignment was ineffectual to convey title as regards the arrears of annuity because they were the absolute property of the widow and that as regards such arrears the widow's separate heirs were the proper representatives and not the assignee. The first court gave, a decree for the said arrears in favour of the assignee. The objection was not taken even in the appeal to the High Court. On objection taken before their Lordships, held that, as it was a question of fact to be determined on the evidence as to whether the arrears did or did not form an accretion, it could not be allowed to be raised at that stage. (*Lord Phillimore.*) RAJA OF RAMNAD *v.* SUNDARA PANDIYASAMI TEVAR.

(1918) 46 I. A. 64 (70-1) = 42 M. 581 (588-9) = 17 A. L. J. 153 = 23 C. W. N. 549 = 29 C. L. J. 551 = 25 M. L. T. 400 = 10 L. W. 322 = (1919) M. W. N. 511 = 21 Bom. L. R. 885 = 49 I. C. 704 = 36 M. L. J. 164.

TEST AS TO.

———*Original estate and after—purchases—Distinction between, whether made by widow.*

According to the case of Isridut Koer (L.R. 10 I.A. 150), the matter which has to be looked at in deciding whether the property acquired or purchased by the widows is to descend with the husband's estate, or is to be treated as a separate estate is whether the widows made any distinction between the original estate and the after purchases (65-6). (*Sir Richard Couch.*) BABU SHEOLOCHUN SINGH *v.* BABU SAHEB SINGH. **(1887) 14 I. A. 63 = 14 C. 387 (394) = 5 Sar. 1.**

TRESPASSER—PROPERTY IN POSSESSION OF WIDOW AS—MESNE PROFITS OF—PURCHASES WITH.

———A Hindu widow, who was not entitled to succeed to the estate of her step-son, trespassed upon the same, received the mesne profits, utilised the same in the purchase of other property, and left the property so purchased by her will to *B*, who was not entitled to the estate. The question was whether the property so purchased by her accreted to the estate, and whether the heir to the estate was entitled to recover it from *B* along with the estate.

HINDU LAW—(*Contd.*)

Widow — Accumulations of — Accretion to husband's estate or absolute property of widow—(*Contd.*)

TRESPASSER—PROPERTY IN POSSESSION OF WIDOW AS—MESNE PROFITS OF—PURCHASES WITH—(*Contd.*)

Held, the step-mother was merely a trespasser upon the estate, and if she trespassed upon the estate and received the mesne profits, it is not clear that a Court of Equity would ear-mark those mesne profits, and say that because the mesne profits must have been expended in the purchase of the property in question it necessarily passed with the estate (179-80).

It is not the case of a widow inheriting and purchasing property out of the assets of the estate which she takes as widow, for those have been considered by law as an augmentation of the estate; but this is the case of a step-mother who was not entitled to succeed to the estate, and who, if she disposed of any portion of the rents and profits, was disposing of them as profits which she had received as a trespasser (180). (*Sir Barnes Peacock.*) DEWAN RAN BIJAI BAHADUR SINGH *v.* RAI JAGATPAL SINGH.

(1890) 17 I. A. 173 = 18 C. 111 (119) = 5 Sar. 590 = R. & J's. No. 120.

Widow—Accumulations of—Devolution of, when not disposed of by widow.

———The accumulations of a Hindu widow, even of her husband's estate, devolve on her death on the heirs-at-law of her husband, and not on her own heirs (25). (*Mr. Pemberton Leigh*). SREEMUTTY RABUTTY DOSSEE *v.* SIBCHUNDER MULLICK. **(1854) 6 M.I A. 1 = 1 Sar. 484.**

———A widow's savings from her husband's estate are not her stridhan. If she has made no attempt to dispose of them in her lifetime, there is no dispute but that they follow the estate from which they arose (158). (*Sir Arthur Hobhouse*). ISRI DUT KOER *v.* MUSSUMUT HANSBUTTI KOERAIN. **(1883) 10 I.A. 150 = 10 C. 324 (334-5) = 13 C.L.R. 418 = 4 Sar. 459.**

Widow—Adoption by.

———(*See* MAINLY UNDER HINDU LAW—ADOPTION—WIDOW.)

———Presumptive reversioner's suit to set aside. *See* HINDU LAW—REVERSIONER—PRESUMPTIVE REVERSIONER — WIDOW — ADOPTION BY — SUIT TO SET ASIDE.

———Remote reversioner's suit to set aside. *See* HINDU LAW — REVERSIONER — REMOTE REVERSIONER — WIDOW—ADOPTION BY—SUIT TO SET ASIDE.

———Suits relating to—Limitation. *See* LIMITATION ACT OF 1877, ART. 129 AND LIMITATION ACT OF 1908, ARTS. 118, 119.

Widow—Adverse possession against.

———Decree against widow based on— Effect against reversioners of. *See* HINDU LAW — WIDOW — DECREE AGAINST—EFFECT AGAINST REVERSIONERS OF—LIMITATION.

——— Effect against reversioner of. *See* UNDER HINDU LAW—REVERSIONER—WIDOW—ADVERSE POSSESSION AGAINST— EFFECT OF.

———*Joint family—Member deceased of—Widow of—Adverse possession of surviving members against—Proof of.*

Nothing could be more natural or consistent with the usage of Hindu families than that upon her husband's death a Hindu widow should continue to reside at the family dwelling-house as a member of the joint family. If the widow and her daughter continued to live as members of the joint family, the presumption would be that they were maintained out of the widow's share, which she inherited

HINDU LAW—(*Contd.*)

Widow—Adverse possession against—(*Contd.*)

from her husband, unless it could be distinctly shewn that she received only maintenance as distinguished from a participation in the profits of the estate; for, even if she did not receive her full share of the profits, limitation would not run against her in the same manner as if she had been actually dispossessed of her husband's share of the estate (122-3).

R, a Hindu, governed by the Bengal Mithakshara law, died withont a son, leaving a widow and three daughters. The evidence was to the effect that, after *R's* death, his widow continued to live with her deceased husband's brothers and was supported by them out of the incomc of the estate. Indeed, the defendants, who represented *R's* brothers, themselves stated that the brothers retained *R's* wife and unmarried daughter under their own support and guidance, and that they effected the marriage of the unmarried daughter into a suitable family, and in a proper manner.

Held that the possession of the brothers was not adverse to *R's* widow (122-3) (*Sir Barnes Peacock*). AUMIRTOLALL BOSE *v.* RAJONEEKANT MITTER.

(1875) 2 I.A. 113 = 15 B.L.R. 10 = 23 W.R. 214 = 3 Sar. 430 = 3 Suth. 94.

Widow—Adverse possession by.

———*Absolute estate—Intention to acquire—Evidence of.*

Where the question was whether a Hindu widow, who, after her husband's death, took possession of his estate and held it adversely, acquired by such adverse possession an absolute title therein, or only the limited interest of a Hindu widow, *held* that a statement made by her that she took possession to the exclusion of her son could not be reconciled with the contention that she took possession as widow (29).

The son having the title, she could not take possession excluding him unless she intended to take an adverse possession—a possession to which she was not in any way entitled (29). (*Sir Richard Couch.*) MUSSUMMAT LAGHHAN KUNWAR *v.* ANANT SINGH.

(1894) 22 I.A. 25 = 22 C. 445 (449) = R. and J's No. 136 (Oudh) = 6 Sar. 523.

———*M*, a Hindu, died in 1859, leaving a widow, *J*, and a son, *P*. *P* died in 1861, leaving a widow, the appellant, *L*.

After the death of *M*, *J* took possession of the suit property which belonged to him and remained in possession of it up to the time of her death, which took place in 1887. It was not, however, clear upon the evidence whether *J* got possession during the lifetime of her son *P* or on his death. In or before 1875 *L* brought a suit against *J* to recover possession of the property in dispute and of other property. That suit was ultimately dismissed on the ground that it was barred by the law of limitation.

In a suit brought after the death of *J* for the recovery of the same property from persons who claimed it under a will and a deed of gift of *J*, the question was in what capacity *J* took possession of the property as stated above, whether she took possession of the property claiming an absolute title therein, or whether she took possession asserting a title as a widow.

There was no direct evidence of any statement by *J* at the time she took possession, or subsequently, that she took it as a Hindu widow; but it was sought to be inferred from various documents and statements that she must have taken it in that capacity. The court below held on the evidence that *J* treated the estate always as being her own absolute property, and that the estate she held was that of an absolute full proprietor, and not the limited estate of a Hindu widow.

HINDU LAW—(*Contd.*)

Widow—Adverse possession by—(*Contd.*)

Their Lordships affirmed the court below.

J seems to have had some reason for asserting an absolute title in herself on the death of her husband, though it does not clearly appear what that reason was (30). (*Sir Richard Couch.*) MUSSUMMAT LACHHAN KUNWAR *v.* ANANT SINGH. **(1894) 22 I. A. 25 = 22 C 445 = R. & J's. No. 136 (Oudh) = 6 Sar. 523 = 5 M. L. J. 1.**

———*Benefit of—Husband's estate if and when entitled to.*

The Hindu widow is not a life renter, but has a widow's estate—that is to say, a widow's estate in her deceased husband's estate. If possessing as widow she possesses adversely to any one as to certain parcels, she does not acquire the parcels as stridhan, but she makes them good to her husband's estate (176). (*Lord Dunedin.*) LAJWANTI *v.* SAFA CHAND. **(1924) 51 I. A. 171 = 5 Lah. 192 = 22 A. L. J. 304 = 34 M.L.T. 87 = A.I. R. 1924 P.C. 121 = (1924) M.W.N. 442 = 20 L. W. 10 = 2 Pat. L.R. 245 = 26 Bom. L. R. 1117 = 28 C. W. N. 960 = 6 Pat. L. T. 1 = 80 I.C. 788 = 47 M. L. J. 935.**

———*Heiress—Possession taken and held as—Life estat only acquired by,*

It was contended that *K*, *S's* mother, under whom the defendant claims, and who entered into possession of the property upon her son's death and enjoyed it until her own death, acquired an absolute title by adverse possession against the heirs of *S*.

Their Lordships are of opinion that the possession of *K* must be referred to her title as heiress of her son, in which capacity she would take a life interest, and that no case of adverse possession has been established (43). (*Sir John Bouser.*) RAM ANUGRA NARAIN SINGH *v.* CHOWDHRY HANUMAN SAHAI. **(1902) 30 I.A. 41 = 30 C. 303 = 7 C. W. N. 225 = 5 Bom. L. R. 6 = 8 Sar. 409.**

———*Joint family—Member deceased of—Widow of, not entitled to inherit—Possession of joint family property by—If adverse to reversioners — Starting point of adverse possession.*

On the death of a member of an undivided Hindu family governed by the Mithakshara law, neither his widow nor the widow of his predeceased son is entitled to anything more than maintenance out of his undivided estate. Where, in such a case, the widow and the daughter-in-law of the deceased take possession of a portion of the undivided estate, their possession is adverse to the reversionary heirs unless it is the result of an arrangement with them (135-6). (*Lord Macnaghten.*) SHAM KOER *v.* DAH KOER.

(1902) 29 I. A. 132 = 29 C. 664 (671) = 6 C.W.N. 657 = 4 Bom. L. R. 547 = 8 Sar. 280.

Where on the death of a member of an undivided Hindu family governed by the Mithakshara law, his widsw takes adverse possession of a portion of the undivided property, the rights of the reversionary heirs would be barred at the expiration of 12 years from the date of the member's death or the date of the widow's taking possession (135-6). (*Lord Macnaghten.*) SHAM KOER *v.* DAH KOER.

(1902) 29 I.A. 132 = 26 C. 664 (671) = 6 C. W.N. 657 = 4 Bom. L. R. 547 = 8 Sar, 280.

The appeal arose out of a suit brought by the appellants on the 10th August, 1888, to recover possession of an eight and three-quarter annas share of an estate originally owned by one *B*. The appellants were the great grandsons of *B*, that is *B's* daughter's son's sons.

The estate devolved, on the death of *B*, on his two sons *K* & *T*. Of these *K* died first, and thereupon *T* succeeded to the whole estate. *T* himself died in 1833, leaving his sonless widow *N*, the widow of *B*, and *D* the widow of *K*.

HINDU LAW—(*Contd.*)

Widow—Adverse possession by—(*Contd.*)

On the death of *T*, his widow inherited for her widow's estate the property which had been in her husband's sole possession. By an ikrarnama, dated 27th December, 1833, *T's* widow and *D* agreed that they should hold jointly the property which had come down from *B*. In the following year the two widows entered into an arrangement with *N*, carried out by ikrarnamas, executed on the 13th March, 1834, to the effect that she would have a four-annas share of the property which the widows had dealt with in the ikrarnama of 27th December, 1833. *T's* widow died in 1843, and thereafter by arrangement between *D* & *N*, the property was held in the proportion of eight and three-quarter annas by *D*, and seven and a quarter annas by *N*. The eight and three-quarter annas share thus got by *D* she transferred to her own brother *R*, who died in 1863. The defendants in the suit were the daughter and the widow of *R*.

The appellants, having obtained possession of the seven and one-quarter annas share got by *N* as aforesaid, sued for the recovery of the eight and three-qurter annas share in the possession of the defendants.

Held, affirming the High Court, that the possession of the suit property had been adverse since the year 1843, the date of the death of *T's* widow, and that the suit was therefore barred by limitation. (*Lord Macnaghten*,) MAHABIR PERSHAD *v.* ADHIKARI KOER. **(1896) 23 C. 942 = 7 Sar. 58.**

———*Findings concurrent as to— P.C's. interference with —Reversioners—Possession adverse to or not—Finding as to based on legal inference from documents.*

In a case in which the question was as to whether possession held by a Hindu widow was only in lieu of her maintenance for life or adverse to the plaintiffs in the suit, and the courts below concurrently held that it was merely in lieu of maintenance and not adverse to the plaintiffs, relying upon (1) the widow's statements and the manner in which she entered into possession, (2) the admissions of the defendants who claimed through the widow; and (3) certain earlier judgments of the High Court in other suits, their Lordships, on appeal, reversed the decision of the courts below and held that the possession of the widow was adverse to the plaintiffs. They held that the question was one in reality of legal inference from documents and not of finding of fact. (*Viscount Maldane.*) CHAUDHRI SATGUR PRASHAD *v.* KISHORE LAL. **(1919) 46 I. A. 197 = 42 A. 152 = 18 A. L. J. 235 = (1920) M. W. N. 3 = 24 C.W.N. 394 = 11 L. W. 384 = 22 Bom. L. R. 451 = 55 I. C. 487 = 38 M. L. J. 259.**

———*Son and his heir lawfully entitled—Adverse Possession against—Effect—Son's heir alone barred or husband's heir also barred—Test.*

On the death of a Hindu, *M*, his son became entitled to his property. It appeared, however, that *J*, his mother and the widow of *M*, took possession of the property and held it adversely for over the statutory period, assetting an absolute title thereto, and acquired an absolute title by adverse possession.

It was contended that, although the adverse possession of *J* might bar the son and all persons claiming under him, the effect was only to extinguish those rights, and to let in the rights of any persons who would claim as reversionary heirs of *M*.

Held that the contention was untenable, unless it was clearly shown that when *J* took possession she professed to do it as claiming only the limited estate of a widow (30). (*Sir Richard Couch.*) MUSSUMMAT LACHHAN KUNWAR *v.* ANANT SINGH. **(1894) 22 I. A. 25 = 22 C. 445 (450) = R & J's No. 136 (Oudh) = 6 Sar. 523 = 5 M. L. J. 1**

HINDU LAW—(*Contd.*)

Widow—Agent of—Power of—Extent of.

———*Power of—Extent of.*

A Hindu widow cannot confer upon her agent any larger power than she has herself (192). (*Lord Davey.*) SHAM SUNDER LAL *v.* ACHHAN KUNWAR. **(1898) 25 I. A. 183 = 21 A. 71 (82) = 2 C.W.N. 729 = 7 Sar. 417.**

WIDOW—ALIENATION BY.

(For cases relating to alienations by way of compromise, family arrangement, gift, lease, mortgage, or sale see also under each of those heads.)

ALIENEE UNDER—SUIT BY, FOR DECLARATION OF TITLE TO PROPERTY TRANSFERRED—RIGHT TO RESIST.
ANCIENT AND RECENT ALIENATIONS.
BENEFIT OF ESTATE.
COMPROMISE –ALIENATION UNDER OR BY WAY OF.
COMPROMISE BY—DISTINCTION.
CROWN TAKING BY ESCHEAT.
FAMILY ARRANGEMENT.
HUNOOMAN PERSHAD'S CASE — PRINCIPLE LAID DOWN IN.
HUSBAND'S TESTAMENTARY WISHES NOT LEGALLY GIVEN EFFECT TO—ALIENATION TO GIVE EFFECT TO.
IMMOVEABLE PRORERTY GIFTED BY HUSBAND.
IMMOVEABLE PROPERTY INHERITED FROM HUSBAND
LIFE ESTATE WITHOUT POWER OF ALIENATION—HUSBAND'S DEED GIVING.
LITIGATION FOR PRESERVATION OF ESTATE.
MOVEABLE PROPERTY INHERITED FROM HUSBAND.
NECESSITY FOR.
PILGRIMAGE—EXPENSES OF.
PILGRIMAGE—PLACE OF—PRESIDING DEITY AT.
PIOUS ACTS—PERPETUAL PERFORMANCE OF.
PRESUMPTIVE REVERSIONER.
RELIGIOUS ACTS—TWO SETS OF—ALIENATION WITH REFERENCE TO.
RELIGIOUS OR CHARITABLE PURPOSES.
REMOTE REVERSIONER.
REVENUE DUE UPON ESTATE PAID BY CO-SHARERS—DECREE FOR CONTRIBUTION OBTAINED BY THEM.
REVERSIONER.
SUBJECT-MATTER OF, IMMOVEABLE OR MOVEABLE PROPERTY.
SURRENDER BY.
TRADE OF HUSBAND.
VOID OR VOIDABLE.
WORDLY PURPOSES—RELIGIOUS OR CHARITABLE PURPOSES.
ALIENEE UNDER—SUIT BY, FOR DECLARATION OF TITLE TO PROPERTY TRANSFERRED—RIGHT TO CONTEST.

———*Impertinent intervenor—Right of—Possession with alienee—Defendants without title or possession.*

A Hindu widow, who held an Oudh estate as the heir of her husband, made, with the consent of the next reversioners, an absolute transfer of the estate by way of gift to *A*, and put him in possession. *A* sued for a declaration of his title as proprietor. The widow, the next reversioners to the estate, and the respondent, who had successfully opposed an application for mutation of names by *A*, were made defendants to the suit. The respondent claimed title to the suit estate under an alleged will of the last male owner.

The widow and the next reversioners supported the title of the respondent. The first Court found against the title of the respondent based on the alleged will and decreed the suit. The respondent appealed against that decree, making the widow and *A* alone parties to the appeal. The widow

HINDU LAW—(*Contd.*)

Widow—Alienation by—(*Contd.*)

ALIENEE UNDER—SUIT BY, FOR DECLARATION OF TITLE TO PROPERTY TRANSFERRED—RIGHT TO CONTEST—(*Contd.*)

died pending the appeal, and the next reversioners brought themselves on record as parties to the appeal in her place, and supported the gift in favour of *A*. At the hearing of the appeal, the respondent admitted the correctness of the findings of the Court below as to (1) the will set up by himself, and (2) the execution of the deed of gift in favour of *A*, and confined his appeal to the question of the validity of the gift in favour of *A*, his contention being that it was beyond the powers of the widow as a Hindu widow holding the estate of her husband. The appellate Court upheld the respondent's contention, and dismissed the suit.

Held that the Court below ought, after the concessions made by the respondent, to have held that the respondent had no *locus standi* to contest the declaration of title which *A* had obtained from the first Court, and that his appeal to that Court ought to have been dismissed.

The respondent was, after the admission made by him that the finding of the first Court as to the title set up by him was correct, a mere impertinent intervenor in another person's affair, because he was not, in face of that finding, even remotely concerned in the title to the suit estate and in the right to the proprietary possession thereof, and he had no title to protect and no interest which could give him a right to contest the declaration of title of the Court below in favour of *A*.

If the suit had been one in ejectment by *A*, the respondent would have had a right to contest the correctness of the declaration of title of the Court below in favour of *A*. (*Sir John Edge.*) CHANDRIKA BAKHSH SINGH *v.* RAJA INDAR BIKRAM SINGH. **(1916) 43 I. A. 179 = 38 A. 440 = 20 C. W. N. 1149 = 20 M. L. T. 164 = (1916) 2 M.W.N. 120 = 4 L. W. 288 = 14 A.L.J. 1024 = 18 Bom. L. R. 846 = 24 C. L. J. 291 = 19 O. C. 141 = 4 O. L. J. 4 = 35 I. C. 958 = 31 M. L. J. 505.**

ANCIENT AND RECENT ALIENATIONS.

———Validity of—Presumption of—Proof of—Quantum—Distinction. *See* HINDU LAW—WIDOW—ALIENATION BY—NECESSITY FOR—PROOF OF—QUANTUM—ANCIENT AND ETC.

BENEFIT OF ESTATE.

———Alienation for—Meaning of. *See* HINDU LAW—EXPRESSIONS IN—BENEFIT TO ESTATE.

(1917) 44 I. A. 147 = 40 M. 709.

———Validity of alienation on ground of its being for. *See* HINDU LAW—WIDOW—PERMANENT LEASE.

(1921) 42 M. L J. 253 (255 6).

COMPROMISE—ALIENATION UNDER OR BY WAY OF.

———*See* HINDU LAW—WIDOW—COMPROMISE BY.

COMPROMISE BY—DISTINCTION.

———Test. *See* HINDU LAW—WIDOW—COMPROMISE BY.

CROWN TAKING BY ESCHEAT.

———Binding nature on, of alienation made for justifiable purposes. *See* ESCHEAT—WIDOW OF LAST MALE OWNER—DEBTS PROPERTY CHARGED ON ESTATE BY.

(1860) 8 M. I. A. 500 & (1867) 11 M. I. A. 619 (633).

———Decree against widow—Alienation made to satisfy—Challenge of decree—Duty of Crown as to—Debt basis of decree legally chargeable on estate. *See* HINDU LAW—REVERSIONER—WIDOW—DEATH OF—POSSESSION OF PROPERTY ON—SUIT FOR RECOVERY—ALIENEE FROM WIDOW. **(1861) 8 M. I. A. 529 (554).**

———Right of, to impeach unauthorised alienation. *See* ESCHEAT—WIDOW OF LAST MALE OWNER—ALIENATION UNAUTHORISED BY. **(1861) 8 M. I. A. 529.**

HINDU LAW—(*Contd.*)

Widow—Alienation by—(*Contd.*)

FAMILY ARRANGEMENT.

———Alienation by way of. *See* HINDU LAW—WIDOW—FAMILY ARRANGEMENT.

HUNOOMAN PERSHAD'S CASE—PRINCIPLES LAID DOWN IN.

———Applicability of. *See* HINDU LAW—MINOR—GUARDIAN OF—ALIENATION BY—HUNOOMAN PERSHAD'S CASE. **(1880) 8 I. A. 8 (11) = 6 C. 843 (847).**

HUSBAND'S TESTAMENTARY WISHES NOT LEGALLY GIVEN EFFECT TO—ALIENATION TO GIVE EFFECT TO.

———*Validity—Interest conveyed under, entire property or widow's estate only.*

Drigpal and Din Dayal were two out of 5 brothers who were at one time all members of a joint Hindu family. Din Dayal was adopted by his uncle and went out of the family. Another brother died without male issue. That left Duli Chand, Drigpal, and Kanhaya. Those three brothers separated in estate in the year 1876. Din Dayal died on 8th March, 1878, leaving no issue, but leaving surviving him his widow, *R*, and two widows of his adoptive father.

Din Dayal, though he made no legal will, expressed his last wishes as to the disposal of his estate. They were that after his death, his three surviving brothers should, as proprietors, enter upon possession of all his properties, and that they should make certain payments to his own widow, *R*, to his father's widows, and to certain other named persons. All parties were desirous that those wishes should be carried into effect, and accordingly a series of documents were executed, the first of which was an ekrarnama, dated the 3rd April, 1878, and executed by *R*, whereby she purported to dispose of all the property of her deceased husband in favour of the three brothers. The brothers carried out the wishes of the deceased with regard to the payments to his widow, etc., and entered into possession of the estate.

The question was whether the ekrarnama of the 3rd April, 1878, executed by *R* in favour of the three brothers was inoperative to pass more than her life interest, and whether the brothers who survived her must be deemed to have taken the property by inheritance, and not to have taken it by purchase.

The Sub-judge held that in the circumstances of the case the widow *R* could effect a valid alienation of the estate; the High Court held that she could not.

Their Lordships did not decide the question, though they observed that the obvious intention of the deed was to pass the whole property (739). (*Sir Walter Phillimore.*) RADHAKANT LAL *v.* NAZMA BEGUM.

(1917) 45 C. 733 = 22 C. W. N. 649 = 27 C.L.J. 632 = 16 A. L. J. 537 = 5 P. L. W. 72 = 23 M. L. T. 392 = (1918) M. W. N. 386 = 20 Bom. L. R. 724 = 45 I. C 806 = 35 M. L. J. 99.

IMMOVEABLE PROPERTY GIFTED BY HUSBAND.

———Alienation of. *See* HINDU LAW—WIDOW—GIFT TO, BY HUSBAND—IMMOVEABLE PROPERTY ETC.

IMMOVEABLE PROPERTY INHERITED FROM HUSBAND.

———Alienation of. *See* HINDU LAW—WIDOW—INHERITANCE TO HUSBAND—ESTATE GOT BY.

LIFE INTEREST WITHOUT POWER OF ALIENATION—HUSBAND'S DEED GIVING.

———Alienation of portion of property given to preserve rest of estate—Widow's power of. *See* HINDU LAW—WIDOW—GIFT TO, BY HUSBAND—LIFE INTEREST ETC.

(1876) 4 I. A. 52 (56) = 2 C. 341 (346).

HINDU LAW—(*Contd.*)

Widow—Alienation by—(*Contd.*)

LITIGATION FOR PRESERVATION OF ESTATE.

——*Costs of—Alienation for.*

A decree was obtained against a Hindu daughter, who had succeeded to her father's estate on the death of her mother, on foot of a money bond executed by the mother for money advanced to her for family purposes including the costs of litigation which was eventually successful in preserving the estate of the father. In satisfaction of that decree, the daughter assigned certain villages absolutely to the creditor.

Held, that the bond debt being one which, according to Hindu law, the daughter was justified in paying, her sons (the plaintiffs) were bound by the assignment of the villages by their mother to satisfy the decree obtained on the bond debt (147).

The preservation of the estate and the costs of litigation for that purpose are objects which justify a widow in incurring debt, and alienating a sufficient amount of the property to discharge it (147). (*Sir Andrew Scoble.*) KARIM-UD-DIN *v.* GOBIND KRISHNA NARAIN.

(1909) 36 I. A. 138 = 31 A. 497 (506) = 6 M. L. T. 275 = 10 C. L. J. 243 = 13 C. W. N. 1117 = 11 Bom. L. R. 911 = 6 A.L.J. 807 = 3 I. C. 795 = 19 M. L. J. 687

MOVEABLE PROPERTY INHERITED FROM HUSBAND.

——Alienation of. *See* HINDU LAW—WIDOW—HUSBAND—MOVEABLE PROPERTY INHERITED FROM.

NECESSITY FOR.

——*Admission of, by daughter and son-in-law—Admissibility in evidence of, against daughter's sons.*

In a suit brought by the daughters' sons of the last male owner after his (the last owner's) widow's death for the recovery of the properties of the last owner alleged to have been improperly alienated by her, the question was whether the alienation by her was for necessity. The trial Judge admitted in evidence an affidavit made by the mothers and the fathers of the plaintiffs and containing a statement to the effect that the last male owner died leaving some debts due from him. The affidavit was filed in a prior suit brought against the widow of the last male owner, and was admitted by the trial Judge as an admission, "regarding the parents as the guardians of the plaintiffs and so capable of making admissions against their interests in their behalf."

The appellate Court *held*, that the affidavit was not admissible in evidence against the plaintiffs and their Lordships affirmed the judgment of the appellate Court.

The relevance of an admission must be determined by reference to the terms of the Evidence Act, and there is nothing in the Act which supports the view of the trial Judge. The plaintiffs in no sense derive their interest in the subject-matter of the suit from their parents nor can their parents be regarded as having been expressly or impliedly authorised by them to make the admission (721) per High Court. (*Lord Moulton.*) SRIMUTTY MANOKARANI DEBI *v.* HARIPADA MITTER.

(1914) 18 C. W. N. 718 = 24 I. C. 311.

——Evidence of—Attestation by reversioner of deed of alienation if. *See* HINDU LAW—REVERSIONER—WIDOW—ALIENATION BY—ATTESTATION OF DEED OF.

——Evidence of—Consent of reversioner to alienation if. *See* HINDU LAW—REVERSIONER—WIDOW — ALIENATION BY—CONSENT TO.

——*Evidence of—Recitals in deed of alienation if.*

The suit was by a presumptive reversioner to set aside an alienation made by a Hindu widow on the ground that it was not made for justifiable purposes. The purposes for

HINDU LAW—(*Contd.*)

Widow—Alienation by—(*Contd.*)

NECESSITY FOR—(*Contd.*)

which the alienation was made were stated in the deed of alienation itself to be (1) the payment of the husband's debts, and (2) the performance of the Shradh, etc., of the husband at Gya. In the Court of First Instance the alienee gave no evidence in support of the transaction except the deed of sale itself. That Court decided the issue against him.

Held, that in the above-mentioned state of things the issue was properly decided against the alienee (225). (*Sir James IV, Colvile.*) RAJ LUKHEE DABEA *v.* GOKOOL CHUNDER CHOWDHRY.

(1869) 13 M. I. A. 209 = 12 W.R.P.C. 47 = 3 B. L. R. 57 = 2 Suth. 275 = 2 Sar. 518.

——Recitals in mortgages or deeds of sale with regard to the existence of necessity for the alienation have never been treated as evidence by themselves of the fact. To substantiate the allegation there must be some evidence *aliunde*. (*Mr. Ameer Ali.*) BRIJ LAL *v.* INDA KUNWAR.

(1914) 36 A 187 (193) = 18 C.W.N. 649 = 12 A. L. J. 495 = 19 C. L. J. 469 = (1914) M W. N. 405 = 15 M. L. T. 395 = 16 Bom L. R. 352 = 1 L.W. 794 = 23 I. C. 715 = 26 M. L. J. 442.

——Recitals as to necessity contained in a deed of alienation executed by a Hindu widow in respect of her husband's property are not of themselves proof of necessity as against reversioners (722)—per High Court. (*Lord Moulton*). SRIMUTTY MANOKARANI DEBI *v.* HARIPADA MITTER.

(1914) 18 C.W.N. 718 = 24 I. C. 311.

——Necessity for an alienation by a Hindu widow must be proved, and the mere recital in the deed of alienation it not sufficient (81). (*Lord Dunedin.*) RANGASAMI GOUNDEN *v.* NACHIAPPA GOUNDEN.

(1918) 46 I.A. 72 = 42 M. 523 (533) = 26 M. L. T. 5 = (1919) M.W.N. 262 = 17 A.L.J. 536 = 21 Bom. L. R. 640 = 23 C. W. N. 777 = 29 C.L.J. 539 = 10 L. W. 105 = 50 I.C. 498 = 36 M.L.J. 493.

——*Evidence of—Recitals in deed of alienation if—Ancient and recent alienations—Distinction.*

Recitals in deeds of alienation by a Hindu widow as to the necessity for such alienations cannot by themselves be relied upon for the purpose of proving the assertions of fact which they contain. If such proof were permitted the rights of reversioners could always be defeated by the insertion of carefully prepared recitals (252). But in such a case those recitals cannot altogether be disregarded, nor, on the other hand, can any fixed and inflexible rule, however, be laid down as to the proper weight which such recitals are entitled to receive. If the deeds of alienation were challenged at the time or near the date of their execution, so that independent evidence would be available, the recitals would deserve but slight consideration, and certainly should not be accepted as proof of the facts. But, as time goes by and all the original parties to the transaction and all those who could have given evidence on the relevant points have grown old or passed away, a recital consistent with the probability and circumstances of the case assumes greater importance and cannot lightly be set aside; for it should be remembered that the actual proof of the necessity which justified the deed is not essential to establish its validity. It is only necessary that a representation should have been made to the purchaser that such necessity existed, and that he should have acted honestly and made proper inquiry to satisfy himself of its truth. The recital is clear evidence of the representation, and if the circumstances are such as to justify a reasonable belief that an inquiry would have confirmed its truth, then, when proof of actual inquiry has become impossible, the recital, coupled

HINDU LAW—(*Contd.*)

Widow—Alienation by—(*Contd.*)

NECESSITY FOR—(*Contd.*)

with such circumstances, would be sufficient evidence to support the deed. To hold otherwise would result in deciding that a title becomes weaker as it grows older, so that a transaction - perfectly honest and legitimate when it took place—would ultimately be incapable of justification merely owing to the passing of time (252-3). (*Lord Buckmaster, L. C.*) BANGA CHANDRA DHUR BISWAS *v.* JAGAT KISHORE CHOWDHURI.

(1916) 43 I.A. 249 = 44 C. 186 (195-7) = 20 M.L.T. 335 = (1916) 2 M.W.N. 336 = 4 L. W. 448 = 18 Bom. L.R. 868 = 24 C.L.J. 487 = 14 A. L. J. 1103 = 21 C.W.N. 225 = 1 Pat. L.W. 1 = 36 I.C. 420 = 31 M.L.J. 563.

——*Finding as to—Fact or Law—Concurrent findings of Courts below—P.C's interference with.*

——(*Mr. Ameer Ali.*) HARI KISHEN BHAGAT *v.* KASHI PERSHAD SINGH. **(1914) 42 I.A. 61 (69 70) = 42 C. 876 (885-6) = 19 C.W.N. 370 = 17 M.L.T. 115 = 2 L. W. 219 = (1915) M W.N. 511 = 13 A.L.J. 223 = 21 C.L.J. 225 = 17 Bom. L.R. 426 = 27 I.C. 674 = 28 M.L.J. 565.**

——*Meaning of.*

The word necessity, when used in connection with an alienation by a Hindu widow of her husband's estate, has a somewhat special, almost technical, meaning. A widow can alienate if there are no other means available for the obligatory ceremonies to secure the repose of the soul of her husband. A holder of a Hindu woman's estate can in some circumstances alienate immoveable property to pay the last owner's debts, or (if there is no other available source of supply) for her own or infant children's maintenance. Necessity does not mean actual compulsion, but the kind of pressure which the law recognises as serious and sufficient. (*Lord Phillimore.*) RAMSUMRAN PRASAD *v.* MUSAMMAT SHYAM KUMARI. **(1922) 49 I.A. 342 (346) = 1 Pat. 741 (745) = 37 C.L.J. 356 = 21 A.L.J. 18 = 27 C.W.N. 269 = L.R. 4 P.C. 17 = 25 Bom. L.R. 634 = 9 O. & A.L.R. 175 (P.C.) = 31 M.L.T. 200 (P.C.) = (1922) P.C. 356 = 3 Pat. L.T. 749 = 16 L.W. 956 = 69 I.C. 71 = 44 M.L.J. 751.**

——*Onus on alienee to prove.*

Though peculiar circumstances may shift the burthen of proof, the general rule certainly is, that it lies upon those who claim under an alienation from a Hindu female to show that the transaction was within her limited powers (554-5). (*Lord Justice Turner.*) COLLECTOR OF MASULIPATAM *v.* CAVALY VENCATA NARRAINAPAH.

(1861) 8 M. I. A. 529 = 2 W. R. 61 = 1 Suth. 476 = 1 Sar. 820.

——In a suit by a presumptive reversioner to set aside an alienation by a Hindu widow of her husband's estate, the burden of proving that the alienation was made for justifiable purposes is on the alienee, the party seeking to support the transaction (225). (*Sir James W. Colvile.*) RAJ LUKHEE DABEA *v.* GOKOOL CHUNDER CHOWDHRY.

(1869) 13 M. I. A. 209 = 12 W. R. P. C. 47 = 3 B. L. R. 57 = 2 Suth. 275 = 2 Sar. 518.

——It has been above stated, in accordance with the often-cited case of Hunooman Pershad, that, in order to sustain an alienation by a Hindu widow of the *corpus* of her husband's estate, it must be shown, either that there was legal necessity for the alienation, or, at least that the grantee was led on reasonable grounds to believe that there was (202). (*Lord Hobhouse.*) LALA AMARNATH SAH *v.* RANI ACHAN KUAR. **(1892) 19 I. A. 196 = 14 A. 420 (428-9) = 6 Sar. 197.**

HINDU LAW—(*Contd.*)

Widow—Alienation by—(*Contd.*)

NECESSITY FOR—(*Contd.*)

——*See* HINDU LAW—WIDOW—CO-WIDOWS — PARTITION BETWEEN. **(1897) 24 I. A. 183 = 25 C. 189.**

One who claims a title under a conveyance from a woman with the usual limited interest which a woman takes, and who seeks to enforce that title against reversioners, is always subject to the burden of proving not only the genuineness of his conveyance, but the full comprehension by the limited owner of the nature of the alienation she was making and also that the alienation was justified by necessity, or at least that the alienee did all that was reasonable to satisfy himself of the existence of such necessity. And this burden lies the more heavily on one who comes into court with the case that he did not take it from a limited owner, but from one whose title was adverse to that owner. (*Sir Arthur Wilson.*) BHAGWAT DAYAL SINGH *v.* DEBI DAYAL SAHU. **(1908) 35 I.A. 48 (57-8) = 35 C. 420 (428-9) = 7 C. L. J. 335 = 12 C. W. N. 393 = 5 A. L. J. 184 = 3 M. L. T. 344 = 10 Bom. L. R. 230 = 14 Bur. L. R. 49 = 18 M. L. J. 100.**

——The onus of supporting a sale from a Hindu widow is undoubtedly on the purchaser. (*Mr. Ameer Ali.*) BRIJ LAL *v.* INDA KUNWAR. **(1914) 36 A. 187 (192-3) = 18 C. W. N. 649 = 12 A. L. J. 495 = 19 C. L J. 469 = (1914) M. W. N. 405 = 15 M. L. T. 395 = 16 Bom. L. R. 352 = 1 L. W. 794 = 23 I. C. 715 = 26 M. L. J. 442**

To be valid as against the reversioners, or to affect their reversionay rights, a charge created by a Hindu widow or an alienation effected by her can be supported only by proof aliunde that such debt was contracted or such alienation was made for valid and legal necessity, and the onus of establishing such necessity rests heavily on the person who claims the benefit of transactions with a Hindu widow or other females taking similar estates (69). (*Mr. Ameer Ali.*) HARI KISHEN BHAGAT *v.* KASI PERSHAD SINGH. **(1914) 42 I.A. 64 = 42 C. 876 (885) = 19 C. W N. 370 = 17 M. L. T. 115 = 2 L.W. 219 = 13 A L. J. 223 = 21 C. L. J. 225 = 17 Bom. L. R. 426 = (1915) M. W. N. 511 = 27 I.C. 674 = 28 M. L. J. 565.**

——Conveyances executed by a Hindu widow in respect of her husband's entire estate cannot be supported unless it is established that the sales they purported to effect were made under circumstances of legal necessity, justifying the widow, who was only entitled to the usufruct of the property, in disposing of the entire estate (251).

The burden of proving that the dispositions by the widow were lawful rests, in a suit by a reversioner to recover the property after setting aside the alienation, upon the alienee (251). (*Lord Buckmaster, L. C.*) BANGA CHANDRA DHUR BISWAS *v.* JAGAT KISHORE CHOWDHURI. **(1916) 43 I.A. 249 = 44 C. 186 (194) = 20 M. L. T. 335 = (1916) 2 M. W. N. 336 = 4 L.W. 448 = 18 Bom. L. R. 868 = 24 C. L. J. 487 = 14 A. L. J. 1103 = 21 C. W. N. 225 = 1 Pat. L.T. 1 = 36 I.C. 420 = 31 M. L. J. 563.**

——To support an alienation by a Hindu widow of her husband's estate, necessity for the alienation must be proved. An equitable modification has also been admitted in the case where the alienee has in good faith made proper inquiry and been led to believe that there was a case of true necessity. (*Lord Dunedin.*) RANGASAMI GOUNDEN *v.* NACHIAPPA GOUNDEN. **(1918) 46 I. A. 72 = 42 M. 523 (533) = 26 M.L.T. 5 = (1919) M. W. N. 262 = 17 A. L. J. 536 = 21 Bom. L.R. 640 = 23 C. W. N. 777 = 29 C. L. J. 539 = 10 L. W. 105 = 50 I. C. 498 = 36 M. L. J. 493.**

HINDU LAW—(*Contd.*)

Widow—Alienation by—(*Contd.*)

NECESSITY FOR—(*Contd.*)

———A person who deals with a Hindu widow having a limited estate must be aware that he may be called upon to establish the facts which justify the transactions under which he claims.

In a case, therefore, in which a permanent lease and a sale by a Hindu widow in favour of the predecessor in interest of the appellants were impeached, *held* that the burden of proving them lay on the appellants. (*Lord Buckmaster.*) NABAKISHORE NANDAL *v.* UPENDRAKISHORE MANDAL. (1921) 15 L W. 417=20 A. L. J. 22=26 C. W. N.322=(1922) P C. 39=35 C.L. J. 116=(1922) M. W. N.95=24 Bom. L R. 346=L.R 3 P.C. 77=30 M. L. T. 234=3 Pat. L. T. 311=65 I. C. 305=42 M. L. J. 253 (254).

———Partial necessity—Validity of alienation in case of—Rights of parties. *See* (1) HINDU LAW—REVERSIONER—PRESUMPTIVE REVERSIONER—WIDOW—ALIENATION BY — DECLARATION OF INVALIDITY OF — PARTIAL NECESSITY. (2) HINDU LAW—WIDOW—SALE BY.

PRESUMPTION OF.

———Ancient and recent alienations—Distinction. *See* HINDU LAW—WIDOW—ALIENATIONS BY—NECESSITY FOR—PROOF OF—QUANTUM—ANCIENT AND ETC.

———Reversioner's attestation of deed of alienation—Presumption from. *See* HINDU LAW—REVERSIONER—WIDOW—ALIENATION BY — ATTESTATION OF DEED OF.

———Reversioner's consent to deed of alienation—Presumption from. *See* HINDU LAW—REVERSIONER—WIDOW—ALIENATION BY—CONSENT TO.

———Reversioner taking benefit under alienation — Presumption from. *See* HINDU LAW—REVERSIONER—WIDOW—ALIENATION BY—RIGHT TO DISPUTE VALIDITY OF—ESTOPPEL—FAMILY ARRANGEMENT.

PROOF OF—QUANTUM.

The appeal arose out of a suit brought by the respondents to recover possession from the appellant with mesne profits of part of a Zemindary (known as the Chakai estate) in the Monghyr District, to which they claimed that one or other of them had title as reversionary heir of the last male owner.

The last male owner of the estate was one *G*, who died a minor and unmarried. On his death the estate passed to his mother, *D*, as his sole heir. She made various alienations of different parts of the estate, by virtue of which the appellant was in possession as the legal representative of his grandfather. One of the questions in the suit (which was instituted after the death of *D*) was as to the validity of those alienations.

Both the Courts below held that no legal necessity for the alienations had been proved.

Their Lordships affirmed the judgments of the Courts below. (*Viscount Haldane.*) RAVANESHWAR PRASAD SINGH *v.* CHANDI PRASAD SINGH. (1915) 43 C. 417=36 I. C. 499.

———Ancient and recent alienations—Distinction. *See* HINDU LAW—WIDOW—ALIENATION BY —NECESSITY FOR—EVIDENCE OF — RECITALS IN DEED OF ALIENATION IF—ANCIENT AND ETC.

(1916) 43 I.A. 249 (252-3)=44 C. 186 (195-7).

———In a suit brought by reversioners to set aside a deed of sale, an alienation made by a Hindu widow more than 82

HINDU LAW—(*Contd.*)

Widow—Alienation by—(*Contd.*)

NECESSITY FOR—(*Contd.*)

years before the date of suit, the High Court observed: It is not disputed that the onus lay upon the defendants (alienees) to prove the necessity for the sale, but having regard to the great lapse of time since the transaction took place, it will not be reasonable to expect such full and detailed evidence as to the state of things which gave rise to the sale in question as in the case of alienations made at more or less recent dates. In such circumstances, presumptions are permissible to fill in the details which have been obliterated by time."

Their Lordships adopted the statement of the law of the High Court. (*Lord Shaw.*) CHINTAMANIBHATLA VENKATA REDDI *v.* RANI OF WADHWAN. (1919) 47 I. A. 6=43 M. 541=(1920) M. W. N. 315=18 A. L. J. 367=22 Bom. L. R. 541=55 I. C. 538=38 M. L. J. 393.

———*Representation of*, bona fide *believed in by alienee—Proof of—Sufficiency of.*

———*See* HINDU LAW—WIDOW—ALIENATION BY—NECESSITY FOR—ONUS ON ALIENEE TO PROVE.

(1892) 19 I. A. 196 (202)=14 A. 420 (428-9).

———*See* HINDU LAW—WIDOW—ALIENATION BY—NECESSITY FOR—ONUS ON ALIENEE TO PROVE.

(1908) 35 I. A. 48 (57-8)=35 C. 420 (428-9).

———Actual proof of the necessity which justified the deed of alienation is not, however, essential to establish its validity. It is only necessary that a representation should have been made to the purchaser that such necessity existed, and that he should have acted honestly and made proper inquiry to satisfy himself of its truth (253). (*Lord Buckmaster, L C.*) BANGA CHANDRA DHUR BISWAS *v.* JAGAT KISHORE CHOWDHURI. (1916) 43 I. A. 249=44 C. 186 (194, 196)=20 M. L. T. 335=(1916) M. W. N. 336=4 L. W. 448=18 Bom. L. R 868=24 C. L. J. 487=14 A. L. J. 1103=21 C. W. N. 225=1 Pat. L. W. 1=36 I. C. 420=31 M. L. J. 563.

———*See* HINDU LAW—WIDOW—ALIENATION BY—NECESSITY FOR—ONUS ON ALIENEE TO PROVE.

(1918) 46 I. A. 72=42 M. 523 (533).

———Validity of alienation on ground of—Plea in Court below of—Failure to prove—Attestation by reversioner of deed of alienation—Validity of alienation on ground of—Plea in appeal of—Maintainability. *See* HINDU LAW—REVERSIONER—WIDOW—ALIENATION BY—ATTESTATION OF DEED OF—VALIDITY OF ALIENATION ON GROUND OF. (1869) 13 M. I. A. 209 (229-30).

PILGRIMAGE.

———*Expenses of—Alienation of small portion of* corpus *for—Validity—Income from estate ample.*

Had the lady made the alienation for the purpose of defraying the expenses of the pilgrimage itself, while she possessed ample means for the performance of the journey and other acts connected therewith there might have been some substance in the objection that she was not entitled to alienate any part of the immovable property having ample means at her disposal (392).

N.B.—The alienation was of something like 1/75th part of the property. (*Mr. Ameer Ali.*) KUNWAR SARDAR SINGH *v.* KUNJ BEHARI LAL. (1922) 49 I. A. 383=44 A. 503 (511)=16 L. W. 871=(1922) P. C. 261=31 M. L. T. 253 P. C.=37 C. L. J. 383=69 I. C. 86=27 C. W. N. 653=25 Bom. L. R 648=44 M. L. J. 766

HINDU LAW—(*Contd.*)

Widow—Alienation by—(*Contd.*)

PILGRIMAGE—PLACE OF—PRESIDING DEITY AT.

——Dedication of very small fraction of corpus for observance of food offerings to, and for maintenance of priests charged with performance of that duty—Validity of—Income of estate. *See* HINDU LAW—WIDOW—ALIENATION BY—PIOUS ACTS. **(1922) 49 I. A. 383 (392, 394) = 44 A. 503 (511).**

PIOUS ACTS—PERPETUAL PERFORMANCE OF.

——*Dedication of very small fraction of corpus for—Validity—Income of estate ample.*

The suit was by a reversioner to set aside an alienation purporting to have been made for a religious or pious purpose by a Hindu lady, the widow of one *G*, *G* died leaving two minors and a considerable estate, yielding an annual income of some Rs 60,000. Both the minor sons of *G* died in infancy, and the property then devolved on his widow in succession to her sons.

After the death of *G's* sons, the widowed mother made pilgrimages to different sacred cities. She visited Puri in 1875, and there made a sankalpa or vow to create a dedication for the observance of bhog or food offerings to the presidin ; deity, and for the maintenance of the priests (pandas) who were charged with the performance of that duty. In 1876 she gave effect to her sankalpa by executing a document purporting to be a gift for the purpose referred to. The suit was to set aside this alienation by the widow. The dedication covered a very small fraction of the property inherited by the lady, something like one-seventy-fifth.

Held, affirming the High Court, that the act which the lady did was fully in accordance with Hindu religious sentiment and religious belief, and was not, therefore, in excess of her powers, having regard to the fact that the dedication related to one-seventy-fifth of the property made specially for the creation of a permanent benefit (394).

Had the lady made the alienation for the purpose of defraying the expenses of the pilgrimage itself, while she possessed ample means for the performance of the journey and other acts connected therewith there might have been some substance in the objection that she was not entitled to alienate any part of the immoveable property having ample means at her disposal. But the alienation she has purported to effect was for the perpetual performance of acts recognised in the Hindu system as pious. It was a dedication of a small fraction of the property by a Hindu female for the continuous benefit of the soul of the deceased owner (392). (*Mr. Ameer Ali.*) KUNWAR SARDAR SINGH *v.* KUNJ BEHARI LAL. **(1922) 49 I. A. 383 = 44 A. 503 (511) = 16 L.W. 871 = A.I.R. (1922) P C. 261 = 31 M. L. T. 253 (P. C.) = 69 I.C. 86 = 37 C. L. J. 383 = 27 C. W. N. 653 = 25 Bom. L. R. 648 = 44 M. L. J. 766.**

PRESUMPTIVE REVERSIONER.

——For cases relating to alienation by widow and Presumptive reversioner. *See* HINDU LAW—REVERSIONER—PRESUMPTIVE REVERSIONER—WIDOW—ALIENATION BY.

RELIGIOUS ACTS—TWO SETS OF—ALIENATION WITH REFERENCE TO.

——*Powers of—Distinction—Obsequies of husband and periodical performance of obsequial rites essential for salvation of his soul—Pious observances which conduce to bliss of his soul.*

The Hindu system recognises two sets of religious acts. One is in connection with the actual obsequies of the deceased, and the periodical performance of the obsequial rites prescribed in the Hindu religious law, which are considered as essential for the salvation of the soul of the deceased. The other relates to acts which, although not essential or

HINDU LAW—(*Contd.*)

Widow—Alienation by—(*Contd.*)

RELIGIOUS ACTS—TWO SETS OF — ALIENATION WITH REFERENCE TO—(*Contd.*)

obligatory, are still pious observances which conduce to the bliss of the deceased's soul (391).

With reference to the first class of acts, the powers of the Hindu female who holds the property are wider than in respect of the acts which are simply pious and if performed are meritorious so far as they conduce to the spiritual benefit of the deceased. In one case, if the income of the property, or the property itself, is not sufficient to cover the expenses, she is entitled to sell the whole of it. In the other case she can alienate a small portion of the property for the pious or charitable purpose she may have in view (391 2). (*Mr. Ameer Ali.*) KUNWAR SARDAR SINGH *v.* KUNJ BEHARI LAL. **(1922) 49 I. A. 383 = 44 A. 503 (511) = 16 L. W. 871 = A.I.R. (1922) P. C. 261 = 31 M. L. T. 253 (P. C.) = 69 I. C. 86 = 37 C. L. J. 383 = 27 C. W. N. 653 = 25 Bom. L. R. 648 = 44 M. L. J. 766.**

RELIGIOUS OR CHARITABLE PURPOSES.

——*Alienation for—Power of.*

For religious or charitable purposes, or those which are supposed to conduce to the spiritual welfare of her husband, a Hindu widow has a larger power of disposition than that which she possesses for purely worldly purposes (551). (*Lord Justice Turner.*) COLLECTOR OF MASULIPATAM *v.* CAVALY VENCATA NARRAINAPAH. **(1861) 8 M. I. A. 529 = 2 W. R. 61 = 1 Suth. 476 = 1 Sar. 820.**

——An alienation by a Hindu widow may be to any one, whether an heir or not. The purposes for which alienation is legitimate may be summarised as religious or charitable purposes, and those which are supposed to conduce to the spiritual welfare of the husband, or necessity. (*Lord Dunedin.*) RANGASAMI GOUNDEN *v.* NACHIAPPA GOUNDEN. **(1918) 46 I. A. 72 (81) = 42 M. 523 (533) = 26 M. L. T. 5 = (1919) M. W. N. 262 = 17 A. L. J. 536 = 21 Bom. L. R. 640 = 23 C. W. N 777 = 29 C. L. J. 539 = 10 L. W. 105 = 50 I. C. 498 = 36 M. L. J. 493.**

REMOTE REVERSIONER.

——For cases relating to widow's alienation and remote reversioner. *See* HINDU LAW—REVERSIONER—REMOTE REVERSIONER—WIDOW—ALIENATION BY.

REVENUE DUE UPON ESTATE PAID BY CO-SHARERS—DECREE FOR CONTRIBUTION OBTAINED BY THEM.

——*Sale by widow to satisfy.*

A Hindu widow became liable for her arrears of Government revenue under Act XI of 1859 in respect of a mouzah which she held in her husband's estate with other co-sharers. To save the property from sale under the Act the co sharers paid the revenue due from her and sued her for contribution. They obtained a decree and attached her dwelling-house for the satisfaction of the debt. In consequence thereof she executed a conveyance of a portion of her husband's estate to raise money for discharging the decree debt.

Held that there was sufficient evidence to show that there was a compelling necessity on the part of the widow for executing the sale-deed, and that the sale was therefore binding on the reversioners (141-2). (*Mr. Ameer Ali.*) GANESH LAL PANDIT *v.* KHETRAMOHAN MAHAPATRA. **(1926) 53 I. A. 134 = 5 Pat. 585 = 24 A. L. J. 615 = 28 Bom. L. R. 931 = 43 C. L. J. 545 = 24 L. W. 50 = (1926) M. W. N. 535 = 3 O. W. N. 591 = 7 P. L. T. 501 = 31 C. W. N. 25 = 95 I. C. 839 = A. I. R. 1926 P. C. 56 = 51 M. L. J. 82.**

HINDU LAW—(*Contd.*)

Widow—Alienation by—(*Contd.*)

REVERSIONER.

———Attestation of deed of alienation by. *See* HINDU LAW — REVERSIONER—WIDOW — ALIENATION BY—ATTESTATION OF DEED OF.

———Consent to. *See* HINDU LAW—REVERSIONER—WIDOW—ALIENATION BY—CONSENT TO.

———Different alienations by widow—Suits different to set aside—Not barred under Or. 2, R. 2, C. P. C. *See* HINDU LAW—REVERSIONER—WIDOW—ALIENATION BY—DIFFERENT ALIENATIONS ETC.

(1871) 14 M. I. A. 187 (197-9).

———Election to treat alienation as good or as nullity. HINDU LAW—REVERSIONER—WIDOW—ALIENATION BY (1) ELECTION TO TREAT, AS GOOD (2) ELECTION TO TREAT, AS NULLITY.

———Invalid alienation—Setting aside of—Necessity. *See* HINDU LAW—REVERSIONER — WIDOW —ALIENATION BY—INVALID ALIENATION.

———Possession of property alienated—Suit for, on death of widow *See* HINDU LAW—REVERSIONER—WIDOW—DEATH OF—POSSESSION OF LAST MALE OWNER'S PROPERTY ON.

———Right to dispute validity of alienation—Estoppel. *See* HINDU LAW — REVERSIONER — WIDOW—ALIENATION BY—RIGHT TO DISPUTE VALIDITY OF.

———Setting aside of alienation. *See* HINDU LAW—REVERSIONER — WIDOW—ALIENATION BY—SETTING ASIDE OF.

SUBJECT-MATTER OF, IMMOVEABLE OR MOVEABLE PROPERTY.

———*Mortgage decree in favour of widow—Purchase of mortgaged property by her at sale in execution—Mortgagor's application to set aside—Compromise by widow on, agreeing to have sale set aside—Alienation by way of—Subject-matter of.*

In a suit by the reversionary heirs of a deceased HIndu to recover possession of certain property which was said to have been alienated hy his widow as one of the terms of a compromise of litigation started by him, the plaintiffs contended that the alienation was of immoveable and not of moveable property.

The litigation in question was a suit brought to enforce a mortgage. A decree was passed in favour of the widow and in execution of the decree she purchased six of the properties of the judgment-debtors. Thereupon the judgment-debtors filed a petition in objection to the sale, and the widow came to the compromise in question.

By the compromise she agreed that the sale of the six properties should be set aside, and that the judgment-debtors should be allowed to sell them again to certain proposed purchasers for a total sum to be paid over to her It was further provided that the two other properties should be hers to sell and make what she could of them. The rest of the debt was remitted.

Held, that it would be carrying technicality to an excess to consider the property, the subject-matter of the compromise, as immoveable property.

In the hands of the deceased and in the hands of the widow till the sale it was money secured by a mortgage on immoveable property. For a very brief period it might be said that the widow had converted the property by her purchase at the sale; but even this can hardly be said. The sale had not been confirmed and the compromise was upon the very point whether it should be confirmed, and that is

HINDU LAW—(*Contd.*)

Widow—Alienation by—(*Contd.*)

SUBJECT-MATTER OF IMMOVEABLE OR MOVEABLE PROPERTY—(*Contd.*)

whether the property should be converted (350). (*Lord Phillimore.*) RAMSUMRAN PRASAD *v.* MUSAMMAT SHYAM KUMARI. (1922) 49 I. A. 342 = 1 Pat. 741 (749-50) = 37 C. L. J. 356 = 21 A. L. J. 18 = 27 C. W. N. 269 = L. R. 4 P. C. 17 = 25 Bom. L. R. 634 = 9 O. & A. L. R. 175 (P. C.) = 31 M. L. T. 200 (P. C.) = A.I.R. (1922) P. C. 356 = 3 Pat. L. T. 749 = 16 L. W. 956 = 69 I. C. 71 = 44 M. L. J. 751.

SURRENDER BY.

———Distinction. *See* HINDU LAW—WIDOW—SURRENDER BY—ALIENATION BY. (1918) 46 I. A. 72 = 42 M. 523 (532-5).

TRADE OF HUSBAND.

———Alienation for purposes of—Power of. *See* HINDU LAW—WIDOW—TRADE OF HUSBAND.

VOID OR VOIDABLE.

———*See* HINDU LAW—WIDOW—LEASE BY—INVALID LEASE. (1897) 24 I. A. 164 = 25 C. 1.

———A Hindu widow may alienate her husband's property subject to certain conditions being complied with. Her alienation is not, therefore, absolutely void. but it is *prima facie* voidable at the election of the reversionary heir. He may think fit to affirm it (92). (*Lord Davey.*) BIJOY GOPAL MUKERJI *v.* KRISHNA MAHISHI DEBI.
(1907) 34 I. A. 87 = 34 C. 329 (333-4) = 2 M. L. T. 133 = 5 C. L. J. 334 = 11 C. W. N. 424 = 9 Bom. L. R. 602 = 4 A. L. J. 329 = 9 Sar. 216 = 17 M. L. J. 154.

———An alienation by a Hindu widow is not a void contract; it is only voidable (*Lord Dunedin.*) RANGASAMI GOUNDEN *v.* NACHIAPPA GOUNDEN.
(1918) 46 I. A. 72 (86) = 42 M. 523 (538) = 26 M. L. T. 5 = (1919) M. W. N. 262 = 17 A. L. J. 536 = 21 Bom. L.R. 640 = 23 C. W. N. 777 = 29 C. L. J. 539 = 10 L. W. 105 = 50 I. C. 498 = 36 M. L. J. 493.

———*Ratification of alienation by reversioners—Effect.*

An alienation by a Hindu widow in excess of her powers is not altogether void but only voidable by the reversioners, who may either singly or as a body be precluded from exercising their right to avoid it either by express ratification or by acts which treat it as valid and binding (402). (*Lord Sinha.*) RAMGOUDA ANNAGOUDA *v.* BHAUSAHEB.
(1927) 54 I. A. 396 = 46 C. L. J. 267 = 4 O. W. N. 876 = 39 M. L. T. 250 = 29 Bom. L. R. 1380 = 32 C.W.N. 88 = 105 I. C. 708 = A. I. R. 1927 P.C. 227 = 53 M. L. J. 350.

WORDLY PURPOSES—RELIGIOUS OR CHARITABLE PURPOSES.

———Alienation for—Powers of—Distinction. *See* HINDU LAW—WIDOW—ALIENATION BY—RELIGIOUS OR CHARITABLE PURPOSES. (1861) 8 M. I. A. 529 (551).

Widow—Arrangement by.

———*See* HINDU LAW—WIDOW—FAMILY ARRANGEMENT BY.

Widow—Bequest to.

———*See* HINDU LAW—WILL—WIDOW.

Widow—Bond by.

———*Execution of—Proof of—Question as to—Law or Fact—Bond binding estate.*

The question for decision was whether a bond which was alleged to have been executed by the senior of the widows

HINDU LAW—(*Contd.*)

Widow—Bond by—(*Contd.*)

of a deceased Hindu and which was sought to be enforced against the estate in the hands of the junior widows had been duly executed by her. The decision of the question depended upon the credit which ought to be given to oral testimony of a conflicting character.

Held, that the finding of the first appellate court upon that evidence was substantially a finding of fact (3). (*Lord Watson.*) RAMRATAN SUKAL *v.* MUSSUMAT NANDU.

(1891) 19 I. A. 1=19 C. 249.

——*Suit to enforce, against estate—Onus of proof on plaintiff—Nature of proof required.*

The action was brought by the appellant against the respondents as widows and heirs of *K*, a Zemindar, who died in 1878. He was survived by three widows, *D*, the senior, who died in 1881, and the respondents. The action, which was brought in 1886, was laid upon a bond dated 7-11-1881, which bore to have been granted in favour of the appellant by *D*, who at that time was the manager of the estate.

Held, that it was clearly the duty of the appellant to prove, in order to make his claim under the bond good against the estate in the hands of the respondents, that the senior widow duly executed the bond, because it was her intelligent signature, in the capacity of a Hindu widow representing the estate, which alone could give validity to such a document (2).

The onus of proving due execution lay upon the plaintiff, who relies upon the signature of a Hindu widow as binding the estate which she represented (3). (*Lord Watson.*) RAMRATAN SUKAL *v.* MUSSUMAT NANDU.

(1891) 19 I. A. 1=19 C. 249.

Widow—Business of husband.

——*See* HINDU LAW—WIDOW—TRADE OF HUSBAND.

Widow—Charge created by.

——*Suit to enforce, against estate—Onus on plaintiff in.*

A person seeking to establish a charge upon the estate in the hands of a limited owner, a Hindu widow, has, no doubt, to sustain an extraordinary burthen of proof. He has to establish not only that he had a charge on the estate by the act of the widow, but that the debt charged was of a particular character (633). (*Sir James W. Colvile.*) CAVALY VENCATA NARRAINAPAH *v.* COLLECTOR OF MASULIPATAM. **(1867) 11 M. I. A. 619=10 W. R. P. C. 47=2 Suth. 103=2 Sar. 338.**

Widow—Compromise by.

——(*See also* HINDU LAW—REVERSIONER—WIDOW—COMPROMISE BETWEEN.)

ALIENATION—DISTINCTION.
ALIENATION—FAMILY SETTLEMENT—TEST.
ALIENATION RESULT OF—VALIDITY.
ANTECEDENT TITLE—COMPROMISE BASED ON, AND ACKNOWLEDGING AND DEFINING.
BENEFIT OF ESTATE—PERSONAL BENEFIT OF WIDOW—COMPROMISE BEING FOR—TEST OF.
DAUGHTER—VALIDITY AGAINST.
HUSBAND'S KINDRED—COMPROMISE WITH—PROPERTY GOT UNDER—ESTATE TAKEN IN.
LINEAL DESCENDANTS IN—MEANING OF.
LITIGATION—COMPROMISE OF.
REVERSIONER'S RIGHT TO DISPUTE—ESTOPPEL.
TRANSFER OF HUSBAND'S ESTATE TO COLLATERAL UNDER.

ALIENATION—DISTINCTION.

——*Test.*

The true test to apply to a transaction which is challenged by the reversioners as an alienation not binding on them is, whether the alienee derives title from the holder of the

HINDU LAW—(*Contd.*)

Widow—Compromise by—(*Contd.*)

ALIENATION—DISTINCTION—(*Contd.*)

limited interest or life-tenant. If he does, the transaction is an alienation and is not binding on the reversioners except under circumstances under which an alienation by her will bind them. If, however, the transaction is based on the assumption that there was an antecedent title of some kind in the parties and the agreement acknowledges and defines what that title is, the transaction is a compromise and not an alienation (102-3). (*Mr. Ameer Ali.*) KHUNNI LAL *v.* GOBIND KRISHNA NARAIN.

(1911) 38 I. A. 87=33 A. 356 (366-7)=15 C. W. N. 545=8 A. L. J. 552=13 Bom. L. R. 427=13 C. L. J. 575=10 M. L. T. 25=(1911) 1 M.W.N. 432=10 I. C. 477=21 M.L.J. 645.

ALIENATION—FAMILY SETTLEMENT—TEST.

——*Validity.*

Held, on the facts, that the compromise in question was in no sense of the word an alienation by a limited owner of the family property, but a family settlement in which each party took a share of the family property by virtue of the independent title which was, to that extent, and by way of compromise, admitted by the other parties.

On *A's* death, his widow adopted *B* in pursuance of a power to adopt given to her by her husband. She remained in possession of her husband's property till her death and was succeeded thereupon by the widow of *B*, who had died during the interval. One of the daughters of *A* brought a suit against *B's* widow for the recovery of her share of the property left by *A*, her father. That suit, in which the plaintiff questioned the adoption of *B*, was eventually settled by a compromise under which various claimants got their respective shares. In a suit subsequently brought by *B's* daughter challenging the compromise on the ground that it amounted to an alienation and was beyond her (*B's* widow's) powers as a Hindu widow, *held* it was a family settlement, and not an alienation, and was valid. (*Lord Moulton.*) MUSSAMMAT HIRAN BIBI *v.* MUSAMMAT SOHAN BIBI. **(1914) 18 C. W. N. 929=1 L. W. 648=24 I. C. 309=27 M. L. J. 149.**

ALIENATION RESULT OF—VALIDITY.

——*Test.*

An alienation, which is the result of a compromise, or the mode by which a compromise is carried into effect will, if the compromise be reasonable and prudent, and for the interest of the estate, fall within the power of the holder of a Hindu woman's estate, either as being an alienation which is to be deemed to be induced by necessity, or as being in a parallel position to an alienation induced by necessity. (*Lord Phillimore.*) RAMSUMRAN PRASAD *v.* MUSAMMAT SHYAM KUMARI. **(1922) 49 I. A. 342 (346)=1 Pat. 741 (745 6)=37 C.L.J. 356=21 A.L.J. 18=27 C.W.N. 269=L.R. 4 P. C. 17=25 Bom. L.R. 634=A.I.R. (1922) P.C. 356=9 O. & A.L.R. 175 (P. C.)=31 M. L. T. 200 (P. C.)=3 Pat. L.T. 749=16 L. W. 956=69 I.C. 71=44 M. L. J. 751.**

ANTECEDENT TITLE—COMPROMISE BASED ON, AND ACKNOWLEDGING AND DEFINING.

——Compromise creating title for first time—Test. *See* COMPROMISE—CONSTRUCTION OF—ANTECEDENT TITLE. **(1874) 1 I. A. 157 (164 6).**

——*Validity against reversioner of.*

R and his son, *D*, were members of a joint Hindu family and thus entitled in joint tenancy each to a moiety of the properties. In 1845 *R* abandoned Hinduism and adopted the Mahomedan faith Nevertheless the father and the son remained joint until the death of the latter, leaving a widow and two daughters. *R* died a few months later and,

HINDU LAW—(*Contd.*)

Widow—Compromise by—(*Contd.*)

ANTECEDENT TITLE — COMPROMISE BASED ON, AND ACKNOWLEDGING AND DEFINING—(*Contd.*)

on his death, the entire property which had stood all along in his name in the Collector's register was recorded in the name of his widow.

Disputes then arose between the heirs of *D*, on the one side, and the widow of *R*, on the other, in consequence of which the Court of Wards took over, in 1852, possession of the entire estate, recognising the claim of *R's* widow, but not that of *D's* heirs, thereto. The widows of *D* & *R* died subsequently, and, after their death, that is, in 1860, under the advice of the Collector of the District, the daughters of *D*, and *K*, the daughter's son of *R*, entered into a compromise, by which *D's* daughters obtained between them an $8\frac{1}{2}$ anna share, taking the entire estate as 16 annas; whiist *K* received a $7\frac{1}{2}$ anna share. Partition was effected in terms of the compromise, and the parties obtained possession of the respective shares allotted to them.

Plaintiff's mother, one of the daughters of *D*, survived her sister, and herself died in 1899, whereupon plaintiffs brought a suit claiming as next reversioners to their grandfather, *D*, to recover possession of the properties held by the defendants under the said deed of compromise, on the allegation that the same was not binding on them (the plaintiffs).

Held, reversing the judgment of the High Court, that the compromise was binding on the plaintiffs (102-3).

In 1863, when the compromise was entered into, the heirs of *D* had no existing enforceable rights to the share of *R*, and the entire property was recorded in the name of his widow. Under these circumstances the parties, under the advice of the District Officer, instead of engaging in a long litigation, arrived at a mutual settlement of their claims. The real nature of the compromise is well expressed in the judgment in a prior litigation between the parties thus :— The true character of the transaction appears to us to have been a settlement between the several members of the family of their disputes, each one relinquishing all claim in respect of all property in dispute other than that falling to his share and recognising the right of the others as they had previously asserted it to the portion allotted to them respectively. It was in this light, rather than as conferring a new distinct title on each other, that the parties themselves seem to have regarded the arrangement, and we think that it is the duty of the Courts to uphold and give full effect to such an arrangement (102). (*Mr. Ameer Ali.*) KHUNNI LAL *v.* GOBIND KRISHNA NARAIN. **(1911) 38 I. A. 87 = 33 A. 356 (366-7) = 15 C. W. N. 545 = 8 A. L. J. 552 = 13 Bom. L. R. 427 = 13 C. L. J. 575 = 10 M. L. T. 25 = (1911) 1 M. W. N. 432 = 10 I. C. 477 = 21 ML J. 645.**

BENEFIT OF ESTATE—PERSONAL BENEFIT OF WIDOW —COMPROMISE BEING FOR—TEST OF.

———*Validity of compromise against reversioners.*

Where, in a suit by the daughters of a deceased Hindu for the recovery of possession of the properties which belonged to him, the defendant, set up that he had been adopted by the deceased in the Kritrima form and relied upon an oral compromise made by the widow of the deceased after his death by which she admitted that the defendant had been adopted by her husband upon condition that she was to enjoy the whole of his property for her life without power of alienation and that, after her death her daughters (the plaintiffs) were to take the self-acquired property of the deceased and the defendant was to succeed to the ancestral estate, *held* that the compromise was not against the widow's interest and was not binding upon plaintiffs. (*Sir Barnes Peacock.*) MUSSUMAT IMRIT KONWAR *v.* ROOP NARAIN SINGH. **(1879) 3 Suth. 612 = Bald. 227 = 6 C. L. R. 76 = 3 I. J. 328.**

HINDU LAW—(*Contd.*)

Widow—Compromise by—(*Contd.*)

BENEFIT OF ESTATE — PERSONAL BENEFIT OF WIDOW—COMPROMISE BEING FOR—TEST OF—(*Contd.*)

———A compromise made *bona fide* for the benefit of the estate and not for the personal advantage of the limited owner will bind the reversioner quite as much as a decree on contest. (*Lord Phillimore.*) RAMSUMRAN PRASAD *v.* MUSSAMMAT SHYAM KUMARI. **(1922) 49 I. A. 342 (348) = 1 Pat. 741 (745-6) = 37 C. L. J. 356 = 21 A. L. J. 18 = 27 C. W. N. 269 = L. R. 4 P. C. 17 = 25 Bom. L. R. 634 = 9 O. & A. L. R. 175 (F. C.) = 31 M. L. T. 200 (P. C.) = (1922) P. C. 356 = 3 Pat. L. T. 749 = 16 L. W. 956 = 69 I. C. 71 = 44 M. L. J. 751.**

DAUGHTERS—VALIDITY AGAINST.

———The doughters could not be bound by a compromise made by the widow under any circumstances. (*Sir Barnes Peacock.*) MUSSUMAT IMRIT KONWAR *v.* ROOP NARAIN SINGH. **(1879) 3 Suth. 612 (615) = 6 C. L. R. 76 = Bald 227 = 3 I. J. 328.**

HUSBAND'S KINDRED—COMPROMISE WITH—PROPERTY GOT UNDER—ESTATE TAKEN IN.

———*Husband's share—Money payment to widow in lieu of, "for her own absolute and separate use"—Effect.*

B & *S* were members of a joint Hindu family. After an agreement of partition between them but before receipt of actual possession in severalty of the share allotted to him, *B* died, having by his will appointed *S*, his brother, sole executor. *S*, who continued in possession of the entire estate, paid to three of *B's* sons one-fourth share each of *B's* share in the joint property. *D*, the fourth son of *B*, was a minor at the time, and the delivery to him of his one-fourth share was accordingly postponed. *D*, however, died a minor, intestate, without issue, leaving *Z* his sole widow and heiress-at-law. *S* having died in the interval, his son, *G*, took possession of the whole estate, including *D's* share.

Disputes, which arose between *G* & *Z* with reference to *D's* share, were settled by a deed of compromise, to which the other three sons of *B* were, amongst others, parties. The deed of compromise stated that, to settle the disputes between *G* & *Z*, it had been mutually agreed between them that *Z* should be considered as entitled to the sum of Rs. 59,000 in full payment and discharge of all demands, legal and equitable, which *Z* had, or could, should or might have, against *G* in respect of the joint estate, or her part and share or interest therein in right of her deceased husband, and that on payment of the said sum *G* was to be considered to have been released by her from all her claims against him on account of her husband's share. The deed went on to state that it was agreed by and between all the parties that the said sum of Rs. 59,000 was to be the sole and exclusive property of *Z*, " for her own absolute and separate use."

Held, on a construction of the deed of compromise, that *Z* look only a widow's interest in the said sum of Rs 59,000, and that it devolved on her death on the heirs-at-law of her husband.

The words "to her separate use" in the deed of compromise are not to be understood in the sense in which that term is used in a Court of equity; but to her separate use as distinguished from the joint estate, dividing that which was joint into separate estate, and treating her share as being that which she is to take for her absolute use in her representative character, subject to any claims that may exist upon the same, for "her sole, absolute, and exclusive use" as against the parties to this deed. If it was a deed in which the recitals had reference to the life estate, and the reversioners had been parties, and the reversioners had

HINDU LAW—(*Contd.*)

Widow—Compromise by—(*Contd.*)

HUSBAND'S KINDRED—COMPROMISE WITH—PROPERTY GOT UNDER—ESTATE TAKEN IN—(*Contd.*)

agreed that she should hold the sum for "her absolute use and benefit," those words would have had a totally different meaning (22-3). (*Mr. Pemberton Leigh.*) SREEMUTTY RABUTTY DOSSEE *v.* SIBCHUNDER MULLICK.

(1854) 6 M. I. A. 1 = 1 Sar. 484.

———*Life estate—Estate with condition against alienation and of forfeiture on alienation — Construction of compromise.*

Mouzah *A* formed part of the ancestral property of a family who, in the year 1826, were representated by *K* and *M*, the widow of his first cousin. The two parties were in litigation. *K* claimed to be entitled to the whole property, subject only to such maintenance as the widow might be entitled to. The widow claimed the whole during her life or widowhood as representing her husband. Under those circumstances the parties came to a compromise in the year 1826, and that compromise was carried into effect in the suit which was then pending for the purpose of settling that question as to the ancestral property. The portion of the compromise material to the appeal was that which related to the interests given in the immoveable property to *K* and *M* respectively. As regards that property, the first clause of the Solenama executed by *K* was that all the villages, whether ancestsal or acquired by purchase, which lay in certain districts and which were held by the deceased husband of *M*, "shall during the lifetime of the aforesaid Mussumat"—that is *M*—"remain in equal shares in the joint possession and enjoyment of me the declarant and the aforesaid Mussumat, but the aforesaid Mussumat shall have no power to alienate the moveable or immoveable properties; and after her death all the moveable and immoveable properties, and the outstanding of the time of *R*," (the husband of *M*) "and the said Mussumat, shall be the right of me the declarant." A corresponding solenama was executed by *M*. That compromise was carried into effect by the decree, which merely provided and ordered that the two parties, *K* and M, "do hold possession and occupation of all the properties left by *R* conformably to the conditions laid down in the deeds of compromise."

On a question arising as to the nature of the interest taken by *M* in the estate awarded to her by the compromise, whether it was an interest in the property on condition that she should not alienate, with the result that by an alienation she broke the condition and forfeited the estate, or whether she took a life interest in the property which she could deal with freely and the only restriction was that she should not alienate in p rpetuity, *held* that, on the right construction of the compromise, the latter of the contentions was the right one (214). (*Sir Arthur Hobhouse.*) MUSSUMMAT BEBEA SAHOODRA *v.* ROY JUNG BAHADOOR.

(1881) 8 I. A. 210 = 8 C. 224 (228-9) = 6 I. J. 108 = 4 Sar. 294.

———*Will of husband—Income of estate not specifically disposed of by—Receipt of—Estate in.*

On the construction of the will of a deceased Hindu a question arose between his widow and his brother as to the right to the income of the estate during 8 years after the death of the testator. That income had not been specifically disposed of by the will. The widow maintained it to be intestate succession falling to her as her husband's widow and heiress. *S*, the brother of the deceased, contested that claim, and for a time maintained that the income of those years became his property under the general destination to him of the real and personal estate of the testator.

That dispute was settled by a deed of agreement which narrated the will, and stated the question which had arisen

HINDU LAW—(*Contd.*)

Widow—Compromise by—(*Contd.*)

HUSBAND'S KINDRED—COMPROMISE WITH—PROPERTY GOT UNDER—ESTATE TAKEN IN—(*Contd.*)

regarding the accumulated income of 8 years, and the nature of the widow's claim in regard to it. The deed then stated that *S* had consented and agreed to concede the point in question, and to give up to the widow as heiress of her husband the accumulated income of 8 years It went on to state that, in order to avoid the delay and expense of taking an account of the accumulations, it had been agreed by the parties that the amount should be taken at Rs. 2,89,000, and, that amount having been paid to her, the widow granted a full discharge of all her claims for those accumulations. By the same deed the widow relinquished certain other claims on receipt of certain amounts in respect of the same. The several sums payable and paid under that deed amounted in the aggregate to Rs. 4,75.450, and the payment was made in currency notes of various amounts, the most of those being one thousand rupee notes, others being notes for Rs. 500 and Rs. 100.

It was contended that the widow claimed and accepted the accumulated income of 8 years as a capitalised sum which in her hands was part of the capital of the estate of her husband: that she, therefore, acquired only a Hindu widow's interest in the fund, and was not entitled to alienate it or deal with it in any way which might deprive her husband's heirs of their right to receive it as part of his estate to which they had a right of succession.

Held, overruling the contention, 'that the claim of the widow to that part of the income of her husband's estate was made by her as heiress of her husband entitled to income not disposed of, that she claimed that income as her absolute property, and that there was nothing in the language of the deed of agreement, or in the transaction with *S* which could support the contention that she agreed to receive that income as capital in which she should acquire only the estate of a Hindu widow, or that the nature of the fund should differ in any way after she received it from what it had been before (22-3). (*Lord Shand.*) SOWDAMINEE DOSSEE *v.* ADMINISTRATOR-GENERAL OF BENGAL.

(1892) 20 I. A. 12 = 20 C. 433 (441) = 6 Sar. 272.

LINEAL DESCENDANTS IN—MEANING OF.

———Monthly allowance to lady and her "lineal descendants"—Compromise allowing—Married daughter of lady if included. *See* COMPROMISE — CONSTRUCTION — LINEAL DESCENDANTS. **(1929) 57 M.L.J. 580.**

LITIGATION—COMPROMISE OF.

———*Alienation by widow pursuant to—Validity of—Onus of proof as to*

In a suit by the reversionary heirs of one *M* to recover possession of certain property which was said to have been alienated by his widow as one of the terms of a compromise of litigation, the plaintiffs alleged that the compromise was beyond the powers which a woman holding a widow's estate had under the Hindu law and was invalid. *Quære* whether the judgment of the High Court, in so far as it placed the burden of proof on the plaintiffs, was absolutely and without qualification sound. (*Lord Phillimore*). RAMSUMRAN PRASAD *v.* MUSSAMMAT SHYAM KUMARI.

(1922) 49 I.A. 342 (350-1) = 1 Pat. 741 (749) = 37 C.L.J. 356 = 21 A.L.J. 18 = 27 C.W.N. 269 = L R. 4 P.C. 17 = 25 Bom. L.R. 634 = 9 O. and A.L.R. 175 (P.C.) = 31 M.L.T. 200 (P.C.) = (1922) P.C 356 = 3 Pat. L.T. 749 = 16 L.W. 956 = 69 I.C. 71 = 44 M L.J. 751.

———*Decree on foot of—Validity of, against reversioner—Husband's brother—Claim by, false to his knowledge—Compromise induced by.*

HINDU LAW—(*Contd.*)

Widow—Compromise by—(*Contd.*)

LITIGATION—COMPROMISE OF - (*Contd.*)

On the death of a Hindu subject to the Mithakshara law, leaving behind him a brother, a widow, and a minor daughter by her, the brother instituted a suit against the widow and daughter of the deceased and induced the widow to enter into a compromise on behalf of her daughter by which the widow abandoned all claim to the property of the deceased and admitted that he had been born blind and was consequently excluded by Hindu law from all right of inheritance and that the brother was entitled to the whole property by survivorship. The widow was given under the compromise a fourth of the family property for her life with remainder to plaintiff. A decree was passed in pursuance of the compromise. In a suit brought by the daughter against her uncle and mother *inter alia* for a declaration that the compromise and decree aforesaid were not binding on her, it appeared that to the uncle's knowledge the deceased was not born blind and that, when he induced the widow to enter into the compromise, he had no honest and *bona fide* belief in the claim which he was making. *Held*, that the compromise and decree could not affect the right of the daughter and she was entitled to a declaration to that effect (*Sir John Edge*). GUNJESHWAR KUNWAR *v.* DURGA PRASAD SINGH.

(1917) 44 I.A. 229 = 45 C. 17 = 7 L.W. 94 = 16 A.L.J. 1 = (1918) M.W N. 16 = 20 Bom. L.R. 38 = 22 M.L.T. 403 = 22 C.W.N. 74 = 26 C.L.J. 557 = 42 I.C. 849 = 34 M.L.J. 1.

———*Family settlement—Compromise in nature of—Validity of.*

A Hindu widow has power to enter into a compromise of a litigation in the nature of a family settlement which is "prudent and reasonable" under the circumstances of the case.

Held, on the facts affirming the Court below, that the compromise in question in the case was of such a nature and was within the widow's powers. (*Mr. Ameer Ali*). MATA PRASAD *v.* NAGESHWAR SAHAI.

(1925) 52 I.A. 398 (416) = 47 A. 883 = 6 L.R P.C. 195 = 3 O.W.N. 1 = 28 O.C. 352 = 24 A.L.J. 1 = (1926) M.W.N. 83 = 43 C.L.J. 51 = 13 O L.J. 19 = A.I.R. (1925) P.C. 271 = 91 I.C. 370 = 50 M.L J. 18.

———*Fraudulent or not—Findings concurrent as to—Privy Council's interference with.*

———(*Lord Phillimore*). RAMSUMRAN PRASAD *v.* MUSSAMMAT SHYAM KUMARI.

(1922) 49 I.A. 342 (345) = 1 Pat. 741 (745) = 37 C. L. J. 356 = 21 A L J. 18 = 27 C.W.N 269 = L R. 4 P.C. 17 = 25 Bcm. L.R. 634 = 9 O. and A.L.R. 175 (P.C.) = 3 Pat. L T. 749 = 31 M.L T. 200 (P.C) = (1922) P.C. 356 = 16 L.W. 956 = 69 I.C. 71 = 44 M.L.J. 751.

———*Mortgage decree obtained by widow and mortgaged properties purchastd by her in execution thereof—Mortgagor's application to set aside sale—Compromise on, allowing sale to be set aside on certain terms and remitting portion of debt—Validity of.*

A suit to enforce two mortgage bonds instituted by a Hindu was, after his death, continued by his widow. In that suit a decree was passed in favour of the widow for the recovery of a sum of a lac and 41,000 odd rupees. In execution of the decree; 6 of the properties were sold and purchased by the widow, with leave to bid, for the sum of Rs. 65,000 odd. The judgment-debtors applied to set aside the sale. Thereupon the widow entered into a compromise with the judgment-debtors, whereby it was agreed that the

HINDU LAW—(*Contd.*)

Widow—Compromise by—(*Contd.*)

LITIGATION—COMPROMISE OF—(*Contd.*)

sale of the 6 properties should be set aside, that the judgment-debtors should be allowed to sell them again to certain persons for a sum of Rs. 66,000 to be paid over to her, and that the widow should have power to sell the two other properties and to appropriate the proceeds to herself. It was estimated that by the sale of those two properties the widow would probably obtain Rs. 5,000. The rest of the debt, Rs. 70,000 odd, was remitted.

One of the motives of the widow for entering into the compromise was no doubt the fact that the judgment-debtors were her relations and she did not wish absolutely to impoverish them It appeared, however, that the judgment-debtors had no other available property. and that the real value of the property released was only Rs, 3,000. It was also found that there was no fraud or collusion in the matter of the compromise.

Held that the compromise was reasonable in the circumstances of the case, and was binding on the estate.

Li igation in respect of this very subject matter had already once taken the widow to the Privy Council, and though the objections of the judgment-debtors were of the stock kind and not likely to prevail, still with judgment debtors who had little or nothing to lose it was likely that their objections would have been carried as far as the High Court. (*Lord Phillimore.*) RANSUMRAN PRASAD *v.* MUSSAMMAT SHYAM KUMARI. **(1922) 49 I A. 342 (348-9) = 1 Pat. 741 (748-9) = 37 C.L.J. 356 = 21 A.L.J. 18 = 27 C.W.N. 269 = L. R. 4 P.C. 17 = 25 Bom. L. R. 634 = 9 O. and A.L.R. 175 (P.C.) = 31 M.L.T. 200 (P.C) = (1922) P.C. 356 = 3 Pat. L. T. 749 = 16 L.W. 956 = 69 I.C. 71 = 44 M.L.J. 751.**

———*Movable and immovable property—Powers of compromise as regards—Distinction.*

Quære whether, as regards the power of a Hindu widow under the Mithakshara law to compromise a litigation affecting her husband's estate, there was a greater sanctity in immovable property than in movable property forming the estate of the deceased (350). (*Lord Phillimore*). RAMSUMRUN PRASAD *v.* MUSSAMMAT SHYAM KUMARI.

(1922) 49 I.A. 342 = 1 Pat. 741 (749-50) = 37 C.L.J. 356 = 21 A.L.J. 18 = 27 C.W.N 269 = L.R. 4 P.C. 17 = 25 Bom. L.R. 634 = 9 O. and A.L R. 175 (P.C.) = 31 M.L.T. 200 (P.C.) = (1922) P.C. 356 = 3 Pat. L.T. 749 = 16 L. W. 956 = 69 I.C. 71 = 44 M.L.J. 751.

———Subject-matter of—Immovable or movable property. *See* HINDU LAW—WIDOW—ALIENATION BY—SUBJECT-MATTER OF. **(1922) 49 I.A. 342 (350) = 1 Pat. 741 (749-50.)**

REVERSIONER'S RIGHT TO DISPUTE—ESTOPPEL.

———*Reversioner responsible for compromise and taking benefit under it.*

B, the surviving member of a joint family, died in 1883 without male issue but leaving a widow and a daughter. On his death his widow became entitled to the entire estate owned by him for her life. Her title was, however, disputed by the widows of *B*'s two predeceased brothers and by the appellant, one of the reversionary heirs of *B*. The appellant claimed the entire estate on the ground that he had been adopted by ths widow of one of *B*'s predeceased brothers ; and the widows of the predeceased brothers alleged that *B* and his brothers had separated and that they were entitled each to one-third of the family estate. One of those widows also supported the case of the appellant as to his adoption by her. Thereupon *B*'s widow sued the

HINDU LAW—(*Contd.*)

Widow—Compromise by—(*Contd.*)

REVERSIONER'S RIGHT TO DISPUTE—ESTOPPEL—(*Contd.*)

widows of his predeceased brothers for a declaration that *B* had been the owner and in possession of the entire estate, that she became entitled to the same after his death, and that the defendants had no right other than that of mainte nance. That suit was settled by a compromise in 1892, whereby one-fourth of the family property was allotted to each of *B*'s widow, his daughter, and the widows of his brothers, and they respectively obtained possession of the properties allotted to them. The appellant got no share in the family property, but in fact he got the one-fourth share which was allotted to his alleged adoptive mother; and he further obtained the benefit of having the validity of his adoption left undecided by a Court of law. Subsequent to the compromise, the appellant's alleged adoptive mother executed in his favour a deed of relinguish-ment of the property which had been allotted to her under the compromise. That deed of relinquishment recited the fact of the appellant's adoption, and declared that the appel-lant was the owner of all her husband's property. In accord-ance with that deed of relinguishment, the appellant obtain-ed mutation of names in his own favour, and throughout enjoyed the share of his alleged adoptive mother as his own property, and his right to it was not questioned by any body.

In a suit instituted by the appellant, after the death of *B*'s widow, to recover as reversionary heir of *B*, the properties allotted to the other parties to the compromise of 1892, *held* that, the appellant was bound by the said compromise, and could not claim as reversionary heir as against it (124).

The claim of the appellant that he had been adopted by the widow of one of the predecea ed brothers was a serious one; it was supported by his alleged adoptive mother; and if it had been substantiated, the appellant would have been entitled to the whole family property, and *B*'s widow would have been entitled only to maintenance. His claim must, therefore, have mainly influenced *B*'s widow in entering into the compromise and thereby consenting to a division of the family property, in which she obtained for herself only a one-fourth share. The claims of the widows of the pre-deceased brothers must also have influenced her to agree to the compromise. The appellant was a party to that com-promise. He was one of those whose claims to the family property, or to shares in it, induced *B*'s widow, against her own interests and those of her daughter, and greatly to her own detriment, to alter her position by agreeing to the compromise, and under that compromise he obiained a substantial benefit; which he has hitherto enjoyed. He is bound by it, and cannot now claim as a reversioner (123 4). (*Sir John Edge.*) KANHAI LAL *v.* BRIJ LAL.

(1918) 45 I. A. 118 = 40 A. 487 = 16 A. L. J. 825 = 22 C. W. N. 914 = 8 L. W. 212 = (1918) M. W. N. 709 = 24 M. L. T. 236 = 28 C.L.J. 394 = 20 Bom. L. R. 1148 = 5 Pat. L. W. 294 = 47 I. C. 207 = 35 M. L. J. 459.

TRANSFER OF HUSBAND'S ESTATE TO COLLATERAL UNDER.

———*Mortgagee* bona fide *of estate from collateral—Rights of, as against reversioner—Not higher than those of his mortgagor.*

The daughter's sons of a deceased Hindu sued for a declaration of the invalidity of a compromise by their mother under which she transferred a portion of their grand-father's property to a collateral of his. The defendant in the suit was a person who had taken a mortgage of that portion from the collateral subsequent to the said com-promise and had obtained a decree on foot of that mort-gage. The High Court found that the compromise was

HINDU LAW—(*Contd.*)

Widow—Compromise by—(*Contd.*)

TRANSFER OF HUSBAND'S ESTATE TO COLLATERAL UNDER—(*Contd.*)

invalid and not binding on the reversionary heirs but upheld the title of the respondent on the ground that he was a *bona fide* transferee for value, and so stood in a better position than his transferor.

Held that, as against the reversioners, it was not within the power of the collateral to transfer a larger legal title than he himself had, and that, as the reversioners had not, by any act or omission, debarred themselves from insisting on that contention, the title of the respondent could not prevail against them. (*Sir Lawrence Jenkins.*) OBALA KONDAMA NAICKER AYYAN *v.* KANDASAMI GOUNDAR.

(1923) 51 I. A. 145 (151 3) = 47 M. 181 = 22 A.L.J. 16 = 19 L. W. 107 = (1924) M.W.N. 86 = 26 Bom. L R. 198 = 10 O. & A. L. R. 176 = 34 M.L T. 20 = 39 C. L. J. 194 = 28 C. W. N. 1050 = 79 I. C. 961 = A. I R. (1924) P. C. 56 = 46 M. L. J. 172.

———Validity against reversioner of. *See* HINDU LAW—DAUGHTER — COMPROMISE BY—FATHER'S ESTATE—TRANSFER OF, TO ETC. **(1923) 51 I. A. 145 (150-1) = 47 M. 181.**

Widow—Co-widows.

(Cases under Hindu Law —Daughter —Inheritance—Daughters succeeding to father's estate by—May also be usefully referred to).

ADOPTION BY.

ALIENATION FOR NECESSITY BY ONE OF, WITHOUT CONSENT OF OTHER.

DISPUTE AS TO HUSBAND'S ESTATE BETWEEN—REFERENCE TO ARBITRATION OF—SCOPE OF.

ESTATE OF—NATURE AND INCIDENTS OF.

MORTGAGE BY ONE OF, NOT FRAMED SO AS TO BIND OTHER.

PARTITION BETWEEN.

SURVIVORSHIP BETWEEN—RIGHT OF.

ADOPTION BY.

———*See* UNDER HINDU LAW—ADOPTION—WIDOW—CO-WIDOWS.

ALIENATION FOR NECESSITY BY ONE OF, WITHOUT CONSENT OF OTHER.

———*Consent of co-widow—Application for—Alienation even without—Validity of.*

One of two widows cannot alienate the estate without the consent of the other (515-6). (*Sir James W. Colvile.*) BHUGWANDEEN DOOBEY *v.* MYNA BAEE.

(1867) 11 M. I. A. 487 = 9 W. R. P. C. 23 = 2 Suth. 124 = 2 Sar. 327.

———In a case in which one of two widows jointly inheriting the estate of their deceased husband mortgaged a portion thereof without reference to the other widow, *held* that, assuming that there was a sufficient necessity for borrowing money, that necessity did not render a mortgage by one widow binding upon the joint estate which had descended from their deceased husband so as to affect the interest of the surviving widow (190). (*Sir Richard Couch.*) SRI GAJAPATI RADHAMANI GARU *v.* MAHARANI SRI PUSAPATI ALAKARAJESWARI. **(1892) 19 I. A. 184 = 16 M. 1 (10) = 6 Sar. 1.**

———One of two widows acting without the authority of the other cannot prejudice the latter's right of survivorship by burdening or alienating part of the estate.

Held that, a mortgage by one widow, even for necessary purposes, was not binding upon the joint estate in the hands of the surviving widow, when the concurrence of the latter was not even applied for. (*Lord Salvesen.*) GAURI NATH

HINDU LAW—(*Contd.*)

Widow—Co-widows—(*Contd.*)

ALIENATION FOR NECESSITY BY ONE OF, WITHOUT CONSENT OF OTHER—(*Contd.*)

KAKAJI *v.* MUSSUMAT GAYA KUAR. **(1928) 55 I.A. 399 = 28 L. W. 378 = 5 O. W. N. 661 = (1928) M. W. N. 758 = 111 I. C. 485 = 33 C. W. N. 39 = 48 C. L. J. 405 = A. I. R. 1928 P. C. 251 = 55 M. L. J. 339.**

———*Consent of co-widow applied for but improperly refused—Validity of alienation in case of.*

Semble : When the concurrence of the co-widow has been asked for to a borrowing by the other for necessary purposes and unreasonably refused, a mortgage for such a debt granted only by the one widow might be held binding on what may be termed the corpus of the estate. (*Lord Salvesen*) GAURI NATH KAKAJI *v.* MUSSUMAT GAYA KUAR. **(1928) 55 I. A. 399 = 28 L. W. 378 = 5 O.W. N. 661 = (1928) M. W. N. 758 = 111 I. C. 485 = 33 C.W.N. 39 = 48 C.L.J. 405 = A.I.R. 1928 P. C. 251 = 55 M. L. J. 339.**

———*Consent of co-widow applied for but not given—Validity of alienation in case of.*

Quaere whether a mere application by the widow effecting the mortgage to her co-widow for her consent to the mortgage would render it binding on the interest of the latter in the event of her survival if the latter did not in fact consent to the same (190). (*Sir Richard Couch.*) SRI GAJAPATI RADHAMANI GARU *v.* MAHARANI SRI PUSAPATI ALAKARAJESWARI. **(1892) 19 I. A. 184 = 16 M. 1 (10) = 6 Sar 1.**

———*Refusal of consent by co-widow justifying—Presumption of circumstances giving rise to.*

Held that, from the fact that two widows who had jointly inherited the estate of their husband were at enmity, and actually engaged in litigation with each other respecting the estate, it by no means followed that if it had been necessary to borrow money to save the estate of the two widows from sale for arrears of revenue, one of the widows would have refused to consent to mortgage the joint interest of the widows for a sum sufficient to discharge those arrears (190). (*Sir Richard Couch.*) SRI GAJAPATI RADHAMANI GARU *v.* MAHARANI SRI PUSAPATI ALAKARAJESWARI. **(1892) 19 I.A. 184 = 16 M. 1 (10) = 6 Sar. 1.**

———*Right of—Partition between widows—Implication from.*

The mere fact of partition between the widows, while it gives each a right to the fruits of the separate estate assigned to her, does not imply a right to prejudice the claim of the survivor to enjoy the full fruits of the property during her lifetime. (*Lord Salvesen.*) GAURI NATH KAKAJI *v.* MUSSUMAT GAYA KUAR. **(1928) 55 I. A. 399 = 28 L. W, 378 = 5 O. W. N 661 = (1928) M. W. N. 758 = 111 I. C. 485 = 33 C. W. N. 39 = 48 C. L. J. 405 = A. I. R. 1928 P. C. 251 = 55 M. L. J. 339.**

DISPUTE AS TO HUSBAND'S ESTATE BETWEEN—REFERENCE TO ARBITRATION OF—SCOPE OF.

———*Unchastity of one of widows and her consequent disability to inherit—Question as to, if included.*

The suit was brought by the plaintiff, the younger widow of one *D*, to recover half of the property which had been left by *D*. The defendant was the elder widow of the deceased. The defandant pleaded, *inter alia*, that the matters between the parties had been referred to arbitration by an agreement in writing, that there was an award of the arbitrators which decided that the plaintiff was not entitled to recover half of the property, and that the suit was therefore barred.

The submission was made by two argeements, one signed by the plaintiff, and the other by the defendant. That signed by the plaintiff was in favour of certain named arbitrators and was to the effect that there was a difference between the younger widow and the elder about their respective rights ; that the younger widow had appointed the persons so named as arbitrators; that she would accept what the arbitrators might give as the limit of her rights. The agreement signed by the elder widow was precisely similar in its purport. The allegation of the elder widow was that the younger was guilty of unchastity which disentitled her to succeed to any portion of the estate of her deceased husband. The arbitrators went into the question of the alleged unchastity of the younger widow, found that she was unchaste, and held that she was not entitled to inherit any portion of her husband's estate but was entitled only to maintenance.

Held, differing from the court below, that the arbitrators had not exceeded their authority in entering into the question of the unchastity of the younger widow (69).

The reference is a general reference to the arbitrators to decided between the two widows upon their respective rights, and particularly with respect to the younger widow, what was the limit of her rights, raising the entire question not merely whether she was entitled to maintenance, but whether there were facts which would disentitle her to succeed to any portion of the estate of her deceased husband (69). (*Sir Richard Couch.*) RANI BHAGOTI *v.* RANI CHANDAN. **(1885) 12 I. A. 67 = 11 C. 386 (390-1) = 4 Sar. 624.**

ESTATE OF—NATURE AND INCIDENTS OF.

The estate of two widows, who take their husband's property by inheritance, is one estate. The right of survivorship is so strong that the survivor takes the whole property, to the exclusion even of daughters of the deceased widow. They are, therefore, in the strictest sense, co parceners, and between undivided co-parceners there can be no alienation by one without the consent of the other (515-6). (*Sir James Colvile.*) BHUGWANDEEN DOOBEY *v.* MYNA BAEE. **(1867) 11 M. I. A. 487 = 9 W. R. P.C. 23 = 2 Suth. 124 = 2 Sar. 327.**

———Two or more lawfully married wives (patnis) take a joint estate for life in their husband's property, with rights of survivorship and equal beneficial enjoyment (221). (*Sir James W. Colvile.*) SRI GAJAPATHI NILAMANI *v.* SRI GAJAPATHI RADHAMANI. **(1877) 4 I. A. 212 = 1 M. 290 (299 300) = 1 C. L. R. 97 = 3 Sar. 753 = 3 Suth. 447.**

———If a Hindu dies leaving two widows, they succeed as joint tenants with a right of survivorship. They are entitled to obtain a partition of separate portions of the property so that each may enjoy her equal share of the income accruing therefrom. Each can deal as she pleases with her own life-interest, but she cannot alienate any part of the corpus of the estate by gift or will so as to prejudice the rights of the survivor or a future reversioner. If they act together they can burden the reversion with any debts contracted owing to legal necessity, but one of them acting without the authority of the other cannot prejudice the right of survivorship by burdening or alienating any part of the estate. The mere fact of partition between the two, while it gives each a right to the fruits of the separate estate assigned to her, does not imply a right to prejudice the claim of the survivor to enjoy the full fruits of the property during her lifetime. (*Lord Salvesen.*) GAURI NATH KAKAJI *v.* MUSSI. GAYA KUAR. **(1928) 55 I. A. 399 = 28 L. W. 378 = 5 O. W.N. 661 = (1928) M. W. N. 758 = 111 I C. 485 = 33 C.W N. 39 = 48 C.L.J. 405 = A.I.R. 1928 P.C. 251 = 55 M.L.J. 339.**

HINDU LAW—(*Contd.*)

Widow—Co widows—(*Contd.*)

MORTGAGE BY ONE OF, NOT FRAMED SO AS TO BIND OTHER.

———*What amounts to—Effect of.*

One of two widows, who had jointly succeeded to the estate of their deceased husband, executed a mortgage-deed with possession in respect of a portion of the estate, which recited that the mortgaged property had devolved upou her as widow of her deceased husband and that it had been in her possession and enjoyment, and which contained many stipulations which were personal to the mortgagor and could not be held to be binding or to have been intended to be binding upon the other widow or her interest in the event of her surviving. At the time the mortgage deed was executed and for some years afterwards the widow who executed the deed was contending that her co-widow as junior widow took no interest in the estate, but was merely entitled to maintenance. In a suit brought to enforce the mortgage after the death of the mortgagor against the estate in the hands of the other widow as the survivor, *held* that the mortgage was not, on its true construction, so framed as to bind the estate in the hands of the other widow, as the surviving widow (190-1). (*Sir Richard Couch.*) SRI GAJAPATI RADHAMANI GARU *v.* MAHARANI SRI PUSAPATI ALAKARAJESWARI. **(1892) 19 I. A. 184 = 16 M. 1 (10-1) = 6 Sar. 1.**

PARTITION BETWEEN.

———*Effect of—No enlargement of estate by.*

The widows of a Hindu who have inherited his estate have no power by a compromise between themselves with regard to that estate to affect the rights of the reversioners therein.

Where two widows who had inherited the estate of their husband entered into a compromise whereby they divided the estate between them and each was declared to have no claim whatever to the portion that fell to the share of the other, *held* that the compromise could only apply to the shares to which the widows were entitled as widows and that a mortgage of the estate by them would not, unless effected for a purpose binding on the estate, be binding on it.

Under the compromise the widows simply were entitled to their shares as for what is called the widow's estate. (*Sir Richard Couch.*) DHARAM CHAND PAL *v.* BHAWANI MISRAIN. **(1897) 24 I. A. 183 = 25 C. 189 = 1 C.W.N. 697 = 7 Sar. 249.**

———*Permissibility of—Scope and effect of.*

Widows taking a joint interest in the inheritance of their husbands have no doubt no right to enforce an absolute partition of the joint estate between them. But a case may be made out entitling one of several widows to the relief of separate possession of a portion of the inheritance. Such relief can and ought to be granted when from the nature or situation of the property and the conduct of the co-widows or co-widow it appears to be the only proper and effectual mode of securing the enjoyment of her distinct right to an equal share of the benefits of the estate (221).

Where it appeared that the widows of a deceased Hindu could not go on peaceably in the joint enjoiment of his estate, and that they had acted as if they had agreed that they were separately to enjoy their respective shares, leaving the title to each share unaffected, their Lordships, guarding themselves against being supposed to affirm by their order that either widow had power to dispose of the share of the estate allotted to her, or that they had any right to a partition in the proper sense of the term, confirmed the order below under which the profits of her share of the estate was to go to each widow during their joint lives, their respective rights by survivorship and otherwise remaining unaffected

HINDU LAW—(*Contd.*)

Widow—Co-widows—(*Contd.*)

PARTITION BETWEEN—(*Contd.*)

(222). (*Sir James W. Colvile.*) SRI GAJAPATI NILAMANI *v.* SRI GAJAPATHI RADHAMANI. **(1877) 4 I. A. 212 = 1 M. 290 (299-300) = 1 C.L.R. 97 = 3 Sar. 753 = 3 Suth. 447.**

———*See also* HINDU LAW—WIDOW — CO-WIDOWS—ESTATE OF. **(1928) 55 I. A. 399 = 55 M. L. J. 339.**

———*Release of right of survivorship by—Validity of.*

Quaere whether it is competent to one of two widows inheriting the estate of their husband to enter into a contract of partition, and as part of that contract, to release her rights of survivorship (515). (*Sir James W. Colvile.*) BHUGWANDEEN DOOBEY *v.* MYNA BAEE. **(1867) 11 M. I. A. 487 = 9 W. R. P. C. 23 = 2 Suth. 124 = 2 Sar. 327.**

———*Right of*, inter se—*Title to property in others—Possession lawfully obtained and peaceably held by widows for a long time.*

The appellant and the respondent were the widows of one *B*. The appellant sued the respondent for partition and separate possession of certain properties which appertained to the estate of *B*. *B* had, during his lifetime, adopted one *P* and had executed a will bequeathing his whole estate to *P*, subject to provisions for the maintenance of his (*B*'s) mother and of his widows. *P* survived *B* and died a minor in 1879. From that date down to the date of suit, May, 1883, the appellant and the respondent were in joint possession of the estates of *B*, including the suit properties, describing themselves sometimes as the widows of *B* and sometimes as mothers of *P*.

The High Court held that the appellant was not entitled to a decree for partition, and dismissed her suit. While recognising that 'Possession is a good title against all the world except the person who can show a better title," and that "By reason of his possession such person has an interest which can be sold or devised," the learned Judges distinguished the case before them, observing " In this case there is nothing of the kind; parties come and claim an estate to which they are not entitled. They set up a false claim. They have no estate in law which they could divide. To do so would be to recognise an illegal transaction, and we would be dividing an estate which has no legal existence".

Their Lordships reversed the High Court, and decreed the suit, observing: "The fact of joint possession by the widows of the estates which belonged to *B*, ever since the death of *P* in 1879 is sufficient for disposing of this suit in favour of the appellant. The possession of the widows was lawfully attained, in this sense, that it was not procured by force or fraud, but peaceably, no one interested opposing. In these circumstances it does not admit of doubt that they are entitled to maintain their possession against all comers except the heirs of *P* or of *B*, one or other of whom (it is unnecessary to say which) is the only person who can plead a preferable title. But neither of these possible claimants is in the field, and the widows have, therefore, each of them, an estate or interest in respect of her possession, which cannot be impaired by the circumstance that they may have ascribed their possession to one or more other titles which do not belong to them. It is impossible to hold that a joint estate is not also partible (193-4). (*Lord Watson.*) MUSSAMMAT SUNDAR *v.* MUSSAMMAT PARBATI. **(1889) 16 I. A. 186 = 12 A 51 = 5 Sar. 448.**

———*Succession Property Protection Act XIX of* 1841—*Partition under—Effect of—Alienation by widows—Power of—Effect on.*

HINDU LAW—(*Contd.*)

Widow—Co-widows—(*Contd.*)

PARTITION BETWEEN—(*Contd.*)

Here the so-called partition was between two widows, each having the limited interest of a Hindu widow in her husband's estate. It does not appear that it was made at the suit or on the application of either. It was made by Order of a Judge who, in the particular proceeding (one under Act XIX of 1841), had no jurisdiction to determine questions of title; and who could only deal with the right to possession. It is difficult to see how such a partition could enlarge either widow's estate, so as to give her a disposition which she would not otherwise have had against the next heirs of her husband (515-6). (*Sir James W. Colvile.*) BHUGWANDEEN DOOBEY *v.* MYNA BAEE. **(1867) 11 M. I. A. 487 = 9 W. R. P. C. 23 = 2 Suth. 124 = 2 Sar. 327.**

SURVIVORSHIP BETWEEN—RIGHT OF.

———*See* UNDER HINDU LAW—WIDOW—CO-WIDOWS—ESTATE OF.

———*Effect on, of acquiescence by surviving widow in unfounded claim to entire estate set up by third party under alleged will of husband.*

A Hindu widow is not precluded from suing to enforce her right to succeed by survivorship on the death of her co-widow to the latter's share of their husband's estate, by reason of the fact that she (the surviving widow) acquiesced in the title to the entire estate of their husband set up by a third party under an alleged will of the husband, which claim was however decided to be untenable (496). (*Sir James W. Colvile.*) BHUGWANDEEN DOOBEY *v.* MYNA BAEE. **(1867) 11 M. I. A. 487 = 9 W. R. P. C. 23 = 2 Suth. 124 = 2 Sar. 327.**

———Release of, by partition between widows—Validity of. *See* HINDU LAW—WIDOW—CO-WIDOWS—PARTITION BETWEEN—RELEASE OF RIGHT OF ETC. **(1867) 11 M. I. A. 487 (515).**

———*Survivor's suit to recover deceased widow's share based on—Decree allowing—Declaration in, as to plaintiff's limited interest in property recovered—Necessity.*

Where, in a suit by a Hindu widow, claiming to be entitled by survivorship to the share of her deceased co-widow, for the recovery of such share, it appeared that the plaintiff had assumed a power of disposing of her own share, their Lordships inserted in the decree a declaration that the property recovered by the plaintiff was to be possessed and enjoyed by her as a widow of a Hindu husband dying without issue, in the manner prescribed by the Hindu law (516). (*Sir James W. Colvile.*) BHUGWANDEEN DOOBEY *v.* MYNA BAEE. **(1867) 11 M. I. A. 487 = 9 W. R. P. C. 23 = 2 Suth. 124 = 2 Sar. 327.**

Widow—Debt of.

———*See* UNDER HINDU LAW—WIDOW—MORTGAGE BY.

Widow—Debt of husband.

———*See* UNDER HINDU LAW—WIDOW—HUSBAND—DEBT OF.

Widow—Decree against.

ALIENATION BY HER TO SATISFY—REVERSIONER CHALLENGING—CHALLENGE OF DECREE BY—NECESSITY.

HUSBAND'S ESTATE WHEN REPRESENTED IN.

RES JUDICATA AGAINST REVERSIONERS.

SALE IN EXECUTION OF—INTEREST PASSING UNDER—ENTIRE ESTATE OR WIDOW'S INTEREST ONLY.

SALE IN EXECUTION OF—MINOR SON—INTEREST OF.

SUIT BY HER TO SET ASIDE, ON GROUND OF FRAUD—DISMISSAL OF—REVERSIONER'S SUIT SUBSEQUENT

HINDU LAW—(*Contd.*)

Widow—Decree against—(*Contd.*)

IN RESPECT OF SAME PROPERTY AFTER WIDOW'S DEATH.

TRANSFER OF PORTION OF ESTATE IN SATISFACTION OF—INTEREST PASSING UNDER.

WILL OF HUSBAND—WIDOW WITH WIDOW'S ESTATE AND POWER OF APPOINTMENT GIVEN BY—DECREE AGAINST.

ALIENATION BY HER TO SATISFY—REVERSIONER CHALLENGING—CHALLENGE OF DECREE BY—NECESSITY.

———Debt basis of deeree legally chargeable on estate. *See* HINDU LAW—REVERSIONER—WIDOW—DEATH OF—POSSESSION OF PROPERTY ON—SUIT FOR RECOVERY OF—ALIENEE FROM WIDOW. **(1861) 8 M.I.A. 529 (554).**

HUSBAND'S ESTATE WHEN REPRESENTED IN.

———Their Lordships wish it to be understood that they leave unimpaired the general rule that in a suit brought by a third person, the object of which is to recover or charge an estate of which a Hindu widow is the proprietress, she will, as defendant, represent and protect the estate, as well in respect of her own as of the reversionary interest (267). (*Lord Romilly.*) NUGENDER CHUNDER GHOSE *v.* SREEMUTTY KAMINEE DOSSEE. **(1867) 11 M. I. A. 241 = 8 W. R. P. C. 17 = 2 Suth. 77 = 2 Sar. 275.**

RES JUDICATA AGAINST REVERSIONERS.

———*Shivagunga case.*

The same principle, which has obtained in England as to tenants-in-tail representing the inheritance, would seem to apply to the case of a Hindu widow; and it is obvious that there would be the greatest possible inconvenience in holding that the succeeding heirs were not bound by a decree fairly and properly obtained against the widow.

A decree in a suit brought for a zamindary by a Hindu widow binds those claiming the zamindary in succession to her. Unless the decree can be successfully impeached on some special ground, it will be an effectual bar to any new suit by any person claiming in succession to her. For, assuming her to be entitled to the zamindary at all, the whole estate would, for the time, be vested in her, absolutely for some purposes, though, in some respects, for a qualified interest; and, until her death, it could not be ascertained who would be entitled to succeed. (*Lord Justice Turner.*) KATAMA NATCHIAR *v.* THE RAJAH OF SHIVAGUNGA. **(1863) 9 M. I. A. 539 (603-4) = 2 W. R. C. R. P. C. 31 = 1 Suth. 520 = 2 Sar. 25.**

———*Shivagunga case—Rule in.*

A Hindu widow, who has inherited the estate of her husband, represents the estate in suits brought by her or against her for possession of the estate or any part of it, and she and the reversioners are equally bound by any final decree which a court makes in such a suit provided that the suit was fought out according to law and was not collusive or fraudulent. The Board has invariably applied the rules of the Shivagunga case as sound Hindu Law where that rule was applicable. (*Sir John Edge.*) VAITHIALINGA *v.* SRIRANGATH ANNI. **(1925) 52 I. A. 322 (329-30) = 48 M. 883 = 6 L. R. P. C. 169 = 42 C. L. J. 563 = (1926) M. W. N. 11 = 28 Bom. L. R. 173 = 30 C. W. N. 313 = A. I. R. 1925 P. C. 249 = 92 I. C. 85 = 49 M. L. J. 769.**

———Where the estate of a deceased Hindu has vested in a female heir a decree fairly and properly obtained against her in regard to the estate is, in the absence of fraud or collusion, binding on the reversionary heir. It is true that that the rule of *res judicata*, as enacted in S. 11 of C. P. C. of 1908, is not strictly applicable in such a case, as the reversionary heir was not a party to the suit by or against

HINDU LAW—(*Contd.*)

Widow—Decree against—(*Contd.*)

RES JUDICATA AGAINST REVERSIONERS— (*Contd.*)

the widow, and does not claim under a party to that suit, but the principle of *res judicata* has been applied rightly by the courts in India so as to bind reversioners by decisions in litigation, fairly and honestly conducted, given for or against Hindu females who represented the estates of the last male owners (178). (*Sir John Edge.*) CHAUDHRI RISAL SINGH *v.* BALWANT SINGH.

(1918) 45 I. A. 168 = 40 A. 593 (603-4) = 28 C. L. J. 519 = 9 L. W 52 = 23 C W. N. 326 = 24 M. L. T. 361 = 21 Bom. L. R. 511 = 48 I. C. 553 = 36 M. L. J. 597.

———*Award—Decree based on.*

Disputes between a Hindu daughter in possession of property as heiress of her father and the latter's agnatic male relations who contested her right to hold the property were referred to arbitrators. Before the arbitrators had taken any action in the matter a compromise was arrived at. This compromise was placed before the arbitrators and they were invited to make an award in accordance therewith, which they did. The daughter's husband represented her in those transactions, and, as she herself did not acquiesce in the award, the opposite party applied tp the civil court under the provisions of S. 327 of the Code of 1859 (the law that regulated at the time the procedure of Civil Courts in India) for a decree on the award. In those proceedings, the court made a decree "to have the award filed and enforced under S. 327." The result of the decision was to put the daughter out of possession of the properties covered by the compromise, which were practically all the properties she had inherited from her father.

In a suit brought by her son after her death for the recovery of the properties which his mother had been deprived of in virtue of the above-mentioned proceedings on the ground that the arbitration proceedings and the decree on the award were not binding on the plaintiff,

Held, that the proceedings culminating in the said decree were entirely devoid of the conditions on which, and which alone, a reversioner can be shut out from the assertion of his right, which comes to him altogether independently of the female owner (40). (*Mr. Ameer Ali.*) AMRIT NARAYAN SINGH *v.* GAYA SINGH. **(1917) 45 I. A. 35 = 45 C. 590 (604-5) = 22 C. W. N. 409 = 23 M. L. T. 142 = 27 C. L. J. 296 = 4 Pat. L. W. 221 = 16 A. L. J. 265 = (1918) M. W. N. 306 = 20 Bom. L. R. 546 = 7 L. W. 581 = 44 I. C. 408 = 34 M. L. J. 298.**

———*Estoppel against widow and merits—Decree based on.*

A Hindu widow, who had become entitled to a Hindu widow's estate on the death of her infant son, sued for a declaration that *B*, who claimed to have been adopted by her to her deceased husband, had in fact never been adopted by her and that her husband had never given her authority to adopt a son. That suit went upon appeal to the Privy Council which dismissed the suit, holding that the widow was estopped by her conduct from denying the validity of *B*'s adoption, and that, on the facts of the case, the adoption was true and valid. In a suit brought after the death of the widow by the reversionary heir impugning the validity of the adoption of *B*, *held*, that the suit was barred by the principle of *res judicata* by reason of the decision of the Board in the widow's suit.

It has been urged that the widow cannot be regarded as having represented the estate in her suit against *B*, as by her acts she was personally estopped from denying that she had validly adopted him to her husband In the absence of all authority, their Lordships cannot decide that a Hindu lady, otherwise qualified to represent an estate in litigation, ceases to be so qualified merely owing to personal disability

HINDU LAW—(*Contd.*)

Widow—Decree against—(*Contd.*)

RES JUDICATA AGAINST REVERSIONERS—(*Contd.*)

or disadvantage as a litigant, although the merits are tried and the trial is fair and honest. The principle is that reversioners must risk that, so that there may be an end to litigation (178-9). There can, therefore, be no doubt, in their Lordships' opinion, that the widow in her suit against *B* did, notwithstanding the personal estoppel under which she laboured, represent the estate on the question of fact as to whether *B* had or had not been validly adopted, and that she represented the estate within the meaning of the rule in the Shivagunga case (178). (*Sir John Edge.*) CHAUDHRI RISAL SINGH *v.* BALWANT SINGH.

(1918) 45 I. A. 168 = 40 A. 593 (604) = 28 C. L. J. 519 = 9 L. W. 52 = 23 C. W. N. 326 = 24 M. L. T. 361 = 21 Bom. L. R. 511 = 48 I. C. 553 = 36 M. L. J. 597.

———*Limitation against widow—Decree based on.*

The plaintiff was the son of *S*, a daughter of *R*, the last male owner of the suit property, and sued to recover a two-thirds share of the properties of *R*, who died in 1847, leaving a widow *P*, and five daughters of whom *S*, one. *S*, was the survivor of the daughters. The 1st defendant, the son of another daughter, alleged that *S* had, after the death of *P*, instituted a suit for possession of all the properties under claim against him; that her claim was dismissed on the ground of limitation, it having been established that, after the death of *P*, *S* was never in possession of any of the properties left by *R*; and that the plaintiff was bound by that decree, and his suit was therefore barred. The High Court found the facts alleged by the defendant and held that the suit was barred.

Their Lordships affirmed the High Court (192).

It was contended that the effect of Art. 142 of the Limitation Act of 1871, and of Art. 141 in the Schedule to the Act of 1877, was that a decree against a Hindu widow or daughter founded upon the law of limitation was by virtue of those articles excepted from the rule of *res judicata* laid down in the Shivagunga case, and therefore that the decree of 1881 against *S* only bound her, and the plaintiff had by the terms of Art. 141 of the Limitation Act, 1877 a period of 12 years from her death to bring his suit.

The words "entitled to the possession of immoveable property" in Art. 141 of the Limitation Act, 1877 refer to the then existing law. Under that law the plaintiff being bound by the decree against *S* would not be entitled to bring a suit for possession. Art. 141 cannot be construed as altering the law respecting the effect of a decree. Their Lordships approve of the judgment of the High Court, where it says, "We think, therefore, that on the authorities cited the plaintiff is bound by the decree in the previous suit, and that he cannot maintain this suit" (192). (*Sir Richard Couch.*) HURRINATH CHATTERJI *v.* MOHUNT MOTHOOR MOHUN GOSWAMI. **(1893) 20 I. A. 183 = 21 C. 8 = 6 Sar. 334.**

———A childless Hindu died in 1849, leaving a widow, *C*. *C* adopted *A* in 1862 and made over possession of her husband's properties to him as proprietor. *A* continued to be in possession of those properties until he died in 1864, and had dealt with them as an absolute owner would have done. On his death, possession of those properties was held on behalf of his adopted son *T*, till his death in 1881. On the death of *T*, in 1881 the miras which had stood in his name was altered to the name of his widow, who died in 1882. Upon the death of that widow, *M*, the mother by adoption of *T*, took possession of the properties for a Hindu widow's interest and held them until 1884, when *C*, forcibly ejected her. In February, 1887 *M* sued *C* and others for a decree for possession of the properties of which she had been forcibly dispossessed by *C*. *M*, set up the adoption of her hus-

HINDU LAW—(*Contd.*)

Widow—Decree against—(*Contd.*)

RES JUDICATA AGAINST REVERSIONERS—(*Contd.*)

band, *A*, by *C*, and a title by adverse possession to the suit properties. *C* denied the validity of *A*'s adoption on the ground of his having been a natural brother of her husband and an orphan at the time of his adoption. That suit was decreed in *M*'s favour on the ground that her claim of adverse possession for 12 years had been established;

Held, that the decision in the suit of 1887 was binding on the reversioners entitled to succeed to the estate of *C*'s husband on her death.

In the suit of 1887 *C* was no doubt personally interested to defeat *M*'s claim for the possession of lands which had been in her own possession as the widow of her husband from 1849, when her husband died, until 1862, when she made over possession to *A*, but although her object in resisting *M*'s claim was probably a purely personal and selfish object, she did, in fact and in law in that suit, represent the estate, as well as her own interest, as a Hindu widow. The suit of 1887 was not a collusive suit; it was regularly and according to due procedure at law fought out in the Sub-Court and in the High Court. (*Sir John Edge.*) VAITHIALINGA *v.* SRIRANGATH ANNI.

(1925) 52 I.A. 322 (330) = 48 M. 883 = 6 L.R.P.C. 169 = 42 C.L.J. 563 = (1926) M.W.N. 11 = 28 Bom. L.R. 173 = 30 C.W.N. 313 = 92 I.C. 85 = A.I.R. 1925 P.C. 249 = 47 M.L.J. 769.

——The judgment of the Board in the Shivaganga case established the principle of the representation of the inheritance by a Hindu widow. That case was decided during the currency of the Limitation Act of 1859. The judgment in L.R. 20 I A. 183 held that the effect of the Limitation Acts of 1871 and 1877 was not to except from the rule laid down in the Shivagunga decision the case where a decree had been obtained against a Hindu widow in her lifetime founded upon the law of limitation. It is therefore established by this decision that where a decree founded upon the law of limitation is obtained against the widow in her lifetime the reversionary heir is barred and does not get the benefit of Art. 141 of the Limitation Act.

Where, however, there has been no decree against the widow or other act in the law in the widow's lifetime depriving the reversionary heir of the right to possession on the widow's death, the heir is entitled, after the widow's death, to rely upon Art. 141 for the purpose of the determination of the question whether the title is barred by lapse of time. To hold otherwise would in effect compel the Court in determining a question within the scope of the article to ignore the express words of the article. (*Lord Tomlin.*) MT. JAGGO BAI *v.* UTSAVA LAL.

(1929) 56 I.A. 267 = 51 A. 439 = 27 A.L.J. 716 = 33 C.W.N. 809 = 30 L.W. 60 = 10 P.L.T. 527 = 31 Bom. L.R. 891 = 6 O.W.N. 589 = 50 C.L.J. 52 = 117 I.C. 498 = (1929) M.W.N. 762 = A.I.R. 1929 P.C. 166 = 57 M.L.J. 160.

SALE IN EXECUTION OF—INTEREST PASSING UNDER—ENTIRE ESTATE OR WIDOW'S INTEREST ONLY.

——*Debt binding on estate—Decree recovered against estate for—Sale in execution of.*

Where it appeared that the property of a deceased Hindu sought to be recovered by his adopted son had been sold in execution in satisfaction of decrees that had been recovered affecting the property for debts for which the estate of the deceased was unquestionably liable, *held* that the entire interest in the property, and not merely the widow's interest therein, passed by the sale, and that the sale was binding on the adopted son. RAJAH DEBENDRO NARAIN ROY *v.* COOMAR CHUNDERNATH ROY. **(1873) 2 Suth. 863 = 20 W.R. 30.**

HINDU LAW—(*Contd.*)

Widow—Decree against—(*Contd.*)

SALE IN EXECUTION OF—INTEREST PASSING UNDER—ENTIRE ESTATE OR WIDOW'S INTEREST ONLY—(*Contd.*)

——*Debt binding on estate—Personal decree against widow for—Sale in execution of.*

Where a decree was obtained personally against the daughter of the last male owner and his estate was sold in execution thereof, *held* that the decree and execution sale would not bind the reversion, even though the debt for which the decree was obtained was one binding on the estate. (*Lord Phillimore.*) LALIT MOHUN *v.* SRIMATI DAYAMOYI. **(1927) M.W.N. 95 = 29 Bom. L.R. 759 = 25 L.W. 709 = 45 C.L.J. 404 = 105 I.C. 469 = A.I.R. 1927 P.C. 41 = (1926) 52 M.L.J. 426.**

——*Maintenance of mother-in-law — Arrears of — Personal decree against widow for—Sale in execution of.*

A Hindu widow having allowed the maintenance payable to her mother-in-law to fall into arrear, the latter sued her personally for the recovery of the said arrear with interest. The decree passed in that suit ordered that the mother-in-law should recover from the daughter-in-law a stated sum on account of her claim. In execution of that decree, the right, title, and interest of the daughter-in-law in certain property inherited by her from her husband was sold. The notification of the sale was that a sale would be held of whatever right and interest the judgment debtor had in the property, and it was specifically pointed out that besides the right and interest of the judgment-debtor the right and interest of no other person would be sold at the said auction

Held, that what was intended to be sold and what was sold at the said sale was the widow's interest only of the daughter-in-law, and not the absolute estate in the property (280-1).

The claim in respect of which the decree was obtained was a personal debt of the daughter-in-law. The decree was a personal decree against her. All that would be sold under it was her interest as widow. And that was all that was in fact sold (280). (*Sir Barnes Peacock.*) BARJUN DOOBEY *v.* RRIJ BHOOKUM LALL AWASTI.

(1875) 2 I.A. 275 = 1 C. 133 = 24 W.R. 306 = 3 Sar. 541 = 3 Suth. 207.

——*Mesne profits and costs—Decree for, against widow and other members of husband's family—Execution of, against only widow's share of property—Sale of right, and interest of widow in.*

A suit was instituted by the daughter of a member of a joint family for the recovery of her father's share in the family property as his heiress. The defendants in that suit were the surviving male members of the family, *S*, the widow of another deceased member, and *B*, the reversionary heir of *S*'s husband. *S* remained *ex parte*; but the other members set up in defence a hibbanamah by the plaintiff's father by which it was alleged that the plaintiff's father had conveyed his share to them. That defence was found against, and a decree was passed in plaintiff's favour against all the defendants, including *S*, for possession, mesne profits and costs. In execution of that decree for mesne profits and costs, *S*'s right, title, and interest in her share of the family property was sold.

Held, that under the execution sale the entire property itself, and not merely the right therein of *S* as widow passed (74).

If in the execution of that decree the right, title, and interest of all the other members of the family had been sold, then, although one portion of it was represented by the widow, *S*, the whole property would have passed to the purchaser. The reversionary interest of *B* would have passed, although the share of *S*'s husband was represented by her. There is no reason why the same result should not follow

HINDU LAW—(*Contd.*)

Widow—Decree against—(*Contd.*)

SALE IN EXECUTION OF—INTEREST PASSING UNDER—ENTIRE ESTATE OR WIDOW'S INTEREST ONLY—(*Contd.*)

merely because the execution was against only the widow's share of the property. The description of the property sold as her right, title, and interest, in accordance with the provisions of S. 249 of C. P. C. of 1859 is not conclusive of the sale being of the widow's right only. Looking to the judgment in the suit in which the decree was passed, their Lordships are of opinion that the whole interest in the estate passed under the sale in execution (72-4). (*Sir Barnes Peacock.*) JUGOL KISHORE *v.* MAHARAJAH JOTINDRO MOHUN TAGORE. **(1884) 11 I. A. 66 = 10 C. 985 = 4 Sar. 553.**

———*Question as to—Judgment in suit in which decree was passed—Reference to—Permissibility.*

Where in execution of a decree obtained against a Hindu widow her right, title, and interest in her husband's property is sold, and the question arises as to what was sold under the right, title, and interest of the widow, the Court is at liberty to look to the judgment in which the decree was passed (74). (*Sir Barnes Peacock.*) JUGAL KISHORE *v.* MAHARAJAH JOTINDRO MOHUN TAGORE.

(1884) 11 I. A. 66 = 10 C. 985 (992) = 4 Sar, 553.

———Rent decree under Bengal Rent Act X of 1859—Sale in execution of. *See* BENGAL ACTS—RENT ACT X OF 1859—HINDU WIDOW. **(1872) 14 M. I. A. 605 (615-6).**

———Rent decree under Bengal Tenancy Act VIII of 1869—Sale in execution of—Special procedure under Act not followed. *See* BENGAL ACTS—LANDLORD AND TENANT PROCEDURE ACT OF 1869, SS. 64, 59.

(1903) 30 I. A. 81 (87-8) = 30 C. 550.

———*Right, title and interest of widow—Description of property sold as—C. P. C. of* 1859.

S. 249 of C. P. C. of 1859 enacts that the proclamation of a sale in execution shall declare "that sale extends only to the right, title, and interest of the defendant in the property specified therein." In the case of a widow it is necessary that the proclamation shall make that statement. But there are many cases in which when the right, title and interest of the widow is sold the whole interst in the estate passes. In other cases the whole interest does not pass. The case depends upon the nature of the suit in which the execution issues. If the suit is simply for a personal claim against the widow, then merely the widow's qualified interest is sold, and the reversionary interest is not bound by it. If, on the other hand, the suit is against the widow in respect of the estate, or for a cause which is not a mere personal cause of action against the widow, then the whole estate passes. In many of the cases, although the right, title, and interest of the widow had been sold, the whole interest in the estate was held to have passed and the reversionary heir to be bound by it (73-4). (*Sir Barnes Peacock.*) JUGOL KISHORE *v.* MAHARAJAH JOTINDRO MOHUN TAGORE.

(1884) 11 I.A. 66 = 10 C. 985 (991-2) = 4 Sar. 553.

———*Sale of Land for Revenue Arrears Act I of* 1845, *S.* 9—*Suit against widow under, for recovery of revenue arrears payable by her but in fact paid by plaintiff—Decree in—Sale in execution of.*

H, the mortgagor of a Talook, died leaving no male issue but only a widow. Similarly, *N*, the mortgagee, died leaving only a widow, who became entitled to his rights as mortgagee of the Talook. To save the Talook from being sold under Act I of 1845 for revenue allowed to fall into arrears by *H's* widow, *N's* widow borrowed money from the father of the appellants and paid up the arrear of revenue due in respect of the Talook. Thereafter *N's* widow sued *H's* widow for the recovery of the amount so paid by her. The plaint in that suit did not raise any claim against the estate itself and only sought relief against *H's* widow personally. The decree made in that suit was similarly a general decree against *H's* widow, and was not a decree against the land. That decree was assigned by *N's* widow in favour of the appellants. They attempted to execute the decree by a sale of the whole Talook, but their claim was successfully opposed by the reversionary heirs of *H*. Thereupon the appellants instituted the suit out of which the appeal arose. The suit was brought under the provisions of S. 9 of Act I of 1845; it sought repayment only under that section, as against *H's* widow, and to have the Talook sold for that purpose.

The High Court held that they had not to decide the question whether, by payment of the revenue in arrear, the person who had such an interest in the Talook as to entitle her to pay the arrear, and who thereby saved the Talook from being sold did not thereby acquire a lien or charge on the Talook to the extent of the money so paid and interest thereon, but that the question they had to decide was simply and merely whether that equity could be enforced in a suit brought under the provisions of S. 9 of Act I of 1845, which was confined to the object authorised by that section, and which did not proceed against the persons who had an interest in the property in succession after the death of the widow in possession.

Held that the High Court came to a correct conclusion as to the construction of S. 9 of Act I of 1845 (265-6).

The person who pays the arrears of the revenue must, if he seek to enforce the charge acquired on the Talook which he saves from sale, do so in a suit properly framed for that purpose, and not merely in a suit which is confined to a personal remedy against the person in possession of the Talook. If the person who so pays the arrears of revenue seek repayment only under S. 9 of Act I of 1845, as against the person in possession of the Talook, who has but a limited interest therein, and confines his suit to that object, the decree so obtained against the person in possession can only be made effectual against the property of that person, including such interest as she had in the Talook (266). (*Lord Romilly.*) NUGENDER CHUNDER GHOSE *v.* SREEMUTTY KAMINEE DOSSEE.

(1867) 11 M. I. A. 241 = 8 W. R. P. C. 17 = 2 Suth. 17 = 2 Sar. 275.

SALE IN EXECUTION OF—MINOR SON—INTEREST OF.

———*If and when passes under sale—Bengal Act XI of* 1859—*Sale under.*

The appellant, pursuing his remedy for rent under Bengal Act X of 1859, in the Collector's Court, had obtained a decree for the arrears of rent in respect of which he sued against *C*, as the widow of *G* and the guardian of her infant son *H*. In that suit the case set up by the defendants was, that *H* was not the heir of his father, that he had been adopted into another family, and that consequently the widow was the sole heiress and representative. The decree was against the widow in that capacity. It declared that the son was not liable, and ended with a declaration, which clearly pointed to the realisation of the demand out of the estates of *G*, and showed that the decree was made against the person supposed to be the heir and representative of *G*. Other difficulties being interposed in the way of executing that decree, appellant instituted a suit in the Zillah Court and obtained a decree, in effect, establishing that *H* was the heir of *G*. Thereupon the execution

HINDU LAW—(*Contd.*)

Widow—Decree against—(*Contd.*)

SALE IN EXECUTION OF—MINOR SON—INTEREST OF—(*Contd.*)

of the Collector's decree, which had been stayed in the interval, was proceeded with, and the interest of the widow was sold under Act XI of 1859, and was purchased by the decree-holder.

Held, reversing the High Court, that the entire estate passed under the sale, and not merely the widow's interest therein.

The proceedings took place under Act XI of 1859, and that Act appears to contemplate that the estate should be put up for sale, and that the person whose interest should be nominally sold should be the registered proprietor. In this case, the widow was the registered proprietor. But the case does not rest there, because in the certificate of sale there is a distinct reference to the decree obtained by the appellant from the Zillah Court, and, therefore, the whole proceeding, if fairly looked at, amounts to this,—that the estate of *G* was sold under that decree in execution for his debt, and that the interest of his widow, the registered proprietor and ostensible owner of the estate, and also the interest of his son, if he had any interest, was bound by that decree (615-6). (*Sir James W. Colvile.*) GENERAL MANAGER OF THE RAJ DURBHANGA *v.* MAHARAJAH COOMAR RANAPUT SINGH. **(1872) 14 M. I. A. 605 = 17 W. R. 459 = 10 B. L. R. P. C. 294 = 2 Suth. 575.**

SUIT BY HER TO SET ASIDE, ON GROUND OF FRAUD—DISMISSAL OF—REVERSIONER'S SUIT SUBSEQUENT IN RESPECT OF SAME PROPERTY AFTER WIDOW'S DEATH.

———*Maintainability.*

In execution of a mortgage decree passed against a Hindu widow her share in the income of a shebaitship was sold and purchased by another. The widow subsequently brought a suit to set aside the decree on the ground of fraud, but the same was dismissed on the ground that she should apply under S. 244 of C. P. C. of 1882. After her death the reversioner brought a suit claiming the share of the income of the shebaitship.

Held that the former decision did not operate as *res judicata* (272). (*Sir John Edge.*) JALANDHAR THAKUR *v.* JHARULA DAS. **(1914) 41 I. A. 267 = 42 C. 244 (249-50) = 16 M. L. T. 210 = (1914) M. W. N. 636 = 12 A. L J. 1176 = 16 Bom L. R. 845 = 20 C L.J. 360 = 18 C. W. N. 1029 = 24 I. C. 501 = 27 M. L. J. 100.**

TRANSFER OF PORTION OF ESTATE IN SATISFACTION OF—INTEREST PASSING UNDER.

———*Entire estate or widow's interest only—Debt binding on estate—Decree for.*

In satisfaction of a decree obtained against a Hindu daughter, who had succeeded to her father's estate, for a debt binding on the estate, she transferred a portion of the estate to the creditor. In her petition to the Court for permission to settle the claim in that way, she stated that the property to be assigned was "owned and possessed" by her, and that the creditor was to "enter into possession as a proprietor like the petitioner."

Held, on a construction of the transfer, that it was intended to convey an absolute estate. (*Sir Andrew Scoble.*) KARIM-UD-DIN *v.* GOBIND KRISHNA NARAIN. **(1909) 36 I. A. 138 (146-7) = 31 A 497 (506) = 6 M. L. T. 275 = 10 C. L. J. 243 = 13 C. W. N. 1117 = 11 Bom L. R. 911 = 6 A. L. J. 807 = 3 I. C. 795 = 19 M. L J. 687.**

HINDU LAW—(*Contd.*)

Widow—Decree against—(*Contd.*)

WILL OF HUSBAND—WIDOW WITH WIDOW'S ESTATE AND POWER OF APPOINTMENT GIVEN BY—DECREE AGAINST.

———*Effect of, against heir subsequently appointed by her under power,*

M, an Oudh talookdar, executed a will appointing his wife full owner and proprietor of the taluk after his death, with power to appoint an heir to and representative of the talook. On *M's* death, his widow executed a will appointing the respondent heir to and representative of the talook afte her death. Thereupon the appellant, the daughter's son of *M*, instituted a suit for a declaration that he was entitled to succeed to the taluk as heir, by virtue of Act I of 1869, being, as he alleged, a daughter's son, who had been treated by *M* as a son within the meaning of S. 22, cl (4) of the Act. He also prayed for the cancellation of the wills of *M* and of his widow. The defendants to that suit were *M's* widow, the respondent, then a minor, and certain others. It was ultimately held by the P. C. in that suit that the will of *M* had been duly revoked by him in his lifetime, and that the appellant was entitled, under Act I of 1869, to succeed, as *ab intestato*, to the talookdari estate of *M*.

In a suit subsequently instituted by the respondent, raising the same issue upon the revocation of *M's* will, the respondent contended that he was not bound by the judgment in the prior suit, because he was a minor when the former suit was commenced, and he was not represented therein by a duly appointed guardian.

Held that, even if the respondent was not bound as a party to the suit, *M's* widow fully represented the estate in the previous litigation, and that consequently the judgment in the former suit against her was binding on the respondent (207).

Under *M's* will, until his widow had appointed another to be owner and representative, her estate in the taluq was sufficient to constitute her the full representative of it in the former suit. Her estate was at least as large as that of a Hindu widow in her husband's property, and a decree fairly and properly obtained against her is, under the ruling in the Shivagunga case, binding on the respondent (207). (*Sir Montague E. Smith.*) PARTAB NARAIN SINGH *v.* TRILOKIANATH SINGH. **(1884) 11 I. A. 197 = 11 C. 186 (197) = 4 Sar. 567 = Bald. 174 = R. & J's No. 86.**

Widow—Deed by—Will or appointment of heir present and irrevocable.

———Test. *See* HINDU LAW—WILL—APPOINTMENT OF HEIR, PRESENT AND IRREVOCABLE.
(1884) 11 I. A. 197 (208-9) = 11 C. 186 (197-8).

Widow—Estate of.

———*See* HINDU LAW—WIDOW—INHERITANCE TO HUSBAND—ESTATE GOT BY.

Widow—Estoppel against.

———Effect of, on reversioners—Estoppel purely personal to widow. *See* HINDU LAW—REVERSIONER—WIDOW—ESTOPPEL AGAINST ETC. **(1912) 39 I. A. 142 (148) = 34 A. 398 (404).**

Widow—*Ex Post Facto* acts—Charging of estate by, with obligations not originally binding upon it.

———*Power of.*

It would be a serious extension of the law, as hitherto applied, to hold that a woman with a limited interest could, by acts *ex post facto*, charge upon the estate which she re-

HINDU LAW—(*Contd.*)

Widow—Ex Post Facto acts—Charging of estate by, with obligations not originally binding upon it—(*Contd.*)

presents obligations not originally binding upon it. (*Sir Arthur Wilson.*) BHAGWAT DAYAL SINGH *v.* DEBI DAYAL SAHU- **(1908) 35 I.A. 48 = 35 C. 420 (429) = 7 C. L. J. 335 = 12 C. W. N. 393 = 5 A. L. J. 184 = 3 M. L. T. 344 = 10 Bom. L. R. 230 = 14 Bur. L. R. 49 = 18 M. L. J. 100.**

Widow—Family arrangement by.

———*Alienation by way of—Benefit under — Reversioner taking—Estoppel as against, and his heirs as regards disputing validity of alienation.*

The question in the appeal was as to the validity of an ijara executed on 7—9—1863, for a term of 60 years, by a Hindu widow named *S*.

It appeared that the ijara was part of a general family settlement whereby the widow divided up the family property amongst the various reversioners, reserving to herself only a comparatively small annual income which might fairly be looked on as representing maintenance. *A* was one of such reversioners. He was one of the actual lessees under the ijara, and he principally benefited by it.

A died in 1882, so that *S* (who died in 1893) survived him 11 years. The appellants were four sons of *A*, and on the death of *S* they became entitled directly to share in any family property of which she was the life tenant. They brought the suit out of which the appeal arose to set aside the ijara, on the ground that it was an unauthorised interference by the widow with the reversionary interest which did not belong to her. It appeared, however, that from the year 1882, when *A* died, to the year 1893, when *S* died, they (the appellants) themselves took the benefit of the family arrangement represented by the ijara in question.

Held, that it was a fair inference from the conduct of the appellants that they believed that the arrangement had been made in good faith, and under such circumstances of necessity as would give it validity according to Hindu law (805). (*Lord Moulton.*) BIJOY GOPAL MUKERJI *v.* GIRINDRA NATH MUKERJI. **(1914) 41 C. 793 = 18 C. W. N. 673 = 19 C. L. J. 620 = 16 M. L. T. 68 = (1914) M.W.N. 430 = 1 L. W. 533 = 16 Bom. L. R. 425 = 12 A.L. J. 711 = 23 I.C. 162 = 27 M. L. J. 123.**

———In 1868, the surviving widow of a deceased Hindu alienated most of her husband's properties by and under three deeds. By one of these she made a gift of certain of these properties to her brother ; by another she purported to sell half of certain other lands to one *A*, who, on the widow's death in 1912, was the nearest heir of her deceased husband, and by the third she sold the other half of those properties to her son-in-law. There was only one small property left unalienated. The three deeds were all executed and registered on the same day. The deed of a gift in favour of the brother was attested by *A* and the son-in-law ; the deed of sale in favour of the son-in-law was attested by *A* and the brother ; and the sale.deed in favour of *A* was attested by the brother and the son-in-law. And the widow as executant was identified before the Registrar in respect of all three deeds by *A*. In 1882 *A* sold the properties purchased by him as aforesaid at a profit of Rs. 1,000. *A*, who survived the widow by nearly 6 years did not in his lifetime seek to set aside the alienations in favour of the brother and the son-in law.

In 1918, *A's* sons and grandsons instituted the suit out of which the appeal arose to recover the properties alienated by the widow on the ground that the alienations were not valid. Owing to the long lapse of time, no proof was forthcoming as to what actually occurred between the parties on the occasion of the said alienations. There was not sufficiently definite evidence to come to a conclusion as to how far any of those properties were validly encumbered, or what was done with the purchase money alleged to have passed on the two deeds of sale.

HINDU LAW—(*Contd.*)

Widow—Family arrangement by—(*Contd.*)

Held, that the decision of the case depended upon how far the three documents could be taken as separate and independent, or so connected as to form one transaction ; that all the circumstances strongly pointed to the three documents being part and parcel of one transaction by which a disposition was made of the last owner's estate, such as was likely to prevent disputes in the future and therefore in the best interests of all the parties ; that *A* himself being a party to and benefiting by the transaction evidenced by the deeds was precluded from questioning any part of it ; and that the plaintiffs who claimed under or through *A* had no better title to succeed in the suit than *A* had.

The parties to the documents included, or after so great a lapse of time may be presumed in a very real sense to have included, all persons who had any actual or possible interest in the properties—namely, the widow herself, her brother, who was a natural object of her affection and bounty, her son-in-law, who was the natural protector of the interests of her daughter and grandson, and *A*, the nearest kinsman on the husband's side and the only person from whom any opposition might be apprehended with regard to dealings by the widow concerning her husband's estate (402). (*Lord Sinha.*) RAMGOUDA ANNAGOUDA *v.* BHANSAHEB. **(1927) 54 I. A. 396 = 46 C. L. J. 267 = 4 O. W. N. 876 = 39 M.L.T. 250 = 29 Bom.L.R. 1380 = 32 C.W.N. 88 = 105 I. C. 708 = A. I. R. 1927 P. C. 227 = 53 M. L. J. 350.**

———*Division of husband's estate among reversioners and reserving to widow only maintenance—Arrangement effecting—Ijara executed by widow as part of with consent of all then reversioners who took benefits under transaction—Validity of ijara against actual reversioners.*

The question in the appeal was as to the validity of an ijara executed on 7—9—1863, for a term of 60 years, by a Hindu widow named *S*.

S was the widow of *B*, who died in 1832 without leaving any issue, making her his sole heiress. The property consisted chiefly of landed property of considerable value.

S was dispossessed of the property by one of her husband's relatives, *D*, and was compelled, in 1844, to bring a suit against him and his two brothers, *G* & *A*, to recover it. That litigation lasted till 1858, when the rights of *S* to the estate of her husband were finally established by the Privy Council. *S*, however, did not thereupon obtain possession of the property. Further difficulties were raised and much of the property was threatened with the growth of adverse rights in the actual possessors of the land, who refused to pay rent under the pretext that the title had not been settled. The whole estate was in fact in very serious peril.

While that state of things was still continuing, the ijara in question was soon executed by the widow. That ijara was evidently part of a general family settlement whereby the widow divided up the family property amongst the various reversioners, reserving to herself only a comparatively small annual income which might fairly be looked on as representing maintenance. The ijara itself was granted to *A* and *S* who was the son of *G* who had died in the interval. The third brother, *D*, did not directly take any interest under the ijara, but in October 1863 a dar-ijara was granted to his son of a portion of the property, and a large sum due from him on account of mesne profits was remitted by *S*, so that it was clear that all branches of the family shared in the settlement. So far as the persons were concerned who then represented the reversion, it was clear that all this was done

HINDU LAW—(*Contd.*)

Widow—Family arrangement by—(*Contd.*)

with their consent. They all took large interests under the arrangement, and continued to enjoy them so long as they lived.

A died in 1882, and *S* in 1893. The appellants were four sons of *A*, and on the death of *S* they became entitled directly to share in any family property of which she was the life-tenant. They brought the suit out of which the appeal arose to set aside the ijara, on the ground that it was an unauthorised interference by the widow with the reversionary interest which did not belong to her.

The courts below decided that, on the facts of the case, the arrangement of which the ijara formed part was in truth dictated by the necessities of the case, and that the choice of the term of 60 years as the term of the ijara was made for the benefit of the estate and did not injure any one.

Their Lordships affirmed the judgments below (804).

The case depends entirely on the facts, and it raises no new question of law as to the powers of a Hindu widow to deal with family property in case of necessity with the consent of the then present reversioners (804). (*Lord Moulton.*) BIJOY GOPAL MUKERJI *v.* GIRINDRA NATH MUKERJI. **(1914) 41 C. 793 = 18 C. W. N. 673 = 19 C. L. J. 620 = 16 M. L. T. 68 = 1 L. W. 533 = (1914) M. W. N. 430 = 16 Bom. L. R. 425 = 12 A. L. J. 711 = 23 I. C. 162 = 27 M. L. J. 123.**

———*Division of husband's estate between daughters and grandsons then living—Arrangement effecting — Nature and effect of—Vesting of property in daughters effectively —Division intended to have effect only during joint lives of daughters.*

The question was whether an arrangement by which a Hindu widow, who had inherited the property of her deceased husband, made a division of the whole of that property among her three daughters and her grandsons then living, certain parts of the property being given to the grandsons and the remainder being divided equally among the daughters, was a family arrangement effectively vesting in the daughters the shares allotted to them, with the result that none of the daughters could set up any claim at any time thereafter inconsistent with the terms of an arrangement, or whether it was an arrangement made merely for convenience of administration, and intended to have effect only during the joint lives of the daughters. *Held*, that the arrangement was of the former nature and not of the latter.

The view that the division was made for convenience of administration, and was intended to have effect only during the joint lives of the daughters is wholly inconsistent with the account of the transaction given by the witnesses, with the fact that shares were given to grandsons who had no present interest in the property, and with the conduct of all the parties to the arrangement who, for a period of 38 years, had dealt as absolute owners with the property allotted to them. (*Viscount Cave.*) MUSAMMAT HARDEI *v.* BHAGWAN SINGH. **(1919) 13 L. W. 436 (439-40) = 2 Pat. L. T. 237 = 24 C.W.N. 105 = 50 I.C. 812.**

———*Division of husband's estate between daughters and grandsons—Arrangement effecting, acted upon for a long time, alienations being also made on faith of it—Claim inconsistent with — Maintainability — Grandson's right to question arrangement.*

N, a Hindu, died in 1856, leaving him surviving a widow, *P*, and three daughters. On his death his estate devolved on *P*. In 1875, *P*, claiming to be absolutely entitled to the property in her possession, made a division of the whole of it among her three daughters and her grandsons then living. Certain parts of the property were given to the grandsons, who were sons of *D* and *H* (the plaintiff),

HINDU LAW—(*Contd.*)

Widow—Family arrangement by—(*Contd.*)

and the remainder was divided into three groups for which the daughters drew lots. The lot which included the suit village fell to *M*, the third daughter. The daughters and grandsons entered into immediate possession of their lots; and mutation of names was effected shortly afterwards, probably in the lifetime of *P*.

P died in 1876, and after her death each of the daughters dealt with the property allotted to her on the division as her own absolute property.

In 1883 and 1884, *M* sold the suit village to the predecessor in title of the respondents. *H* admittedly knew of the sale at the time, but she made no objection to it inasmuch as she had control over the property allotted to her on the division.

On the death of *M* in 1912, *H* instituted a suit for the recovery of the suit village on the ground that it had been the property of her father, and that she had become entitled to possession of it as his sole heir on the death of her mother and sisters.

Held that, having regard to the arrangement of 1875 and to the events which had happened, it was not open to *H* to dispute the respondent's title to the suit village.

From the time of the arrangement of 1875 until the commencement of this suit, that is to say, for a period of 38 years, all the parties to the arrangement, including the plaintiff, dealt as absolute owners with the property allotted to them; and to this, with trifling exceptions, no objection was taken by the other parties to the division. In these circumstances the true inference appears to their Lordships to be that, at a time when *P* was claiming to be absolutely entitled to the property in her possession, and when her rights and those of her daughters were in doubt, the members of the family agreed and arranged among themselves that the whole property should be at once divided among the daughters and their sons then living, the mother surrendering her claims and each daughter accepting the property allotted to her in severalty in lieu of the undivided share in the whole estate which would have devolved upon her on her mother's death and abandoning her right of survivorship on the death of either of her sisters. *H* who was a party to the arrangement is at all events bound by her own agreement; and she cannot now be allowed to repudiate the agreement and to impeach a sale which was made on the faith of it.

Quaere: Whether the arrangement is binding on the grandsons. (*Viscount Cave.*) MUSAMMAT HARDEI *v.* BHAGWAN SINGH. **(1919) 13 L.W. 436 (439-40) = 2 Pat. L.T. 237 = 24 C.W.N. 105 = 50 I.C. 812.**

Widow—Gift by.

———(For all the other cases. *See* HINDU LAW—GIFT—WIDOW—GIFT BY).

———Donee under—Suit by, for possession of property gifted against heir-at-law of last male owner—Onus on plaintiff in. *See* EJECTMENT SUIT — HINDU LAW—WIDOW—GIFT DEED BY. **(1870) 13 M.I.A. 419 (423).**

Widow—Gift to.

———[*N.B.*— All the other cases will be found collected under (1) HINDU LAW—GIFT—WIDOW—GIFT TO AND (2) HINDU LAW—GIFT—WIFE—GIFT TO].

———*Immovable property subject of—Alienation of—Power of—Express words conferring—Necessity.*

In the case in L. R. 35 I. A. 17, when originally heard before the High Court, it had been stated that under the Hindu law in the case of a gift of immovable property to a Hindu widow, she had no power to alienate unless such power was expressly conferred. The decision of this Board did no more than establish that that proposition was not accurate, and that it was possible by the use of words of

HINDU LAW—(*Contd.*)

Widow—Gift to—(*Contd.*)

sufficient amplitude to convey in the terms of the gift the fullest rights of ownership, including, of course, the power to alienate, which the High Court had thought required to be added by express declaration. In that case it is true that there is some comparison drawn between the gift to a widow and gift to a person not under disability, but that was not the foundation of the decision, which depended entirely upon the wide meaning attributed to the words in which the gift to the widow was clothed. More recent decisions of this Board do nothing but repeat this same proposition in other words (135). (*Lord Buckmaster*). RAMACHANDRA RAO *v.* RAMACHANDRA RAO.

(1922) 49 I.A. 129 = 45 M. 320 (327-8) = 30 M.L.T. 154 = 26 C.W.N. 713 = 35 C.L.J. 345 = 20 A.L.J. 684 = 16 L.W. 1 = (1922) M.W.N. 359 = 24 Bom. L.R. 963 = A.I.R. 1922 P.C. 80 = 67 I.C. 408 = 43 M.L.J. 78.

———*Immovable property subject of—Alienation of—Restrictions on—Texts relating to.*

The texts which restrict a woman's power of disposition over immovable property given to her by her husband in his lifetime are different from those which both restrict her power over immovable property inherited from her husband, and regulate the course of its devolution. To the former class belong the text of Narada : " Property given to her by her husband through pure affection, she may enjoy at her pleasure after his death, or may give it away, except land or houses"; and the text of Katyayana : " What a woman has received as a gift from her husband, she may dispose of at pleasure after his death; if it be moveable; but as long as she lives, let her preserve it with frugality." To the second class belongs the text of Katyayana : "The childless widow preserving inviolate the bed of her Lord, and strictly obedient to her spiritual parents, may frugally enjoy the estate or property until she die; after her the legal heirs shall take it." The latter text includes both moveable and immovable property (510-1). (*Sir James W. Colvile*). BHUGWANDEEN DOOBEY *v.* MYNA BAEE.

(1867) 11 M.I.A. 487 = 9 W.R.P.C. 23 = 2 Suth. 124 = 2 Sar. 327.

———*Life interest without power of alienation—Gift of—Alienation of portion of property to preserve rest of estate—Widow's power of.*

A deed executed by a Hindu in favour of his widow gave her a life interest in the properties covered by the deed, and power to adopt a son. It did not give her authority to alienate the estate.

Held that, if the estate was secular property, the widow would have, as its manager, power to alienate it if it became necessary to do so to preserve the rest of the family estate (56). (*Sir Montague E. Smith.*) KONWAR DOORGANATH ROY *v.* RAM CHUNDER SEN. **(1876) 4 I.A. 52 = 2 C. 341 (346) = 3 Sar. 681 = 3 Suth. 375.**

Widow—Husband.

DEBT OF.

———*Payment of, out of his estate—Widow's duty as to.*

It is not in dispute that, by the Hindu law, the widow is bound to pay her husband's debts out of his estate (15). (*Mr. Pemberton Leigh.*) SREEMUTTY RABUTTY DOSSEE *v.* SIBCHUNDER MULLICK. **(1854) 6 M. I. A. 1 = 1 Sar. 484.**

———*Suretyship of widow for—Deed creating.*

The suit was brought against the widows of Rajah *C*, the plaint expressly stating that the claim was founded or based upon the bond which was therein mentioned. The plaint expressly stated that the debt was a debt due from the Raja himself, consequently that it was not a debt due from the Ranis, but from the Raja himself. Therefore the claim against the Ranis was in the nature of a claim against sureties.

HINDU LAW—(*Contd.*)

Widow—Husband—(*Contd.*)

DEBT OF—(*Contd.*).

The bond, which was expressed to be made by the Ranis, began by declaring that, the Raja having had monetary dealings with one *G*, the banker, the proprietor of the firm which was there mentioned, " we," that is, the Ranis, " also entered into similar dealings with the firm of the said Mahant ; that the whole of the principal debt and interest, consisting of certain unpaid items of previous dealings, and the loan we took on the occasions of the marriage and the 'Muklawa' ceremony of the Bibi Sahiba having been balanced, the sum of Rs. 16,960-10-6 has been found due by us up to the present date ; that we are at present unable to pay up the said sum in consequence of our estates being under the management of the Government, along with those of the Raja for the liquidation of the debts of the bankers."

Held that the bond on the face of it was inconsistent with a claim against the Ranis as sureties (98-9).

This bond commences with stating that there had been transactions between the bankers and the Raja, and that the Ranis had similar dealings, drawing, therefore, a distinction between the dealings of the bankers with the Raja on the one hand, and dealings of the same bankers with the Ranis on the other hand. It also draws a distinction between the estates of the Ranis and the estate of the Raja. Therefore, it appears to their Lordships that, upon the construction of this bond, it cannot be successfully contended that, where the words " we " or " us " are used, those words must be considered as including the Ranis and the Raja, because there is throughout the bond the distinction drawn between the dealings of the Raja and the dealings of Ranis, between the Ranis personally and the Raja, and between the estates of the Ranis and the estate of the Raja (99). (*Sir Lawrence Peel.*) MAHANT JAYRAM GIR *v.* RANI SHIVRAJ KOER. **(1869) 2 B. L. R. 98 = 2 Suth. 216 = 11 W. R. 41 P. C. = 4 M. J. 207.**

———*Suretyship of widow for—Suit to establish—Onus on plaintiff in.*

The suit was brought against the widows of a deceased Raja, the plaint expressly stating that the claim was founded or based upon a bond which was therein mentioned. The plaint stated expressly that the debt was a debt due from the Raja himself, consequently that it was not a debt due from the Ranis, but from the Raja himself. Therefore the claim against the Ranis was in the nature of a claim against sureties.

The evidence did not show, but, so far as it went, tended to disprove that the Ranis were informed of the circumstances attending the debt, which was alleged in the plaint as being the Raja's debt, or that they were informed of the transactions before the collectors, which raised a question as to the continued existence of the alleged debt. All that the evidence showed was, that the bond in question was taken into the zenana, and was brought out again executed, or stated to have been executed by them.

Held, that under the circumstances the claim, in the nature of a claim against sureties, could not be established against the Ranis (99). (*Sir Lawrance Peel.*) MAHANT JAYRAM GIR *v.* RANI SHIVRAJ KOER.

(1869) 2 B. L. R. 98 P. C. = 11 W. R. 41 = 2 Suth. 216 = 4 M. J. 207.

ESTATE OF.

———*See also* UNDER HINDU LAW—WIDOW—INHERITANCE TO HUSBAND (1) ESTATE GOT BY AND (2) RIGHT OF.

HINDU LAW—(*Contd.*)

Widow—Husband—(*Contd.*)

ESTATE OF—(*Contd.*)

———Recovery from widow of—Presumptive reversioner's suit for, on foot of joint status of himself and deceased—Finding that deceased was divided member—Decree proper in case of—Dismissal of suit—Declaration of reversionary character of plaintiff—Propriety. *See* HINDU LAW—REVERSIONER—PRESUMPTIVE REVERSIONER—STATUS OF—DECLARATION OF. (1880) 6 C. L. R. 528.

———*Settlement with widow of, to exclusion of other heirs of husband—Estate acquired by widow under.*

When on the death of a malgoozar his widow was admitted to a settlement of the villages held by her husband to the exclusion of his other heirs, and she continued in possession for 19 years, that is, up to the time when a regular settlement took place with her upon the ground of her long possession, and upon the death of the widow the other heirs claimed the property alleging that the widow after her husband's death held the property in trust for the other heirs of her husband: *held* that there was no evidence of anything like an admitted or implied trust, and that the widow could not be fixed with a trust for the whole family except upon satisfactory evidence that she consented to the acceptance of that trust and to take the estate upon it.

If, however, it had been clearly made out that she held under a trust, an enlargement, whatever it may have been, of her proprietary interest in the villages upon that regular settlement, would not have made her less a trustee, and she would have taken whatever additional interest she thus acquired subject to the original trust. (*Sir James W. Colvile.*) ASAD ALI BEG *v.* ZAFFER ALI BEG.
(1879) 3 Suth. 623 (625, 626-7) = Bald 262 = 3 I. J. 387.

———Suit on behalf of—Right of—Authority to adopt—Possession of—Effect. *See* HINDU LAW—ADOPTION—AUTHORITY TO ADOPT—WIDOW'S RIGHT TO SUE ON BEHALF OF ESTATE. (1858) 7 M. I. A. 169 (206).

GIFT BY.

———*See* HINDU LAW—WIDOW—GIFT TO.

INHERITANCE TO.

———*See* HINDU LAW—WIDOW—INHERITANCE TO HUSBAND (1) ESTATE GOT BY AND (2) RIGHT OF.

TESTAMENTARY WISHES OF, NOT LEGALLY CARRIED OUT—ALIENATION BY WIDOW GIVING EFFECT TO.

———Validity of—Estate conveyed under. *See* HINDU LAW—WIDOW—ALIENATION BY—HUSBAND'S TESTAMENTARY WISHES, ETC. (1917) 45 C. 733 (739).

TRADE OF.

———*See* HINDU LAW—WIDOW—TRADE OF HUSBAND.

Widow—Inheritance to husband—Estate got by.

ALIENATION OF—RESTRICTIONS ON.
DEVOLUTION OF, AFTER DEATH OF WIDOW.
ENJOYMENT OF—POWERS OF ALIENATION OVER—LIMIT TO.
NATURE AND INCIDENTS OF.
RECOVERY OF PART OF, FROM PERSONS WITHOUT TITLE—RIGHT OF.
SETTLEMENT OFFICER'S ORDER CONFERRING PROPRIETARY RIGHT ON WIDOW IN—ESTATE TAKEN UNDER.

ALIENATION OF—RESTRICTIONS ON.

———[*See also* HINDU LAW—WIDOW—INHERITANCE TO HUSBAND—ESTATE GOT BY (1) ENJOYMENT OF AND (2) NATURE AND INCIDENTS OF.]

HINDU LAW—(*Contd.*)

Widow—Inheritance to husband—Estate got by—(*Contd.*)

ALIENATION OF—RESTRICTIONS ON—(*Contd.*)

———*Basis and purpose of.*

It is not merely for the protection of the material interests of her husband's relations that the fetter on the widow's power of alienation is imposed. Numberless authorities, from Menu downwards, may be cited to show that, according to the principles of Hindu Law, the proper state of every woman is one of tutelage; that they always require protection and are never fit for independence. The authority of Menu is cited for the proposition that, if a woman have no other controller or protector, the king should control or protect her. Again, all the authorities concur in showing that, according to the principles of Hindu Law, the life of a widow is to be one of ascetic privation. Hence, probably, it gave her a power of disposition for religious, which it denied to her for other, purposes (551-2). (*Lord Justice Turner.*) COLLECTOR OF MASULIPATAM *v.* CAVALY VENCATA NARRAINAPAH. (1861) 8 M. I. A. 529 = 2 W. R. 61 = 1 Suth. 476 = 1 Sar. 820.

———*Not dependent upon existence of collateral heirs of husband.*

The restrictions on a Hindu widow's power of alienation are inseparable from her estate, and their existence does not depend on that of heirs capable of taking on her death (553). (*Lord Justice Turner.*) COLLECTOR OF MASULIPATAM *v.* CAVALY VENCATA NARRAINAPAH.
(1861) 8 M.I.A. 529 = 2 W.R. 61 = 1 Suth. 476 = 1 Sar. 820.

———Effect on, of partition between co-widows under Act XIX of 1841. *See* HINDU LAW—WIDOW—CO-WIDOWS—PARTITION BETWEEN—SUCCESSION PROPERTY PROTECTION ACT. (1867) 11 M.I.A. 487 (515-6).

———A widow has only a limited power of disposition of the property. She can, however, alienate the estate in certain circumstances and under certain conditions (739). (*Sir Walter Phillimore.*) RADHAKANT LAL *v.* NAZMA BEGUM.
(1917) 45 C. 733 = 22 C.W. N. 649 = 27 C.L.J. 632 = 16 A.L J. 537 = 5 P.L.W. 72 = 23 M. L. T. 392 = (1918) M.W.N. 386 = 20 Bom. L.R. 724 = 45 I.C. 806 = 35 M.L.J. 99.

———*Immoveable property—Absolute power of alienation of—Custom conferring—Proof of.*

As to an alleged custom amongst Gyawals, that a widow could, overriding Hindu law, have an absolute and entire power over the immoveable estate of her husband, it is sufficient to say that no such custom has been proved (33). (*Lord Morris.*) BEHARI LAL *v.* MADHO LAL AHIR GYAWAL. (1891) 19 I. A. 30 = 19 C. 236 (242) = 6 Sar. 88.

———*Immoveable property—Mithakshara law.*

A woman cannot, even according to the Mithakshara, alienate immoveable property inherited from her husband, and upon her death it descends to the heirs of her husband, and not to her heirs (15). (*Sir Barnes Peacock.*) BRIJ INDAR BAHADUR SINGH *v.* RANEE JANKI KOER.
(1877) 5 I.A. 1 = 1 C.L.R. 318 = 3 Sar. 763 = Bald. 148 = 3 Suth 474 = R. and J's No. 48.

———*Immoveable and moveable properties — Benares School.*

According to the law of the Benares School, no part of her husband's estate, whether moveable or immoveable, to which a Hindu woman succeeds by inheritance, forms part of her *stridan*, or particular property. Her power of disposition over both is limited to certain purposes; and on her

HINDU LAW—(*Contd.*)

Widow—Inheritance to husband—Estate got by—(*Contd.*)

ALIENATION OF—RESTRICTIONS ON—(*Contd.*)

death both pass to the next heir of her husband (513-4). (*Sir James W. Colvile.*) BHUGWANDEEN DOOBEY *v.* MYNA BAEE. **(1867) 11 M.I.A. 487=9 W.R. P.C. 23=2 Suth. 124=2 Sar. 327.**

———*Immoveable and moveable properties—Ancestral and self-acquired properties—Distinction—Bengal law—Law in Western Schools.*

The result of the authorities seems to be that, although according to the law of the Western Schools the widow may have a power of disposing of moveable property inherited from her husband. which she has not under the law of Bengal, she is by the one law, as by the other, restricted from alienating any immoveable property which she has so inherited ; and that on her death the immoveable property, and the moveable, if she has not otherwise disposed of it, pass to the next heirs of her husband. There is no distinction in that respect between ancestral and acquired property (175-6). (*Sir James W. Colvile.*) MUSSUMAT THAKOOR DEYHEE *v.* RAI BALUK RAM. **(1866) 11 M. I. A. 139=10 W.R P.C. 3=21 I.J.N.S. 106=2 Suth. 49=2 Sar. 231.**

———*Moveable property.*

The reasons for the restrictions which the Hindu law imposes on the widow's dominion over her inheritance from her husband, whether founded on her natural dependence on others, her duty to lead an ascetic life, or on the impolicy of allowing the wealth of one family to pass to another, are as applicable to personal property invested so as to yield an income as they are to land. The more ancient Texts importing the restriction are general. It lies on those who assert that moveable property is not subject to the restriction to estabiish that exception to the generality of the rule (513). (*Sir James W. Colvile.*) BHUGWANDEEN DOOBEY *v.* MYNA BAEE. **(1867) 11 M. I. A. 487=9 W.R.P.C. 23=2 Suth. 124=2 Sar. 327.**

———*Text relating to.*

To the class of texts which both restrict a widow's power over immoveable property inherited from her husband, and regulate the course of its devolution, belongs the text of Katyayana : "The childless widow preserving inviolate the bed of her lord, and strictly obedient to her spiritual parents, may frugally enjoy the estate or property until she die; after her the legal heirs shall take it." This text includes both movable and immovable property (510-1). (*Sir James W. Colvile.*) BHUGWANDEEN DOOBEY *v.* MYNA BAEE. **(1867) 11 M.I.A. 487=9 W.R. P.C. 23=2 Suth. 124=2 Sar. 327.**

DEVOLUTION OF, AFTER DEATH OF WIDOW.

———*See* HINDU LAW—WIDOW— INHERITANCE TO HUSBAND— ESTATE GOT BY—ALIENATION OF—RESTRICTIONS ON—IMMOVEABLE AND MOVEABLE PROPERTIES—ANCESTRAL AND SELF-ACQUIRED PROPERTIES. **(1866) 11 M.I.A. 139 (175-6 & 171).**

———HINDU LAW—WIDOW—INHERITANCE TO HUSBAND—ESTATE GOT BY—ALIENATION OF—RESTRICTIONS ON—IMMOVEABLE AND MOVEABLE PROPERTIES—BENARES SCHOOL. **(1867) 11 M.I.A. 487 (513 4).**

———*See* HINDU LAW — WIDOW—INHERITANCE TO HUSBAND— ESTATE GOT BY—ALIENATION OF—RESTRICTIONS ON — IMMOVEABLE PROPERTY — MITHAKSHARA LAW. **(1877) 5 I.A. 1 (15)**

———*See* HINDU LAW — WIDOW — INHERITANCE TO HUSBAND—ESTATE GOT BY—NATURE AND INCIDENTS OF. **(1880) 7 I.A. 115 (154)=5 C. 776 (789-90).**

HINDU LAW—(*Contd.*)

Widow—Inheritance to husband—Estate got by—(*Contd.*)

DEVOLUTION OF, AFTER DEATH OF WIDOW—(*Contd.*)

———*See* HINDU LAW—WIDOW — INHERITANCE TO HUSBAND—ESTATE GOT BY—NATURE AND INCIDENTS OF. **(1907) 34 I.A. 87 (91-2)=34 C. 329 (333).**

———*See* HINDU LAW—WIDOW — INHERITANCE TO HUSBAND—ESTATE GOT BY—NATURE AND INCIDENTS OF. **(1915) 37 A. 369 (378-9).**

———*Change of rule of—Widow's power as to, with or without reversioner's consent.*

A Hindu widow cannot provide for the descent of the inheritance after her death in a line different from that prescribed by law, either with or without the consent of the reversioners. (*Sir Arthur Wilson.*) RUP NARAIN *v.* GOPAL DEVI. **(1909) 36 I.A. 103 (112)=36 C. 780 (797)=10 C. L. J. 58=13 C. W. N. 920=5 M. L. T. 423=11 Bom. L. R. 833=6 A. L. J. 567=3 I.C. 382=93 P.R. 1909=146 P.W.R. 1909=68 P.L.R. 1910=19 M.L.J. 548.**

———Texts relating to. *See* HINDU LAW—WIDOW—INHERITANCE TO HUSBAND—ESTATE GOT BY—ALIENATION OF—RESTRICTIONS ON—TEXTS RELATING TO. **(1867) 11 M.I.A. 487 (510-1).**

ENJOYMENT OF—POWERS OF ALIENATION OVER—LIMIT TO.

———(*See also* HINDU LAW—WIDOW—INHERITANCE TO HUSBAND—ESTATE GOT BY (1) ALIENATION OF AND (2) NATURE AND INCIDENTS OF).

———In a contest for the possession of the property of a Hindu dying without issue, between his widow and his relations, the widow is entitled to the possession of the property (49). (*Lord Giffard.*) KASHI—NATH BASAK *v.* HARASUNDARI DASI. **(1826) Vyavastha Darpana, 3rd Ed., p. 41.**

———A Hindu widow inheriting the estate of her deceased husband is only entitled to enjoy it according to the rights, of a Hindu widow, which rights it appears to me to be absolutely impossible to define—I mean the extent and limit of her power of disposing of it; because, it must depend upon the circumstances of that disposition, whenever such disposition shall be made, and must be consistent with the law regulating such dispositions (49). (*Lord Giffard.*) KASHI—NATH BASAK *v.* HARASUNDARI DASI. **(1826) Vyavastha Darpana, 3rd Ed., p. 41.**

———*Lower Bengal.*

By the law as it prevails in Lower Bengal, the estate of inheritance which a Hindu widow takes in the property of her husband, dying without male issue, is limited in its enjoyment; she cannot alien such property, whether moveable or immoveable, except for certain defined purposes, and subject to certain restrictions ; and it passes on her death to those who are then the next heirs of her husband (171). (*Sir James W. Colvile.*) MUSSUMAT THAKOOR DEHYEE *v.* RAI BALUK RAM. **(1866) 11 M. I. A. 139=10 W.R. P. C. 3=21 I.J.N.S. 106=2 Suth. 49=2 Sar. 231.**

———*Texts relating to.*

A widow's disabilities under the Hindu Law depend in a great measure upon the notions which the Hindu legislators entertained of the infirmity and necessary dependence of the sex. The limitation of the widow's enjoyment of her husband's estate, and of her power over it, chiefly depends upon the dicta of Menu, Catyayana, Narada and others; and those authorities are received by the Western Schools as well as

HINDU LAW—(*Contd.*)

Widow—Inheritance to husband—Estate got by—(*Contd.*)

ENJOYMENT OF—POWERS OF ALIENATION OVER—LIMIT TO—(*Contd.*)

by that of Bengal. (*Sir James W. Colvile.*) MUSSUMAT THAKOOR DEYHEE *v.* RAI BALUK RAM.

(1866) **11 M. I. A. 139 (173) = 10 W. R. P. C. 3 = 21 I. J. N. S. 106 = 2 Suth. 49 = 2 Sar. 231.**

———*Texts and earlier decisions—Later current of decision—Distinction between.*

The later current of decision gives to the widow a more free and complete usufruct of her husband's property than is accorded to her by the texts and earlier decisions (158). (*Sir Arthur Hobhouse.*) ISRI DUT KOER *v.* MUSSUMUT HANSBUTTI KOERAIN. (1883) **10 I. A. 150 = 10 C. 324 (334) = 13 C. L. R. 418 = 4 Sar. 459.**

NATURE AND INCIDENTS OF.

———[*See also* HINDU LAW—WIDOW—INHERITANCE TO HUSBAND—ESTATE GOT BY (1) ALIENATION OF AND (2) ENJOYMENT OF.]

———Under the Hindu Law the widow, though she takes as heir, takes a special and qualified estate. Compared with any estate that passes under the English law by inheritance, it is an anomalous estate. It is a qualified proprietorship, and it is only by the principles of the Hindu law that the extent and nature of the qualification can be determined (550). (*Lord Justice Turner.*) COLLECTOR OF MASULIPATAM *v.* CAVALY VENKATA NARRAINAPAH. (1861) **8 M. I. A. 529 = 2 W. R. 61 = 1 Suth. 476 = 1 Sar. 820.**

———Where a Hindu widow succeeds to the estate of her husband, the whole estate is for the time vested in her, absolutely for some purposes, though, in some respects, for a qualified interest; and, until her death it cannot be ascertained who will be entitled to succeed (604). (*Lord Justice Turner.*) KATAMA NACHIAR *v.* THE RAJAH OF SHIVAGANGA. (1863) **9 M. I. A. 539 = 2 W. R. C. R. P. C. 31 = 1 Suth. 520 = 2 Sar. 25.**

———According to the Hindu law, a widow, who succeeds to the estate of her husband in default of male issue, whether she succeeds by inheritance or survivorship, does not take a mere life estate in the property. The whole estate is for the time vested in her absolutely for some purposes, though in some respects for only a qualified interest. Her estate is an anomalous one, and has been compared to that of a tenant in tail. It would perhaps be more correct to say that she holds an estate of inheritance to herself and the heirs of her husband. But, whatever her estate is, it is clear that, until the termination of it, it is impossible to say who are the persons who will be entitled to succeed as heirs to her husband. The succession does not open to the heirs of the husband until the termination of the widow's estate. Upon the termination of that estate the property descends to those who would have been the heirs of the husband if he had lived up to and died at the moment of her death (154).

The widow may by law hold the estate without performing the necessary religious ceremonies for her husband, and she may give, sell, or transfer the estate to another for her own life, or in case of necessity sell or mortgage the whole interest in it (146, 155). (*Sir Barnes Peacock.*) MONIRAM KOLITA *v.* KERRY KOLITANY. (1880) **7 I.A. 115 = 5 C. 776 (789-90) = 6 C.L.R. 322 = 4 Sar. 103 = 3 Suth. 765.**

———Reasoning from the general notion of the Hindu commentators, touching the frailty and incapacity of women and the necessity for their dependence upon and control by some male protector; and, from the origin and nature of a widow's interest in the property which she takes in succession to her husband, the learned judge (Mitter, J.) arrived at the conclusion that she is, as he expresses it, "a trustee for the benefit of her husband's soul;" that inasmuch as, by reason of unchastity subsequent to her husband's death, she becomes incapable of performing effectually the religious services that are essential to his spiritual welfare, she ceases to be capable of performing her trust, and must therefore be taken to have broken the condition on which she holds the property, and to have incurred the forfeiture of her estate. Their Lordships entirely concur with the Chief Justice and the majority of the judges in rejecting the somewhat fanciful analogy of trusteeship (145). (*Sir Barnes Peacock.*) MONIRAM KOLITA *v.* KERRY KOLITANY.

(1880) **7 I. A. 115 = 5 C. 776 (780) = 6 C.L.R. 322 = 4 Sar. 103 = 3 Suth. 765.**

———A Hindu widow is not a tenant for life but is owner of her husband's property subject to certain restrictions on alienation and subject to its devolving on her husband's heirs (91-2). (*Lord Davey.*) BIJOY GOPAL MUKERJI *v.* KRISHNA MAHISHI DEBI. (1907) **34 I.A. 87 = 34 C. 329 (333) = 2 M.L.T. 133 = 5 C.L.J. 334 = 11 C.W N. 424 = 9 Bom.L.R. 602 = 4 A.L.J. 329 = 9 Sar. 216 = 17 M.L J. 154.**

———It is not quite accurate to describe the interest which a widow normally takes in immoveable property, which her husband inherits and leaves at his death, as a "life-estate." It would be just as untrue to speak of the estate of a father under the Mithakshara law as one for life.

Hindu Law knows nothing of estates for life or in tail or in fee. It measures estates not by duration but by use. The restrictions upon the use of an estate inherited by a woman are similar in kind to those which limit the powers of a male holder but different in degree. The distinctive feature of the estate is that at her death it reverts to the heirs of the last male owner. Her estate is not a life estate, because, under certain circumstances, she can give an absolute and complete title. Nor is it in any sense an estate held in trust for the reversioners. Within the limits imposed upon her, the female holder has the most absolute powers of enjoyment. (*Lord Atkinson.*) VASONJI MORARJI *v.* CHANDA BIBI (1915) **37 A. 369 (378-9) = 19 C. W. N. 873 = 17 Bom. L. R. 556 = 18 M.L.T. 31 =** (1915) **M.W.N. 449 = 2 L. W. 676 = 22 C.L.J. 180 = 29 I.C. 781 = 29 M. L. J. 130.**

———The rule of the Hindu Law with regard to the nature of a widow's estate may have been subject to various forms of expression, but in substance it is not doubtful. Her right is of the nature of a right of property; her position is that of owner; her powers in that character are, however, limited; but so long as she is alive no one has any vested interest in the succession (209). (*Lord Shaw.*) JANAKI AMMAL *v.* NARAYANASWAMI AIYAR. (1916) **43 I.A. 207 = 39 M. 634 (637) = 20 C. W. N. 1323 = 24 C.L.J. 309 = 14 A. L. J. 927 = 20 M.L.T. 168 = 18 Bom.L.R. 856 =** (1916) **2 M. W. N. 188 = 4 L. W. 530 = 37 I. C. 161 = 31 M.L.J. 225.**

———The rights of a Hindu widow in her late husband's estate are not aptly represented by any of the terms of English law applicable to what might seem analogous circumstances. Phrased in English Law terms, her estate is neither a fee nor an estate for life nor an estate tail. (*Lord Dunedin.*) RANGASAMI GOUNDEN *v.* NACHIAPPA GOUNDEN. (1918) **46 I. A. 72 = 42 M. 523 (531) =**

HINDU LAW—(*Contd.*)

Widow—Inheritance to husband—Estate got by—(*Contd.*)

NATURE AND INCIDENTS OF—(*Contd.*)

26 M. L. T. 5=(1919) M. W. N. 262=17 A.L.J. 536=21 Bom. L. R. 640=23 C. W. N. 777=29 C.L.J. 539=10 L. W. 105=50 I. C. 498=36 M.L.J. 493.

———A Hindu widow. who inherits the estate of her husband, becomes entitled to the full beneficial enjoyment of his estate. She has not power to make a gift of the estate. She has no power to sell or assign the estate except for necessity, so as to bind her husband's reversioners after her death. (*Sir John Edge.*) VAITHIALINGA *v.* SRIRANGATH ANNI. **(1925) 52 I.A. 322 (329)=48 M. 883=6 L.R. P.C. 169=42 C.L.J. 563=(1926) M. W. N. 11=28 Bom. L. R. 173=30 C. W. N. 313=A.I.R. 1925 P. C. 249=92 I.C. 85=49 M.L.J. 769.**

RECOVERY OF PART OF, FROM PERSONS WITHOUT TITLE—RIGHT OF.

———*Alienation improper by her of other part—Effect.*

An improper alienation by a Hindu widow of part of her husband's estate cannot affect her right to recover other parts of it from those who have no title to it (496). (*Sir James W. Colvile.*) BHUGWANDEEN DOOBEY *v.* MYNA BAEE. **(1867) 11 M.I.A. 487=9 W. R. P. C. 23=2 Suth. 124=2 Sar. 327.**

SETTLEMENT OFFICER'S ORDER CONFERRING PROPRIETARY RIGHT ON WIDOW IN—ESTATE TAKEN UNDER.

———*Widow's estate or absolute estate.*

R, the proprietor of a taluka named Bamhni, died on 23—10—1863, without issue leaving behind him a mother and three widows. On 16—2—1864 the Settlement Officer made an order conferring the proprietary rights of Mouza Bamhni in equal shares of four annas each on the three widows and the mother of *R*, and directing the issue of a rubkar to the Tahsildar for information and the issue of the orders for the information of the proprietors.

The question was whether the effect of the order of the Settlement Officer was to give the three widows of *R* only the widow's estate, or whether the order was one effecting a partition of the family property, and giving one-fourth in absolute proprietorship to each of the three widows, and the remaining share to the mother of the deceased.

Held that upon the face of that order no intention could be found to give to the mother and widows between them anything more than an interest in the widow's estate (250).

There may be words in this order about which there is some ambiguity, but reading the order as a whole their Lordships cannot doubt that the Settlement Officer took *R* as being the proprietor of the estate, and took the estate as having passed to his heirs upon his death. Why he attributed a fourth to the mother of *R* does not appear, but no doubt she was entitled to maintenance; and it may have been that that state of things before him at that time led him to believe that it would be a proper way of dealing with the estate to give each of the four who had claims upon it the enjoyment of one-fourth of the estate. That may be so (250). (*Lord Hobhouse.*) MUNNALAL CHAODRI *v.* GAJRAJ SINGH. **(1889) 17 C. 246=5 Sar 452.**

Widow—Inheritance to husband—Right of.

———*Basis of—Spiritual benefit—Capacity to confer—Survivorship.*

There are two principles on which the rule of succession according to the Hindu law appears to depend: the first is that which determines the right to offer the funeral oblation and the degree in which the person making the offering is supposed to minister to the spiritual benefit of the deceased; the other is an assumed right of survivorship. Most

HINDU LAW—(*Contd.*)

Widow—Inheritance to husband—Right of—(*Contd.*)

of the authorities rest the uncontested right of widows to inherit the estates of their husbands, dying separated from their kindred, on the first of these principles. But some ancient authorities also invoke the other principle. Now if the first of those principles were the only one involved, it would not be easy to see why the widow's right of inheritance should not extend to her husband's share in an undivided estate. For it is upon this principle that she is preferred to his divided brothers in the succession to a separate estate. But it is perfectly intelligible that upon the principle of survivorship the right of the coparceners in an undivided estate should overrule the widow's right of succession, whether based upon the spiritual doctrine, or upon the doctrine of survivorship. It is, therefore, on the principle of survivorship that the qualification of the widow's right established by the Mitakshara, whatever be its extent, must be taken to depend. If this be so, the rule ought not in a doubtful case, and in the absence of positive authority, to be extended beyond the reasons for it (610-1). (*Lord Justice Turner.*) KATAMA NATCHIAR *v.* THE RAJAH OF SHIVAGUNGA. **(1863) 9 M.I.A. 539=2 W. R. P.C. 31=1 Suth. 520=2 Sar. 25.**

———*Conditions.*

With respect to the right of succession to *J*, it is not disputed that if he left a son whether natural born, or legally adopted, such son would be entitled to succeed,—that if he left no son, but an undivided brother, such brother would be entitled to succeed—that if he left no son, nor undivided brother, the widows, or one of the widows, would be entitled to succeed (91-2). (*Mr. Pemberton Leigh.*) RUNGAMMA *v.* ATCHAMMA. **(1846) 4 M.I.A. 1=7 W.R. 57 P.C.=1 Suth. 197=1 Sar. 313.**

———*Conditions—Mithakshara law.*

According to the Mithakshara a widow is not entitled to succeed to her husband's estate in preference to collateral male heirs, unless he is separate, or, as in the Shivagunga case, his estate was separate or self-acquired (154). (*Sir Barnes Peacock.*) RAJAH RUP SINGH *v.* RANI BAISNI. **(1884) 11 I.A. 149=7 I.A. (10)=4 Sar. 533=A.W.N. (1884) 246.**

———*Estate once vested by—Divesting of, by subsequent unchastity—Rule as to—Caste degradation in consequence of unchastity—Effect.*

Held, affirming the majority of the Full Bench of the High Court, that, under the Hindu law, as administered in the Bengal School, a widow who has once inherited the estate of a deceased husband is not liable to forfeit that estate by reason of unchastity (156).

Quaere: as to what would have been the effect of Act XXI of 1850, if the widow had been degraded or deprived of her caste in consequence of her unchastity (156).

N.B.—In the case before their Lordships, the widow had never been degraded or deprived of caste (156).

The text of Vrihat Menu cited in verse 7, S. 1, Ch. XI of Mr. Colebrooke's translation of the Dayabhaga, and that of Catyayana cited in Verse 56 of the same section and Chapter, do not, either expressly or by necessary implication, affirm the doctrime that the estate of a widow, once vested, is liable to forfeiture by reason of unchastity subsequent to the death of her husband (153).

It has not been established that the estate of a widow forms an exception to the general rule of Hindu law, that an estate once vested by succession or inheritance is not divested by any act which, before succession or incapacity, would have formed a ground for exclusion of inheritance (153).

Mischief, uncertainty, and confusion likely to follow from the affirmance of the doctrine that a widow's estate is

HINDU LAW—(*Contd.*)

Widow—Inheritance to husband—Right of—(*Contd.*)

forfeited for unchastity pointed out (153-5). (*Sir Barnes Peacock.*) MONIRAM KOLITA *v.* KERRY KOLITANY.
(1880) **7 I A. 115=5 C. 776 (791-2, 789-91)=6 C.L.R. 322=4 Sar. 103=3 Suth. 765.**

———*Forfeiture of—Grounds— Non-residence in husband's family house if one.*

A Hindu widow does not forfeit her right of succession to her deceased husband's estate by ceasing, from any cause other than unchaste purposes, to reside with her husband's family (54). (*Lord Giffard.*) KASHINATH BASAK *v.* HARASUNDARI DASI. (1826) **Vyavastha Darpana, 3rd Ed., p. 41.**

———A Hindu widow does not forfeit her right to property or maintenance merely on account of her goirg and residing with her family or leaving her husband's residence from any other cause than unchaste or improper purposes (206). (*Sir Barnes Peacock*). RAJAH PIRTHEE SINGH *v.* RANEE RAJ KOOER. (1873) **Sup. I.A. 203=12 B.L.R. 238=20 W.R. 21=3 Sar. 259=2 Suth. 846.**

———Forfeiture of—Grounds—Uuchastity if one. *See* HINDU LAW—WIDOW—MAINTENANCE—FORFEITURE OF RIGHT TO—UNCHASTITY.
(1880) **7 I.A. 115 (151)=5 C. 776 (786-7).**

———*Joint family property and Self-acquisition of husband—Distinction.*

According to the Hindu Law of Succession, the widow of a person dying without male issue becomes heir to his divided estate. She cannot, however, claim an undivided property (167-8). (*Dr. Lushington.*) REWUN PERSAD *v.* MUSSAMUT RADHA BEEBY. (1847) **4 M.I.A. 137=7 W R. 35 P.C.=1 Suth. 172=1 Sar. 327.**

———*See* HINDU LAW—IMPARTIBLE ESTATE—SUCCESSION—JOINT FAMILY MEMBER.
(1863) **9 M.I.A. 539 (615).**

———*Recovery of property by virtue of, on foot of its being private property—Suit by widow for—Relief in, on foot of property being debutter property—Grant of.*

A Hindu widow sued to recover her share, as heiress to her husband, in certain family property of which she claimed a portion in her absolute right, and a portion as one of the joint shebaits of certain idols. Among other properties plaintiff claimed one-fifth share in a talook, not as a debutter property, but, in right of her husband, as her absolute property. The Sub-Judge found that that share was in fact the property of a certain idol, and, therefore, he held that she had not maintained the allegation in her plaint. It was contended for her that, although she had failed to prove an absolute right in that property, still she was entitled in her right of joint shebait to a share of the property of the idol; but the Sub-Judge held that, as she had not framed her plaint in that way, and had not sued as Shebait, she could not recover in that capacity, and, therefore, he decided against her upon that point.

On appeal the High Court decided that she was entitled to claim the one-fifth share in the talook as Shebait observing that, although perhaps by a strict construction of the declaration, she might be held not to have expressed her claim to it properly, nevertheless, that was an objection rather of form than of substance, and that looking to the whole case, and considering that the evidence of both parties was gone into, the justice of the case required that they should give her that relief.

Held that the High Court was right in treating the objection which had been made to the reception of that claim by the Sub-Judge as an objection rather of form than of substance, and in giving her the relief which she prayed

HINDU LAW—(*Contd.*)

Widow—Inheritance to husband—Right of—(*Contd.*)

for (130). (*Sir Robert P. Collier.*) RADHA MOHUN MUNDUL *v.* JADOOMONEE DASSEE.
(1875) **3 Suth. 127=23 W.R. 369=3 Sar. 482.**

———*Recovery of property not in possession of husband by virtue of—Disability as to—Rule of—Inapplicability of, to property in which husband had vested interest under will though actual enjoyment postponed,*

We have no intention whatever to disturb the doctrine of Hindu law that a widow succeeding as heir to her husband cannot recover property not in possession of her husband. But we think it has not been shown in this case that the disputed property was not in possession according to the meaning of that term in Hindoo Law, nor that the doctrine applies to a property, where the husband had a vested interest under a will or deed, and the actual enjoyment thereof was postponed during the lifetime of another (176). (*Dr. Lushington*). REWAN PERSAD *v.* MUSSUMAT RADHA BEEBY. (1847) **4 M.I.A. 137=7 W.R. 35 P.C.=1 Suth. 172=1 Sar. 327.**

———*Suit by widow against husband's nephew based on—Onus of proof on widow in—Benares school—Property in suit once joint property of joint family.*

Where, in a case governed by the law of the Benares school, a Hindu widow sued to recover from the nephew of her deceased husband property, which was originally the joint estate, or part of the ancestral estate, of a joint and undivided Hindu family, on the ground that she was entitled to the same as the widow and heiress of her husband, *held* that the onus was on the widow to rebut the strong presumption of Hindu law that the family and the property continued to be joint, and that the property claimed was the separate estate of her husband (379-80). (*Sir James W. Colvile*). MUSSUMAT CHEETHA *v.* BABOO MIHUN LALL.
(1867) **11 M.I.A. 369=2 Sar. 303.**

———*Suit by widow against surviving members to recover husband's share of moveable and immoveable family properties based on—Limitation as regards the two kinds of properties.*

A Hindu widow, alleging that a partition had taken place between her deceased husband and the defendants, his surviving brothers, but that the same had not been completed by actual division at the time of her husband's death, sued for the recovery of her husband's share in the family moveable and immovable properties. The defendants refused to recognise the right of the plaintiff to her husband's share, and that was the cause of action for the suit. The Subordinate Judge held that the claim in reference to the movables having been made after the lapse of three years was barred by limitation, though the claim as to immoveables was not.

Held that, as the cause of action for both kinds of property was the same, the claim as regards the moveable property was not barred by limitation. (*Sir Andrew Scoble*). CHOWDHRY GANESH DUTT THAKOOR *v.* MUSSUMAT JEWACH THAKOORAIN. (1903) **31 I.A. 10=31 C. 262 (272)=6 Bom. L.R. 1=8 C.W.N. 146=8 Sar. 575=14 M.L.J. 8.**

———*Suit by widow against surviving members for husband's share of moveable and immoveable properties based on—Misjoinder — Suit when not bad for—C. P. C., O. 2, R. 4.*

S. 44, Rule (*a*) of C. P. C. of 1882 is not very happily expressed, but there can be nothing irregular in seeking to recover in one suit immoveable and moveable property, if the cause of action is the same in respect of both.

A Hindu widow, alleging that a partition had taken place between her husband and his brothers during the

HINDU LAW—(*Contd.*)

Widow—Inheritance to husband—Right of—(*Contd.*)

former's lifetime but that it had not been completed, brought a suit against her husband's brothers for the recovery of his share of the family moveable and immoveable properties. *Held* that the suit was not barred under S. 44, R (*a*) of C.P.C. of 1882.

The cause of action arose in the refusal of the surviving brothers to recognise the right of the widow to succeed to her deceased husband's share in the family property under a partition which had not been completed by actual division at the time of her husband's death; and it would be a denial of justice to hold that in a suit upon such a cause of action relief could not be given in respect to moveable as well as to immoveable property. (*Sir Andrew Scoble*). CHOWDHRY GANESH DUTT THAKOOR *v.* MUSSUMMAT JEWACH THAKOORAIN. **(1903) 31 I.A. 10 (16) = 31 C. 262 (272) = 6 Bom. L.R. 1 = 8 C.W.N. 146 = 8 Sar. 575 = 14 M.L.J. 8.**

———Suit by widow to recover husband's property by virtue of—Title of husband to suit property—Proof of—Onus on widow. *See* (1) EJECTMENT SUIT—HINDU LAW—WIDOW—SUIT BY LAST MALE OWNER'S. **(1847) 4 M.I.A. 137 (167)** AND (2) HINDU LAW—DAUGHTER—FATHER'S ESTATE. **(1919) 13 L.W. 436 (439).**

Widow—Joint status of husband—Presumptive reversioner's suit for possession against widow on foot of—Finding that deceased was divided member.

———Decree proper in case of—Dismissal of suit—Reversionary character of plaintiff—Declaration of—Propriety. *See* HINDU LAW—REVERSIONER—PRESUMPTIVE REVERSIONER—STATUS OF—DECLARATION OF. **(1880) 6 C.L.R. 528.**

Widow—Lease by.

———*Invalid lease—Void or voidable—Election by reversioner to treat it as valid—Evidence of.*

A Putni lease granted by a Hindu widow in possession of her husband's estate for purposes not binding on the estate is not void and does not come to an end on her death. It is only voidable and the reversioner may elect to assent to it and treat it as valid.

Where, after the death of the widow, the putnidar paid, and the reversioner received money as and for rent due under such putni lease, *held*, in a suit by him to have the putni lease set aside, that the receipt of rent by him was *prima facie* an admission that the putni was subsisting and an election by him to treat that as valid and that it lay upon him to show that the receipt ought not to have that effect. (*Sir Richard Couch.*) RAJA MODHU SUDAN SINGH *v.* ROOKE. **(1897) 24 I.A. 164 = 25 C. 1 = 1 C.W.N. 433 = 7 Sar. 194 = 7 M.L.J. 127.**

———*Permanent lease — Necessity for — Proof of—Quantum.*

Held on the evidence. affirming the Court below, that a permanent lease executed by a Hindu widow in respect of her husband's estate was not proved to have been granted for necessity. (*Lord Buckmaster*). NABAKISHORE MANDAL *v.* UPENDRAKISHORE MANDAL. **(1921) 15 L W. 417 = 20 A.L.J. 22 = 26 C.W.N. 322 = A.I R. (1922) P.C. 39 = 35 C L.J. 116 = (1922) M.W.N. 95 = 24 Bom. L R. 346 = L R. 3 P.C. 77 = 30 M L.T. 234 = 3 Pat. L.T. 311 = 65 I.C. 305 = 42 M.L.J. 253 (254-5).**

———*Permanent lease—Validity of, on grounds of its being for benefit of estate, though not necessary.*

HINDU LAW—(*Contd.*)

Widow—Lease by—(*Contd.*)

It is said that though the permanent lease in question can be upheld on the ground that there was necessity justifying the grant of the lease, the lease must have been a lease for the benefit of the estate, and that it can be supported upon that ground. It is not easy, and in this case it is not necessary, to define what is exactly the character of the transaction entered into by a Hindu widow which can be supported on the ground that it enured for the benefit of the estate. It is sufficient to say that the mere fact that the rent reserved was a fair market rent, or the price obtained was a fair market price, cannot alone and in themselves be regarded as sufficient. (*Lord Buckmaster.*) NABKISHORE MANDAL *v.* UPENDRAKISHORE MANDAL. **(1921) 15 L.W. 417 = 20 A.L.J. 22 = 26 C.W.N. 322 = A.I.R. (1922) P. C. 39 = 35 C.L.J. 116 = (1922) M.W.N. 95 = 24 Bom.L.R. 346 = L.R. 3 P.C. 77 = 30 M.L.T. 234 = 3 Pat. L T. 311 = 65 I C 305 = 42 M.L. J. 253 (255-6).**

Widow—Maintenance.

ARREARS OF—RIGHT TO.
DECREE AWARDING—ALTERATION OF RATE OWING TO CHANGE OF CIRCUMSTANCES — LIBERTY TO APPLY IN SUIT ITSELF FOR
FAMILY LIABLE FOR.
FORFEITURE OF RIGHT TO.
HUSBAND'S RESIDENCE—NON-RESIDENCE OF WIDOW IN.
LAND ALLOTMENT FOR.
PROPERTY ALLOTTED FOR—ALIENATION BY WIDOW OF—VALIDITY OF.
RATE OF.
RIGHT TO.
SUIT TO ENFORCE RIGHT TO—LIMITATION.
WILL FROVIDING FOR—CONDITION IN, OF RESIDENCE IN ANCESTRAL HOUSE.

ARREARS OF—RIGHT TO.

In a suit by a Hindu widow against the adopted son of her deceased husband to recover arrears of maintenance, and also to have a decree for future maintenance, *held*, affirming the High Court, that the widow had a right to recover past arrears as well as to a decree in her favour with regard to future payments (211), (*Sir Barnes Peacock.*) RAJAH PIRTHEE SINGH *v.* RANEE RAJ KOWER. **(1873) Sup. I.A. 203 = 12 B.L R. 238 = 20 W.R. 21 = 3 Sar. 259 = 2 Suth. 846.**

———*Date from which entitled—Residence and maintenance in husband's house—Arrears for period of—Widow's right to.*

Except possibly in the extreme case of a widow being kept under circumstances of extreme penury and oppression, a widow is not entitled to arrears of maintenance from the date of her husband's death and including the time that she resided in her husband's establishment and accepted maintenance in fact and in kind from her husband's relations. To give her arrears only from the date of the decree would be an inadequate recognition of her right to maintenance. It is indeed an inversion of the correct procedure in the case of a continuing right. In any view the right could not be post-dated from the institution of the suit onwards. This, besides being erroneous in law, would be a daily temptation to delay in litigation by posptoning the date of liability to that of final decree. When a widow's receipt of maintenance in her husband's establishment does not cease contemporaneously with her institution of a suit for maintenance, it is the duty of the Court to consider the whole circumstances of the situation in pronouncing a decree for arrears.

HINDU LAW—(*Contd.*)

Widow—Maintenance—(*Contd.*)

ARREARS OF—RIGHT TO—(*Contd.*)

In a suit by Hindu widow who had, from the date of her husband's death resided in and been maintained in her husband's establishment and had subsequently left it and ceased to be maintained by it for, *inter alia*, arrears of maintenance, *held*, on an application of the above principles, that she was entitled to arrears from the date on which she left her husband's house, and not from the date of her husband's death, as claimed by the widow, or merely from the date of suit, or from the date of decree. (*Lord Shaw.*) MT. EKRADESHWARI BAHUASIN SAHEBA *v.* HOMESHWAR SINGH. **(1929) 56 I.A. 182 = 33 C. W. N. 637 = 27 A.L.J. 695 = 31 Bom. L.R. 816 = 30 L W. 1 = 6 O.W.N. 526 = (1929) M.W.N. 468 = 116 I.C. 409 = 49 C.L.J. 579 = 10 Pat. L. T. 345 = A. I. R. 1929 P. C. 128 = 57 M.L.J. 50.**

DECREE AWARDING—ALTERATION OF RATE OWING TO CHANGE OF CIRCUMSTANCES—LIBERTY TO APPLY IN SUIT ITSELF FOR.

———*Reservation of—Propriety.*

In a suit by a Hindu widow for maintenance, the Courts below found that the then net income of the estate was a certain amount, and awarded the widow maintenance at a certain rate on the basis thereof. They also found that two large items of the estate, which were not taken into account in arriving at the net income, were the subject-matters of two suits by and against the estate, and if those litigations ended favourably to the estate, its net income would be substantially increased. The High Court, by its decree, accordingly reserved liberty to the widow to apply in her suit itself for enhancement of maintenance in the event of the said litigations ending favourably to the estate, and decided that a fresh suit for the purpose would not be necessary.

Held, that the High Court's treatment of the position was sound in principle and advantageous in procedure. (*Lord Shaw.*) MT. EKRADESHWARI BAHUASIN SAHEBA *v.* HOMESHWAR SINGH **(1929) 56 I. A. 182 = 33 C. W. N. 637 = 27 A. L. J. 695 = 10 Pat. L. T. 345 = 31 Bom. L. R. 816 = 49 C. L. J. 579 = 30 L. W. 1 = 6 O. W. N. 526 = (1929) M. W. N. 468 = 116 I. C. 409 = A. I. R. 1929 P. C. 128 = 57 M. L. J. 50.**

FAMILY LIABLE FOR.

———*Husband's family.*

It is upon her husband's family that a Hindu widow has her claim for maintenance (191). (*Sir James W. Colvile.*) SRI RAGHUNADHA *v.* SRI BROZO KISHORO. **(1876) 3 I. A. 154 = 1 M. 69 (81) = 25 W. R. 291 = 3 Sar. 583 = 3 Suth. 263.**

FORFEITURE OF RIGHT TO.

———Husband's residence—Non-residence of widow in—Forfeiture on ground of. *See* HINDU LAW—WIDOW—MAINTENANCE—HUSBAND'S RESIDENCE.

———*Unchastity—Forfeiture on ground of—Inheritance—Right to—Distinction.*

The right to receive maintenance is very different from a vested estate in property, and therefore texts of Hindu Law to the effect that a widow will forfeit her right to maintenance by reason of unchastity cannot be extended to the case of a widow's estate by succession (151). (*Sir Barnes Peacock.*) MONIRAM KOLITA *v.* KERRY KOLITANY. **(1880) 7 I. A. 115 = 5 C. 776 (786-7) = 6 C. L. R. 322 = 4 Sar. 103 = 3 Suth. 765.**

———*Unchastity—Forfeiture on ground of—Plea of—What amounts to.*

HINDU LAW—(*Contd.*)

Widow—Maintenance—(*Contd.*)

FORFEITURE OF RIGHT TO—(*Contd.*)

In a suit by the plaintiffs to assert their rights as widow and daughter, respectively, of a Cutchee Memon, the main contest in the courts below was as to whether the 1st plaintiff was a *nika* wife of the deceased and 2nd the issue of that *nika* marriage. That point was decided in favour of the plaintiffs by the courts below, and their decision was affirmed by their Lordships.

At the trial, however, questions were put and disallowed, which went to show that the 1st plaintiff had been unchaste after the death of her husband and had thus (as the defendants contended) disentitled herself to maintenance. On the record as it stood, the defendants had neither averment nor issue of such unchastity, and all that they could point to was their denial that "the plaintiffs" were entitled to maintenance, and the fifth issue, whether "the plaintiffs are entitled in any event to maintenance or marriage expenses."

Held, that those general words, equally applicable to mother and child, were entirely unsuitable for the statement of the specific act of incontinence on the part of the mother, and that the defendants could not, therefore, be allowed to raise the plea that the mother forfeited her right to maintenance after the death of her husband by reason of unchastity (129). (*Lord Robertson.*) HAJI SABOO SIDICK *v.* AYESHABAI. **(1903) 30 I. A. 127 = 27 B. 485 = 7 C. W. N. 665 = 5 Bom. L. R 475 = 8 Sar. 477.**

HUSBAND'S RESIDENCE—NON-RESIDENCE OF WIDOW IN.

———*Forfeiture of right to maintenance on ground of.*

A Hindu widow does not lose her right to maintenance by reason of her leaving her husband's house, provided she does not leave for the purposes of unchastity, or for any other improper purpose.

A Hindu widow is not bound to reside with the relatives of her husband; the relatives of her husband have no right to compel her to live with them; and she does not forfeit her right to property or maintenance merely on account of her going and residing with her family or leaving her husband's residence from any other cause than unchaste or improper purposes (206). (*Sir Barnes Peacock.*) RAJA PIRTHEE SINGH *v.* RANEE RAJ KOWER. **(1873) Sup. I. A. 203 = 12 B. L. R. 238 = 20 W. R. 21 = 3 Sar. 259 = 2 Suth. 846.**

———In the case of a Hindu widow, separation from the ancestral house will not generally disentitle her to maintenance suitable to her rank and condition (119). (*Sir Montague E. Smith.*) NARAYANA RAO RAMACHANDRA PANT *v.* RAMABAI. **(1879) 6 I. A. 114 = 3 B. 415 (421) = 6 C. L. R. 162 = 4 Sar. 24 = 3 Suth. 617.**

———A Hindu widow is, except when she does so for unchaste purposes, or where there is a direction in her husband's will that she is to be maintained in the family house, within her legal rights in leaving her husband's residence and choosing another for herself. In such circumstances, that is to say, in the ordinary case, it is no part of the duty of a widow choosing her own residence to furnish excuses which will satisfy a court of Law that she has made a judicious choice. And she does not forfeit her right to maintenance by such a change of residence. (*Lord Shaw.*) MT. EKRADESHWARI BAHUASIN SAHEBA *v.* HOMESHWAR SINGH. **(1929) 56 I. A 182 = 33 C. W. N. 637 = 27 A.L.J. 695 = 10 Pat. L.T. 345 = 31 Bom. L. R. 816 = 49 C. L. J. 579 = 30 L. W. 1 = 6 O. W. N. 526 = (1929) M. W. N. 468 = 116 I. C. 409 = A. I. R. 1929 P. C. 128 = 57 M. L. J. 50.**

———*Forfeiture of right to maintenance on ground of—Just and reasonable causes—Non-residence due to—Effect*

HINDU LAW—(*Contd.*)

Widow—Maintenance—(*Contd.*)

HUSBAND'S RESIDENCE — NON-RESIDENCE OF WIDOW IN—(*Contd.*)

In a suit for maintenance brought against the holder of an impartible estate by the widow of the previous holder of the estate, the defendant pleaded a special family custom, having the force of law, by which, unless the widow resided, after the death of her husband, where she was directed to reside by the Raja, she forfeited her right to maintenance.

Held, that even assuming that such a custom was established it had no application to a case of absence from the appointed residence due to just and reasonable causes. (*Lord Buckmaster.*) BROJA SUNDAR DEB *v.* SWARNA MANJERI DEI. **(1917) 22 C. W. N. 433 = 47 I. C. 36 = (1918) M. W. N. 313.**

———*Grounds for—Reasonableness of—Finding as to—Fact or Law.*

Whether the refusal of a widow to reside in her husband's dwelling-house was based on reasonable grounds or not is a question of fact. And the concurrent findings of the courts below on such a question comes within the rule of the Privy Council, as to concurrent findings of fact (436). (*Lord Buckmaster.*) BRAJA SUNDAR DEB *v.* SWARNA MANJERI DEI. **(1917) 22 C. W. N. 433 = 47 I. C. 36 = (1918) M. W. N. 313.**

———Rate of maintenance if and when affected by. *See* HINDU LAW—WIDOW—MAINTENANCE OF—RATE OF—CIRCUMSTANCES AFFECTING.

(1917) 22 C. W. N. 433 (436).

LAND ALLOTMENT FOR.

———No partition by. *See* HINDU LAW—WIDOW—MAINTENANCE OF—LAND ALLOTMENT FOR—PRACTICE OF. **(1899) 27 I.A. 39 (41) = 27 C. 515 (519).**

———*Practice of.*

The satisfaction of the right to maintenance of the widow of a deceased member of a joint Hindu family by the assigning to her the enjoyment for her lifetime of a share of the joint estate is not an unnatural or unaccustomed mode of dealing with property that is undivided and is intended to remain undivided (41). (*Lord Robertson.*) REWA PRASAD SUKAL *v.* DEO DUTT RAM SUKAL.

(1899) 27 I.A. 39 = 27 C. 515 (519) = 4 C. W. N. 582 = 2 Bom. L. R. 556 = 7 Sar. 653.

———It could not with truth be asserted before an Indian Court that a widow of a sonless prominent member of a Hindu joint family is never allowed by the family to occupy possession of some of the family's land for her life for her maintenance. (*Sir John Edge.*) MUSAMMAT BHAGWANI KUNWAR *v.* MOHAN SINGH.

(1925) 22 L.W. 211 = 29 C.W.N. 1037 = 23 A.L.J. 589 = 41 C. L. J. 591 = (1925) M.W.N. 421 = 88 I.C. 385 = A.I.R. (1925) P.C. 132 = 49 M L.J. 55 (59).

PROPERTY ALLOTTED FOR—ALIENATION BY WIDOW OF—VALIDITY OF.

———Property given to a widow in lieu of maintenance is property which may be disposed of *inter vivos*. RAJA CHUNDRANATH ROY *v.* RAMJAI NAMUNDAR.

(1870) 6 B. L. R. 303 = 15 W. R. 7 = 2 Sar. 613 = 2 Suth. 377.

———A Hindu widow who, under a compromise with her husband's cousins, receives family lands to be held for her maintenance for her life, cannot, whether she acts under the compromise or not, grant or convey any title of any kind to the same which would be effective for any purpose beyond the term of her own life (*Sir John Edge.*) MUSAMMAT BHAGWANI KUNWAR *v.* MOHAN SINGH.

(1925) 22 L. W. 211 = 29 C. W. N. 1037 =

HINDU LAW—(*Contd.*)

Widow—Maintenance—(*Contd.*)

PROPERTY ALLOTTED FOR—ALIENATION BY WIDOW OF—VALIDITY OF—(*Contd.*)

23 A. L. J. 589 = 41 C. L. J. 591 = (1925) M. W. N. 421 = 88 I.C. 885 = A. I. R. (1925) P.C. 132 = 49 M. L. J. 55 (61).

RATE OF.

———*Circumstances affecting—Non-residence in husband's dwelling-house if one.*

While holding that a widow who resided apart from her husband's family did not, according to the custom pleaded in the case, forfeit her right to maintenance, their Lordships seemed to be of opinion that her residence apart from her husband's dwelling-house ought not to throw an unfair burden on the person on whom the duty of maintaining her was cast (436). (*Lord Buckmaster.*) BRAJA SUNDAR DEB *v.* SWARNA MANJERI DEI. **(1917) 22 C. W. N. 433 = 47 I.C. 36 = (1918) M. W. N. 313.**

———*Data for fixing—Principles on which, to be fixed.*

The amount of maintenance should be fixed with reference to the proprietor's estate (211).

In the case before their Lordships the deceased husband left property to the extent of two lakhs of rupees, or £20,000 a year. He left four widows, the plaintiff being the fourth or youngest of the four. In a suit for maintenance by her against the adopted son of the deceased, the Sub-Judge awarded her the sum of Rs. 150 a month. On appeal the High Court, thought that, having regard to the amount of the husband's property, the widow was entitled to a larger sum; and they awarded her maintenance at the rate of Rs. 200 a month.

Held, affirming the High Court, that it did not appear to be excessive, even though the deceased left 4 widows, that each of those widows should have at the rate of Rs. 200 a month, equal to £240 a year (210-1.)

Looking to the state in which a Hindu widow is bound to live and the religious duties which she is called upon to perform, it does not appear to their Lordships, having reference to the property of the deceased husband; that this widow ought to receive a less sum than that which has been awarded to her by the High Court, namely, Rs.200 a month (211). (*Sir Barnes Peacock.*) RAJAH PIRTHEE SINGH *v.* RANEE RAJ KOWER. **(1873) Sup. I. A. 203 (211) = 12 B.L.R. 238 = 20 W.R. 21 = 3 Sar. 259 = 2 Suth. 846.**

———In determining the amount of maintenance to which a Hindu widow is entitled one element to be considered is the value of the estate. Another element is the position and status of the deceased husband and of the widow. The main subject of inquiry will be the value of the estate, and the question for the Court to consider will be the due proportion which should be given to the widow out of it for her proper maintenance including not only the ordinary expenses of living, but that which she might reasonably expend for religious and other duties incident to the station in life which she might occupy (56-7). Some of the other circumstances which the Court may properly take into account, not as conclusive upon the amount which ought to be awarded, but as affording some guide to the proper amount which the person from whom the maintenance is demanded offered to pay, are the amount which the widows' husband intended to give to her by will, which, however, was never executed (57-9). (*Sir Montague E. Smith.*) SREEMUTTY NITTOKISSOREE DOSSEE *v.* JOGENDRO NAUTH MULLICK. **(1878) 5 I.A. 55 = 3 Suth. 505 = Bald. 159 = 3 Sar. 792.**

———The amount to be allowed to a Hindu widow for her maintenance depends upon a gathering together of all the facts of the situation, the amount of free estate, the past life of the married parties and the families, a survey of the

HINDU LAW—(*Contd.*)
Widow -Maintenance—(*Contd.*)
RATE OF—(*Contd*).

condition and necessities and rights of the members, on a reasonable view of change of circumstances possibly required in the future, regard being, of course, had to the scale and mode of living, and to the age, habits, wants, and class of life of the parties. In short, it is out of a great category of circumstances, small in themselves, that a safe and reasonable induction is to be made by a Court of Law in arriving at a fixed sum.

Ordinarily such sum should be fixed for a widow's maintenance as would enable her to live as far as might be consistently with the position of a widow in something like the same degree of comfort and with the same reasonable luxury of life as she had in her husband's lifetime. The principle of assessing the maintenance might be different in cases in which the past mode of life of the widow has been demonstrably on a penurious and miserly scale or on a quite extravagant scale having regard to the total income of the husband. (*Lord Shaw.*) MT. EKRADESHWARI BAHNASIN SAHEBA *v.* HOMESHWAR SINGH. **(1929) 56 I.A. 182 = 27 A.L.J. 695 = 31 Bom. L.R. 816 = 49 C L.J. 579 = 30 L.W. 1 = 6 O.W.N. 526 = (1929) M.W.N. 468 = 116 I.C. 409 = 33 C.W.N. 687 = 10 Pat. L.T. 345 = A. I. R. 1929 P. C. 128 = 57 M.L.J. 501.**

Where the Courts below fixed such a sum for a widow's maintenance as would enable her to live as far as might be consistently with the position of a widow in something like the same degree of comfort and with the same reasonable luxury of life as she had in her husband's lifetime, *held* that that was sound point from which to start the estimate in a case in which the scale on which the husband had lived in his lifetime was one suited to his own position in life, but that the principle of assessing the maintenance might be different in a case in which the past mode of life of the widow had been demonstrably on a penurious and miserly scale or on a quite extravagant scale having regard to the total income of the husband. (*Lord Shaw.*) MT. EKRADASHWARI BAHUASIN SAHEBA *v.* HOMESHWAR SINGH. **(1929) 56 I. A. 182 = 33 C.W.N. 637 = 10 Pat. L.T. 345 = 27 A.L.J. 695 = A.I.R. 1929 P. C. 128 = 23 Bom. L. R. 816 = 49 C.L.J. 579 = 30 L. W. 1 = 6 O.W.N. 526 = (1929) M. W. N. 468 = 116 I. C. 409 = 57 M. L. J. 50.**

———Decree—Rate allowed by—Alteration of, owing to change of circumstances—Liberty to apply in suit itself for —Reservation in decree of—Propriety. *See* HINDU LAW—WIDOW—MAINTENANCE OF—DECREE AWARDING.

(1929) 56 I. A. 182.

———*Discretion of Indian Courts as to—P. C's interference with.*

The discretion exercised in fixing the amount to be awarded to a Hindu widow for maintenance when agreed to by two Indian Courts or even by one, should not be lightly interfered with by the Privy Council. (*Lord Shaw.*) MT. EKRADESHWAVI BAHUASIN SAHEBA *v.* HOMESHWAR SINGH. **(1929) 56 I. A. 182 = 27 A.L.J. 695 = 31 Bom. L.R. 816 = 49 C.L.J. 579 = 5 O.W.N. 526 = 80 L.W. 1 = (1929) M.W.N. 468 = 116 I.C. 409 = 33 C. W. N. 637 = 10 Pat. L. T. 345 = A. I. R. 1929 P. C. 128 = 57 M.L.J. 50.**

———*See also* HINDU LAW—MAINTENANCE.

———*Legal basis for fixing—Rate allowed a good many years before to another widow of family if affords a.*

On a question as to the amount to be awarded a Hindu widow for her maintenance, the fact that the sum awarded for maintenance to another widow of the family in a previous litigation a good many years before the relation of one-fourth to the then net income of the family was suggested as a principle of law to be applied to the case before their Lordships.

HINDU LAW—(*Contd.*)
Widow—Maintenance—(*Contd.*)
RATE OF—(*Contd.*)

Their Lordships definitely negativsd such a suggestion, observing: "It is no part of the maintenance law of India. In some cases, if applied, it would enlarge the allowance made far beyond any reasonable conception of maintenance as such. In other cases it might depress the allowance beyond what was a reasonable maintenance item." (*Lord Shaw.*) MT. EKRADESWARI BAHUASIN SAHEBA *v.* HOMESHWAR SINGH. **(1929) 56 I. A. 182 = 27 A L.J. 695 = 31 Bom. L.R. 816 = 49 C.L.J. 579 = 30 L.W. 1 = 6 O.W.N. 526 = (1929) M.W.N. 468 = 16 I. C. 409 = 33 C. W. N 637 = 10 Pat. L.T. 345 = A. I. R. 1929 P.C. 128 = 57 M.L.J. 50.**

———*Reduction of—Grounds— Improper disputing by her of title as adopted son of person from whom maintenance claimed if one.*

The fact that a Hindu widow improperly defended a suit brought by the adopted son of her deceased husband (from whom she claimed maintenance) by contesting the factum of his adoption is not a ground for reducing the amount to which she might otherwise be entitled for her maintenance (58-9). (*Sir Montague E. Smith.*) SREEMUTTY NITTOKISSOREE DOSSEE *v.* JOGENDRA NAUTH MULLICK. **(1878) 5 I. A. 55 = 3 Suth. 505 = Bald. 159 = 3 Sar. 792.**

RIGHT TO.

———*Accrual of, from time to time according to wants and exigencies of widow.*

By common law the right to maintenance is one accruing from time to time according to the wants and exigencies of the widow (118). (*Sir Montague E. Smith.*) NARAYANA RAO RAMCHANDRA PANT *v.* RAMABAI.

(1879) 6 I. A. 114 = 3 B. 415 (420) = 6 C. L. R. 162 = 4 Sar. 24 = 3 Suth. 617.

———*Debt if a—Charge on estate in respect of—Widow if has.*

It was argued that the maintenance of a Hindu widow is a charge upon her husband's estate, and like debts must be provided for previous to partition. But the analogy is not complete. The right of a widow to maintenance is founded on relationship, and differs from debts (124). (*Sir Richard Couch.*) SRIMATI HEMANGINI DASI *v.* KEDAR NATH KUDU CHOWDHRY. **(1889) 16 I. A. 115 = 16 C. 758 (766) = 5 Sar. 374.**

———Forfeiture of. *See* HINDU LAW—WIDOW—MAINTENANCE—FORFEITURE OF RIGHT TO.

SUIT TO ENFORCE RIGHT OF—LIMITATION.

———*Policy of law of.*

By common law the right to maintenance is one accruing from time to time according to the wants and exigencies of the widow; and a statute of limitation might do much harm if it should force widows to claim their strict rights, and commence litigation which, but for the purpose of keeping alive their claim, would not be necessary or desirable (118). (*Sir Montague E. Smith.*) NARAYANA RAO RAMCHANDRA PANT *v.* RAMABAI. **(1879) 6 I. A. 114 = 3 B. 415 (420) = 6 C.L.R. 162 = 4 Sar. 24 = 3 Suth. 617.**

WILL PROVIDING FOR—CONDITION IN, OF RESIDENCE IN ANCESTRAL HOUSE.

———*What amounts to—Construction of will.*

Where, by his will, a Hindu expressed his hopes that his wives and sons would all live amicably together after his death and would all look upon his eldest son as the manager of the family, bequeathed the whole of his property to his eldest son, and directed him to maintain his (testator's) widows and treat them with proper respect, *held* that a

HINDU LAW—(*Contd.*)

Widow—Maintenance—(*Contd.*)

WILL PROVIDING FOR—CONDITION IN, OF RESIDENCE IN ANCESTRAL HOUSE—(*Contd.*)

widow of the testator did not disentitle herself to maintenance by separating from the son and living apart from him.

It is argued that it was made a condition of the will to entitle her to maintenance that she should reside under the same roof and in joint family with the eldest son. Their Lordships, however, think that no such condition is to be found in the will, and that she was to be left in this respect in the ordinary position of a Hindu widow, in which case separation from the ancestral house would not generally disentitle her to maintenance suitable to her rank and condition (119). (*Sir Montague E. Smith.*) NARAYANA RAO RAMCHANDRA PANT *v.* RAMABAI.

(1879) 6 I. A. 114 = 3 B. 415 (421) = 6 C. L. R. 162 = 4 Sar. 24 = 3 Suth. 617.

Widow—Manager of joint family—Positions of.

———*Distinction.*

The position of a Hindu widow or daughter is not by any means the same as that of the head of an undivided family (192). (*Lord Davey.*) SHAM SUNDER LAL *v.* ACHHAN KUNWAR. **(1898) 25 I. A. 183 = 21 A. 71 (82-3) = 2 C. W. N. 729 = 7 Sar. 417.**

Widow—Mortgage—Portion of estate subject to—Revenue due upon.

———Wilful default to pay—Mortgagee paying—Remedy of. *See* HINDU LAW—WIDOW—REVENUE DUE UPON ESTATE—WILFUL DEFAULT TO PAY—MORTGAGED PROPERTY. **(1876) 11 M. I. A. 241 (267-8).**

Widow—Mortgage by.

CROWN TAKING BY ESCHEAT.
DAUGHTER'S DAUHTER'S MARRIAGE.
DEBT DUE UNDER—DISCHARGE BY PAYMENT OF.
DEBT DUE UNDER—REDUCTION OF, BY APPROPRIATION OF MONEY OF ESTATE IN HANDS OF MORTGAGEE—DUTY AS TO.
DECREE ON FOOT OF—SALE IN EXECUTION OF—PURCHASE BY MORTGAGEE HIMSELF AT—INTEREST ACQUIRED UNDER.
HUSBAND'S MONEY BUSINESS A LOSING CONCERN.
HUSBAND'S MORTGAGE—INTEREST DUE UNDER.
INTEREST ON—RATE OF, STIPULATED FOR—NECESSITY FOR.
LENDER UNDER—DUTY OF.
NECESSITY FOR.
REVERSIONER.
SUIT TO ENFORCE, AGAINST REVERSIONER.
SUIT TO ENFORCE, AGAINST WIDOW.

CROWN TAKING BY ESCHEAT.

———Binding nature of mortgage on. *See* EXCHEAT—WIDOW OF LAST MALE OWNER—DEBT PROPERLY CHARGED ON ESTATE BY. **(1860) 8 M. I. A. 500 (527) & (1867) 11 M. I. A. 619 (633).**

DAUGHTER'S DAUGHTER'S MARRIAGE.

———*Mortgage for raising money for expenses of—Validity—Father of girl alive.*

One of the items of consideration for a mortgage by a Hindu widow was a sum of money raised to defray the expenses of the marriage of her daughter's daughter. The son-in law of the widow and the father of the girl was alive at the time.

With regard to this item of consideration their Lordships observed: There is no explanation why the expenses of the daughter's daughter's marriage should be paid out of the last male owner's estate instead of by the father of the girl

HINDU LAW—(*Contd.*)

Widow—Mortgage by—(*Contd.*)

DAUGHTER'S DAUGHTER'S MARRIAGE——(*Contd.*)

(193-4). (*Lord Davey.*) SHAM SUNDER LAL *v.* ACHHAN KUNWAR. **(1898) 25 I.A. 183 = 21 A. 71 (84-5) = 2 C. W. N. 729 = 7 Sar. 417.**

DEBT DUE UNDER—DISCHARGE BY PAYMENT OF.

———*Plea by reversioner of—Onus of Proof in case of.*

Because a reversioner or the Crown taking the property of a deceased Hindu by escheat has the right to demand proof that a charge claimed against the estate was a charge on the estate by the act of the widow, and that the debt charged was of a particular character, it does not follow that the ordinary rule, which requires the party who alleges payment to prove payment, is to be inverted in favour of the reversioner or the Crown, or that the debt is to be presumed to be satisfied unless the contrary is shown by the creditor. If, indeed, the facts showed a strong probability of the satisfaction of the debt by the proper application of the surplus revenue of the estate by the widow, the court might be justified in pressing against the creditor the non-production of accounts, or of other satisfactory proof that the debt had not been so satisfied. The Court might legitimately hold that the facts establishing that probability afforded *prima facie* evidence of payment. Such an inference is not legitimate where the facts proved are such as fairly lead to the opposite conclusion (633). (*Sir James W. Colvile.*) CAVALY VENCATA NARAINAPAH *v.* COLLECTOR OF MASULIPATAM. **(1867) 11 M. I. A. 619 = 2 Sar. 338 = 10 W. R. P. C. 47 = 2 Suth. 103.**

DEBT DUE UNDER—REDUCTION OF, BY APPROPRIATION OF MONEY OF ESTATE IN HANDS OF MORTGAGEE—DUTY AS TO.

———*Failure to appropriate—Deduction of that amount from money owing to mortgagee under mortgage.*

The reason of the rule that a person, who lends money to a Hindu widow after due inquiry as to the existence of a necessity for the loan is not bound to see to the application of the money, is that the purposes for which a loan is wanted are often future, as respects the actual application, and the lender can rarely have, unless he enters upon the management, the means of controlling and rightly directing the actual application. That rule has no application to a case where the lender has the control and actual application of the money. Having that control and application he is bound to see that the money is properly applied (5).

The suit was to recover a large sum of money which the plaintiff had advanced to the 1st defendant, a Hindu widow, from time to time, and which, except as to a very small portion of the claim, was secured by mortgages upon her husband's property granted by the 1st defendant. The question was whether a sum of Rs. 10,000, which had been found by the Courts below to have been received by the plaintiff's principal man of business on account of the ijara rent due to the estate, ought to be deducted from the suit claim.

Held that the plaintiff ought to have seen that that sum of Rs. 10,000 was applied in reduction of the debt for which the estate was liable, and that the judgment of the High Court was right in deducting the whole of that sum (4-5.) (*Sir Barn Peacock.*) RAJAH HURRINATH ROY BAHADUR *v.* RUNDHIR SINGH. **(1890) 18 I. A. 1 = 18 C. 311 (314-5) = 5 Sar. 642.**

DECREE ON FOOT OF—SALE IN EXECUTION OF—PURCHASE BY MORTGAGEE HIMSELF AT—INTEREST ACQUIRED UNDER.

———*Purchase after decree in reversioner's suit declaring mortgage invalid as against reversioners.*

HINDU LAW—(*Contd.*)

Widow—Mortgage by—(*Contd.*)

DECREE ON FOOT OF—SALE IN EXECUTION OF—PURCHASE BY MORTGAGEE HIMSELF AT—INTEREST ACQUIRED UNDER—(*Contd.*)

After the decree in a suit by a presumptive reversioner declaring a mortgage made by the widow and a decree obtained on foot thereof invalid as against the reversionary body, the mortgagee purchased the property in execution of his own decree. *Quaere* whether by his purchase the mortgagee acquired anything more than the rights and interests of the widow in the property in question as those had been declared by the decree in the reversioner's suit. (*Lord Blanesburgh*) KESHO PRASAD SINGH *v.* SHEO PRAGASH OJHA. (1924) 51 I. A. 381 (385) = 46 A. 831 = 10 O. & A. L. R. 1105 = 40 C. L. J. 461 = A. I. R. (1924) P. C. 247 = 23 A. L. J. 168 = 27 Bom. L. R. 130 = 29 C. W. N. 606 = 21 L. W. 295 = 82 I. C. 962 = 47 M. L. J. 824.

HUSBAND'S MONEY BUSINESS A LOSING CONCERN.

———Mortgage for carrying on—Validity. *See* HINDU LAW—WIDOW—TRADE OF HUSBAND—MONEY BUSINESS. (1892) 19 I. A. 196 (201-2) = 14 A. 420 (428).

HUSBAND'S MORTGAGE—INTEREST DUE UNDER.

———*Mortgage for—Validity.*

A Hindu widow cannot turn interest due by the estate into principal without any apparent reason. Where without any such reason and without any inquiry into the means and circumstances of the widow a mortgage was taken for interest due under mortgages executed by her husband, *held* that the mortgage was beyond the widow's powers and was invalid. (*Lord Macnaghten.*) TIKA RAM *v.* DEPUTY COMMISSIONER OF BARA BANKI. 26 C. 707 (710-1) = (1899) 26 I. A. 97 (99) = 3 C. W. N. 573 = 1 Bom. L. R. 692 = 7 Sar. 520.

INTEREST ON—RATE OF, STIPULATED FOR—NECESSITY FOR.

———*Absence of—Plea of—What amounts to.*

In a suit on a mortgage bond executed by a Hindu widow the defendant pleaded that the bond sued on was entirely illegal and without passing of consideration and was without legal necessity.

Held, reversing the High Court, that the defendant's plea raised the question of necessity for the rate of interest provided for by the suit bond.

A plea of no legal necessity for a loan and that the property is not at all liable for the payment of the amount claimed opens the door for a defendant to say that the rate of interest is excessive and places on the plaintiff the onus of proving that the rate of interest is not excessive, having regard to all the circumstances which prevailed when the loan was made. (*Lord Dunedin.*) RADHA KISHUN *v.* JAG SAHU. (1924) 51 I. A. 278 (279-81) = 4 P. 19 = 26 Bom. L. R. 732 = 35 M. L. T. 177 = A. I. R. (1924) P. C. 184 = 5 Pat. L. T. 434 = 20 L. W. 285 = 2 Pat. L. R. 259 = 22 A. L. J. 959 = 29 C. W. N. 293 = 10 O. & A. L. R. 1384 = 11 O. L. J. 652 = 80 I. C. 791 = 47 M. L. J. 329.

———*See also* UNDER HINDU LAW—JOINT FAMILY—MANAGER—MORTGAGE BY—INTEREST ON—RATE OF, STIPULATED FOR NECESSITY FOR—PLEA OF ABSENCE OF. (1919) 46 I. A. 145 (148) = 41 A. 571 (575) & (1922) 50 I. A. 14 (22) = 2 Pat. 285.

———Absence of—Reduction of rate in case of. *See* UNDER THIS VERY SUB-HEAD—ONUS OF PROOF OF. (1890) 18 I. A. 1 (6) = 18 C. 311 (315-6).

———*Evidence of—Other borrowings by widow at high rate—Evidence of—Value of.*

HINDU LAW—(*Contd.*)

Widow—Mortgage by—(*Contd.*)

INTEREST ON—RATE OF, STIPULATED FOR—NECESSITY FOR—(*Contd.*)

On an issue as to whether there was necessity for the rate of interest stipulated for in a mortgage by a Hindu widow, *held* that evidence simply that on one other occasion the widow had borrowed at high interest was not in any way conclusive as to what she might have done on the occasion in question. (*Lord Dunedin.*) RADHA KISHUN *v.* JAG SAHU. (1924) 51 I. A. 278 (281-2) = 4 P. 19 = 26 Bom. L. R. 732 = 35 M. L. T. 177 = A. I. R. (1924) P. C. 184 = 5 Pat. L. T. 434 = 20 L. W. 285 = 2 Pat. L. R. 259 = 22 A. L. J. 959 = 29 C. W. N. 293 = 10 O. & A. L. R. 1384 = 11 O. L. J. 652 = 80 I. C. 791 = 47 M. L. J. 329.

———*Evidence of—Other borrowings by widow at high rate and decree on one of them—Evidence of—Insufficiency of.*

On an issue as to whether there was necessity for the high rate of interest stipulated for in a mortgage bond executed by a Hindu widow, the only evidence adduced consisted of the production of two bonds granted by the same widow borrowing at a high rate of interest and decree obtained on one of the bonds, and the tender of a witness to speak to the execution of one of the bonds.

Held that there was really no evidence of necessity for the high rate of interest stipulated for by the bond in suit. (*Lord Dunedin.*) RADHA KISHUN *v.* JAG SAHU. (1924) 51 I. A. 278 (281-2) = 4 P. 19 = 26 Bom. L. R. 732 = 35 M. L. T. 177 = A. I. R. (1924) P. C. 184 = 5 Pat. L. T. 434 = 20 L. W. 285 = 2 Pat. L. R. 259 = 22 A. L. J. 959 = 29 C. W. N. 293 = 10 O. & A. L. R. 1384 = 11 O. L. J. 652 = 80 I. C. 791 = 47 M. L. J. 329.

———*Onus of Proof of.*

A person advancing money to a Hindu widow ought to apply his mind to the question whether there is a necessity to borrow at the rate of interest charged by him; and if it were unreasonable to suppose that the widow could not borrow the money at a lower rate than that charged by him, he ought not to charge her that rate (5-6).

Held that the High Court acted rightly in reducing the rate of interest from 18 per cent. (the rate charged) to 12 per cent. (6). (*Sir Barnes Peacock.*) RAJAH HURRONATH ROY BAHADOOR *v.* RUNDHIR SINGH. (1890) 18 I. A. 1 = 18 C. 311 (315-6) = 5 Sar. 642.

———*Onus of Proof of—Shifting of—Conditions.*

In a suit to enforce a mortgage by a Hindu widow of her husband's estate, *held* that the onus was on the lender to prove not only that there was necessity for the loan but that the necessity included borrowing on such terms as were provided for by the mortgage bond.

Held further that, as in all questions of onus, a certain amount of evidence might cause the onus to shift, and that evidence on the lender's part that the money could not, in the circumstances, have been raised at less interest would suffice to shift the onus so that, if the defendant led no evidence to controvert that statement, the lender would prevail, but that when there was no evidence and it was evident on the face of the document that the interest charged was far in excess of commercial rates, then undoubtedly the lender had not discharged his task. (*Lord Dunedin.*) RADHA KISHUN *v.* JAG SAHU. (1924) 51 I. A. 278 (281) = 4 P. 19 = 26 Bom. L. R. 732 = 35 M. L. T. 177 = A. I. R. 1924 P. C. 184 = 5 Pat. L. T. 434 = 20 L. W. 285 = 2 Pat. L. R. 259 = 29 C. W. N. 293 = 10 O. & A. L. R. 1384 = 11 O. L. J. 652 = 80 I. C. 791 = 47 M. L. J. 329.

HINDU LAW—(*Contd.*)

Widow—Mortgage by—(*Contd.*)

LENDER UNDER—DUTY OF.

A lender who takes from a Hindu widow a charge upon her husband's inheritance is under a legal obligation to inquire and satisfy himself that the widow had a proper justification for so charging it (202). (*Lord Hobhouse.*) LALA AMARNATH SAH *v.* RANI ACHAN KUAR.
(1892) 19 I.A. 196=14 A. 420 (429)=6 Sar. 197.

NECESSITY FOR.

———*Evidence of—Husband's heavy indebtedness—Widow contracting fresh loans on easier terms to meet — General evidence of—Sufficiency of.*

In a suit by the heir of a mortgagee to establish against a Hindu reversionary heir the validity of a mortgage created by his widow, *held*, that general evidence to the effect that the husband was heavily indebted at the time of his death, that he had agreed to pay heavy interest, and that the widow had fresh loans at a lower rate of interest to pay off the old ones, the loan on the suit mortgage being one of them, was not sufficient to discharge the onus on the plaintiff (62-3). (*Sir Richard Couch.*) MAHESHAR BAKSH SINGH *v.* RATAN SINGH. **(1896) 23 I. A. 57= 23 C. 766=7 Sar. 19=6 M. L. J. 127.**

———*Daughter's marriage—Mortgage for raising money for expenses of—Necessity for—Proof of.*

Where a Hindu widow, holding the usual 'widow's estate' in her deceased husband's property, executed a mortgage of it, and it was found that the income from the lands at the material time was hardly sufficient to meet the ordinary expenses of the family, that she had no alternative and was compelled to resort to borrowing in order to meet the extraordinary expenses of the marriages of her daughters, *held*, on the evidence, that necessity for the alienation had been established. (*Sir Lancelot Sanderson.*) BHAGWAN SINGH *v.* UJAGAR SINGH. **(1927) 47 C. L. J. 189= 30 Bom. L. R. 267=107 I. C. 20=29 Punj. L. R. 182= 32 C. W. N. 538=1 L. T. 40 Lah. 49=27 L. W. 672= 26 A. L. J. 553=(1928) M. W. N. 933= A. I. R. 1928 P.C. 20=54 M. L. J. 254 (257).**

———Onus of Proof of—Reversioner's suit to set aside mortgage. *See* HINDU LAW—WIDOW — MORTGAGE BY —REVERSIONER—SUIT BY, TO SET ASIDE ETC.
(1871) 14 M I. A. 187 (199).

———Onus of Proof of—Suit to enforce mortgage against reversioners. *See* HINDU LAW—WIDOW — MORTGAGE BY—SUIT TO ENFORCE, AGAINST REVERSIONERS — NECESSITY FOR MORTGAGE.

———*Proof of—Quantum.*

In a suit to enforce a mortgage bond executed by a Hindu widow, the plaintiff prayed for an absolute decree for the sale of the property alleged to have been mortgaged, including the reversionary interest therein. There was hardly any evidence on the part of the plaintiff to shew what negotiations took place with him, and what representations induced him to advance the money ; still less was there any proof that, having those representations before him, he made the necessary and proper inquiries. The evidence adduced by him was consistent with this state of things ; that the widow's servants, the dewans, chiefly managed her affairs ; that if they had immediate occasion for a sum of money they might have gone to the plaintiff's kooti and got a temporary loan.

Held, that the evidence failed to prove a necessity so serious as would justify a pledge of her husband's estate in excess of the ordinary powers of a Hindu widow, or reasonable grounds for the belief of such necessity (12-3). (*Sir James W. Colvile.*) BABOO KAMESWAR PERSHAD *v.* RUN BAHADUR SINGH. **(1880) 8 I. A. 8= 6 C. 843 (848)=8 C. L. R. 361=4 Sar. 210.**

HINDU LAW—(*Contd.*)

Widow—Mortgage by—(*Contd.*)

REVERSIONER.

———*Admission of mortgage by—Effect of.*

The reversioner's admission of a mortgage bond executed by a Hindu widow cannot make the debt secured by the bond a debt of the last male owner, or one for which his estate is liable (194). (*Lord Davey.*) SHAM SUNDER LAL *v.* ACHHAN KUNWAR. **(1898) 25 I. A. 183= 21 A. 71 (85)=2 C. W. N. 729=7 Sar. 417.**

———*Admission of mortgage by, in ignorance of its nature and effect—Effect of.*

A mortgage of her husband's estate made by a Hindu widow by a bond of December 1877 was found not to have been made for purposes binding on the estate of her deceased husband. It was, however, contended for the mortgagee that that mortgage bond was binding on the estate because it was confirmed by a bond of 1881 executed by the daughter of the last male owner, his widow having died in the interval ,and by the son of that daughter then of age in favour of the mortgagees. The alleged admission of the bond of December 2, 1877 was contained only in the statement in the bond of 1881 that the creditors had no deed except the bonds of May 25, 1877, and December 2, 1877 "which are payable." It was found that the nature and effect of the bond of 1881, or of the admission of liability for past debts contained in that bond, were never explained to or properly appreciated by either the daughter or her son.

Held, affirming the High Court, that under such circumstances the alleged admission was of no avail to the mortgagee (192-194). (*Lord Davey.*) SHAM SUNDER LAL *v.* ACHHAN KUNWAR. **(1898) 25 I. A, 183= 21 A. 71 (83-4, 85)=2 C. W. N. 729=7 Sar. 417.**

———*Binding nature of mortgage on—Condition—Necessity.*

P was entitled only to a life-interest in the property mortgaged by her and could not grant a mortgage of it which would be binding on the person who might be the reversioner at the time of her death unless there was legal necessity for her making the grant (271 2). MATI LAL DAS *v.* EASTERN MORTGAGE AND AGENCY CO., LTD. (*Sir John Edge.*) **(1920) 25 C. W. N. 265=(1920) M. W. N. 631= 28 M. L. T. 351=61 I. C. 486.**

———*Consent to mortgage of — Reversionary interest if affected by—Mortgage intended to charge widow's interest only.*

Where the language of a deed of mortgage executed by a Hindu widow was fully consistent with the fact that her interest alone was intended to be charged, there was nothing to show that the reversioners who helped her to raise the loan understood it otherwise, and there was no evidence to show that they benefited from the transaction, or that so far as they were concerned there was any need for the mortgage, *held* that the facts that they helped her to raise the loan, that one of them wrote her name in the deed, and that some others had attested the deed, did not amount to a consent to bind their interests (70). (*Mr. Ameer Ali.*) HARI KISHAN BHAGAT *v.* KASHI PERSHAD SINGH.
(1914) 42 I.A. 64=42 C. 876 (886)=19 C.W.N. 370= 17 M, L. T. 115=2 L. W. 219=(1915) M. W. N. 511= 13 A. L. J. 223=21 C. L. J. 225=17 Bom. L. R. 426= 27 I. C. 674=28 M. L. J. 565.

———Daughter—Reversioner a — Deed by, validating mortgage—Proof of—Onus—Quantum—Daughter purdanashin. *See* PURDANASHIN—DEED BY—VALIDITY OF—PROOF OF—ONUS— QUANTUM—DAUGHTER REVERSIONER. **(1892) 19 I. A. 196 (200)=14 A. 420 (426-7).**

———*Personal liability of, under mortgage—Surrender by widow of whole estate to reversioner—Agreement by him to pay off her liabilities—Effect.*

HINDU LAW—(*Contd.*)

Widow—Mortgage by—(*Contd.*)

REVERSIONER—(*Contd.*)

A, a Hindu widow, who had inherited the estate of her deceased husband, incurred debts to the appellant, and, on 1-3 1872, she executed a bond to him for a stated sum, to meet the amount of her liability, and thereby hypothecated certain mouzahs appertaining to her husband's estate. On 31-8-1872, an agreement was entered into between the widow and *R*, the presumptive reversionary heir of her husband, whereby she surrendered her interest in her husband's estate to *R*, upon condition that he was to pay her an allowance of Rs. 24,000 for her maintenance, and was to pay off her liabilities. On 31-3-1876, the appellant instituted a suit on the bond against the widow, *A*, and *R*. *R* was joined as a defendant upon the ground that the widow, *A*, had, under the agreement of 1872, given over to him the whole of her properties, including what was mortgaged by the bond, but no relief was claimed against him personally.

Held, that it was clearly competent for the appellant to allege in that suit the personal liability of *R* for the amount of the bond (237).

The appellant relied upon the fact of the mortgage being one affecting the whole estate; but he could also have alleged that *R* was bound at all events to pay him, in consequence of the agreement which he had entered into with the widow (237). (*Lord Morris.*) KAMESWAR PERSHAD *v.* RAJKUMARI RUTTUN KOER. (1892) **19 I. A. 234 = 20 C. 79 (85) = 6 Sar. 241.**

———Remote reversioner—Admission and recognition of mortgage by—Efiect of, on its validity. *See* HINDU LAW—REVERSIONER — REMOTE REVERSIONER — WIDOW—ALIENATION BY—ADMISSION AND RECOGNITION OF. **(1892) 19 I. A. 196 (199) = 14 A. 420 (425-6).**

———*Suit by, to set aside mortgage—Necessity for mortgage—Proof of—Onus of.*

A reversioner sued to set aside a mortgage of the last male owner's estate made by his widow and mother, alleging that it was not within the power of a Hindu widow to grant it, the money not being raised for any of those purposes for which the widow was allowed to pledge the estate.

Held that, in such a case, whatever might be the precise degree of proof required from those who relied upon the mortgage, there was no doubt that those who took such a security from a person, having only a limited power to grant it, were bound to show, *prima facie* at least, that the money was raised for a legitimate purpose (199).

Held further, on the evidence, that the mortgagee had failed to show that the mortgage was given in any part for the purposes, for which the widow was entitled to pledge the estate (202). (*Sir Jamesw Colvile.*) RAO KURUN SING *v.* NAWAB MAHOMED FYZ ALI. (1871) **14 M.I.A. 187 = 2 Suth 474 = 2 Sar. 722 = 10 B. L. R. 1.**

———Suit to enforce mortgage against. *See* HINDU LAW — WIDOW — MORTGAGE BY— SUIT TO ENFORCE, AGAINST REVERSIONERS.

———Valid mortgage—Possession of property subject to—Suit for recovery of—Decree proper in case of—Dismissal of suit without prejudice to plaintiff's right to redeem mortgage. *See* HINDU LAW— REVERSIONER— WIDOW—DEATH OF—POSSESSION OF PROPERTY ON—SUIT FOR—MORTGAGE VALID, ETC. **(1867) 11 M.I.A. 619 (636, 638).**

SUIT TO ENFORCE, AGAINST REVERSIONER.

———*Necessity for mortgage—Absence of—Onus not on reversioners to prove—Onus on mortgagee to prove necessity.*

The rule is that a mortgagee claiming title under a Hindu widow as against the husband's heirs should prove the validity of his mortgage. The onus is not on the heirs to prove the absence of necessity for the mortgage (198).

HINDU LAW—(*Contd.*)

Widow—Mortgage by—(*Contd.*)

SUIT TO ENFORCE, AGAINST REVERSIONER—(*Contd.*)

(*Lord Hobhouse.*) LALA AMARANATH SAH *v.* RANI ACHAN KUNWAR. **(1892) 19 I. A. 196 = 14 A. 420 (427-8) = 6 Sar. 197.**

———In a suit by the heir of a mortgagee to establish against a Hindu's reversionary heirs the validity of a mortgage executed by his widow, *held* that the defendants were not bound to prove that the profits which the widow obtained from the estate sufficed to meet the liabilities upon it (63). (*Sir Richard Couch.*) MAHESHAR BAKSH SINGH *v.* RATAN SINGH. **(1896) 23 I. A. 57 = 23 C. 766 = 7 Sar. 19 = 6 M. L. J. 127.**

———*Necessity for mortgage—Absence of—Plea by reversioners of—Not necessary—Onus on mortgagee to allege and prove necessity.*

In a suit enforce a mortgage bond made by a person with restricted power of alienation, the defendants (reversioners) are not required to plead the absence of legal necessity for the borrowing. It is for the plaintiff to allege and prove the circumstances which alone will give validity to the mortgage (191). (*Lord Davey.*) SHAM SUNDER LAL *v.* ACHHAN KUNWAR. **(1898) 25 I. A. 183 = 21 A. 71 (81) = 2 C. W. N. 729 = 7 Sar. 417.**

———*Necessity for mortgage—Onus of proof of.*

In a suit by the heir of a mortgagee to establish against a Hindu's reversionary heirs the validity of a mortgage created by his widow, *held* that the onus lay on the plaintiff of proving that the money was borrowed for a legitimate purpose and that in proof of this he ought to produce sufficient evidence of the nature of the transaction (62). (*Sir Richard Couch.*) MAHESHAR BAKSH SINGH *v.* RATAN SINGH. **(1896) 23 I.A. 57 = 23 C. 766 = 7 Sar. 19 = 6 M.L.J. 127.**

———*Necessity for mortgage—Onus of proof of—Suit by heir of mortgagee.*

Although the suit here is not brought by the original mortgagee, the affirmative of the question whether the money was borrowed for a legitimate purpose is on the plaintiff who seeks to have the mortgage enforced (63). (*Sir Richard Couch.*) MAHESHAR BAKSH SINGH *v.* RATAN SINGH. **(1896) 23 I. A. 57 = 23 C. 766 = 7 Sar. 19 = 6 M. L. J. 127.**

———*Necessity for mortgage—Representation of*, bona fide *believed in by mortgagee—Proof of—Sufficiency of.*

The principles laid down in the case of Hunooman Pershad Panday (6 M. I. A. 393) are applicable to alienations by a Hindu widow. A plaintiff, therefore, who seeks to charge the inheritance after the death of a widow, by virtue of a security executed by her, is bound at least to show the nature of the transaction, and that in advancing his money he gave credit on reasonable grounds to an assertion that the money was wanted for one of the recognised necessities (11). (*Sir James W. Colvile.*) BABOO KAMESWAR PERSHAD *v.* RUN BAHADOOR SINGH. **(1880) 8 I. A. 8 = 6 C. 843 (847 8) = 8 C. L. R. 361 = 4 Sar. 210.**

———To prove the validity of the mortgage the mortgagee must shew, either that there was legal necessity for raising the money by a charge on the husband's estate, or, at least, that in advancing his money the mortgagee gave credit on reasonable grounds to representations that the money was wanted for such necessity (201). (*Lord Hobhouse.*) LALA AMARANATH SAH *v.* RANI ACHAN KUNWAR. **(1892) 19 I. A. 196 = 14 A. 420 (427 8) = 6 Sar. 197.**

———To give validity to the mottgage bonds as against the estate of Khairati, the last male owner, the plaintiffs and appellants must show that there was legal necessity for

HINDU LAW—(*Contd.*)

Widow—Mortgage by—(*Contd.*)

SUIT TO ENFORCE, AGAINST REVERSIONER—(*Contd.*)

raising the money by a charge on Khairati's estate, or at least that in advancing their money the creditors gave credit on reasonable grounds to representations that the money was wanted for such necessity (189). (*Lord Davey.*) SHAM SUNDER LAL *v.* ACHHAN KUNWAR. **(1898) 25 I.A. 183 = 21 A. 71 (80) = 7 Sar. 417 = 2 C. W. N. 729.**

———*Pledge of husband's estate—Intention of widow as to —Proof of—Necessity.*

In order that the inheritance might be charged after the death of a widow by a mortgage bond executed by her, it is necessary, in the first place, to show that the widow intended to do that which the law allows her to do in certain specified cases; *viz.*, to make a pledge of her husband's estate. There is a total failure of proof that she did really intend to do that, where it appears that the document was not properly explained to her; that she did not understand, or was not properly informed, that it was a deed mortgaging the property (9-10). The question whether the property was mortgaged at all depends upon the fact whether the widow intentionally executed a deed containing such a stipulation (10). (*Sir James W. Colvile.*) BABOO KAMESWAR PERSHAD *v.* RUN BAHADOOR SINGH. **(1880) 8 I. A. 8 = 6 C. 843 (846) = 8 C. L. R. 361 = 4 Sar. 210.**

SUIT TO ENFORCE, AGAINST WIDOW.

———*Money decree against widow in—Propriety—Execution of deed with full comprehension of its nature and effect —Failure of plaintiff to prove—Finding of—Effect.*

In a suit to enforce against a Hindu widow a mortgage bond executed by her, the High Court found that the deed had not been properly explained to her; and that she did not understand, or was not properly informed, that it was a deed mortgaging the property, but nevertheless passed a money decree against her.

Quaere: whether, having found that there was a total failure of proof as to the proper explanation of the deed to the lady, the High Court was right in going so far as to make a money decree against her (10). (*Sir James W. Colvile.*) BABOO KAMESWAR PERSHAD *v.* RUN BAHADOOR SINGH. **(1880) 8 I. A. 8 = 6 C. 843 (846) = 8 C. L. R. 361 = 4 Sar. 210.**

———*Mortgage found to be invalid—Husband's personal liability under unregistered rukkas executed by him—Decree in suit against estate on foot of—Propriety.*

The plaintiff was mortgagee under three mortgages executed by a deceased Hindu, and under a fourth mortgage executed after the death of the deceased by his widow. The fourth mortgage was for interest due under the three earlier mortgages. The deceased had executed unregistered rukkas (notes) promising to pay interest additional to that contracted for in the registered mortgage deeds. In a suit to enforce the four mortgages, the claim under the mortgage by the widow was disallowed on the ground that the mortgage was beyond her competence as a Hindu widow. The plaintiff asked their Lordships to give a decree against the estate of the deceased on his personal liability under the rukkas. That question was not raised in the pleadings or issues.

Held that it was not competent for the Court to deal with that question in the suit as framed. (*Lord Macnaghten.*) TIKA RAM *v.* DEPUTY COMMISSIONER OF BARA BANKI. **(1899) 26 I. A. 97 (100) = 3 C.W.N. 573 = 26 C. 707 (711-2) = 16 Bom. L. R. 692 = 7 Sar. 520.**

Widow—Oudh Estate.

———Grant of, to her and her heirs—Estate conveyed under—Estate granted ancestral estate in possession of widow as heir of husband. *See* OUDH ESTATE—GRANT OF, WIDOW AND HER HEIRS. **(1871) 5 I. A. 1 (11-2).**

HINDU LAW—(*Contd.*)

Widow—Oudh Estate—(*Contd.*)

———*Summary settlement with widow of, and sunnud granting same to her absolutely—Estate taken under.*

At the time of the annexation of Oudh an estate was in the possession of *K*, a Hindu widow, to whom it had descended as the surviving widow of her deceased husband. In 1858 the estate was confiscated by the British Government by virtue of Lord Canning's proclamation of the 15th of March in that year. The summary settlement for 1858-9 was made with *K*, and a sunnud was granted to her in or about 1861 conferring a full proprietary and transferable right in the estate upon her and her male heirs according to the law of primogeniture. After the passing of the Oudh Estates Act of 1869 *K's* name was also entered in Lists I and II of the lists mentioned in S. 8 of the Act.

Held that, the estate was the separate or absolute property of *K* within the meaning of the Mithakshara Law (15-7). (*Sir Barnes Peacock.*) BRIJ INDAR BAHADUR SINGH *v.* RANEE JANKI KOER. **(1877) 5 I. A. 1 = 1 C. L. R. 318 = 3 Sar 763 = Bald. 148 = 3 Suth. 474 = R. & J.'s No. 48.**

———Villages and rights within, inherited from husband—Estate in—Widow's estate or life estate. *See* OUDH ESTATES ACT OF 1869—HINDU WIDOW. **(1873) Sup. I. A. 220 (235-6).**

Widow—Partition with husband's co-parceners.

———*Immoveable property allotted to widow at—Estate taken in—Devolution of.*

Immoveable property, obtained by a Hindu widow on partition of the joint family property under the Mithakshara Law, is not part of her stridhan in the narrow sense of that word, indicating her separate property or *peculium* which passes on her death to her own heirs, but reverts on her death to the next heirs of her husband. Of course, the members of a joint family effecting a partition may agree that a portion of the property shall be transferred to the widow by way of absolute gift, as part of her stridhan, so as to constitute a provision for her stridhan heirs; but, in the absence of any such intention, their Lordships do not feel justified in putting property acquired by a widow, on a partition of the joint estate, upon a footing different from that on which property coming to her by way of inheritance has been placed (131). (*Lord Robson.*) DEBI MANGAL PRASAD SINGH *v.* MAHADEO PRASAD SINGH. **(1912) 39 I. A. 121 = 34 A. 234 (242-3) = 11 M. L. T. 217 = 9 A. L. J. 263 = 16 C. W. N. 409 = 14 Bom. L. R. 220 = 15 C. L. J. 344 = 14 I. C. 1000 = 22 M. L. J. 462.**

———*Property allotted to widow at—Estate taken in.*

The case is wholly distinguishable from those in which a widow, having a right to an ascertained share upon a partition with co-parceners, who have an absolute interest in their shares, is put by them into possession of that share. In such case it may be a question, whether her interest does not become absolute (514). (*Sir Jamesw Colvile.*) BHUGWANDEEN DOOBEY *v.* MYNA BAEE. **(1867) 11 M. I. A. 487 = 9 W. R. P. C. 23 = 2 Suth. 124 = 2 Sar. 327.**

Widow—Person dealing with.

———*Duty of.*

The vendee was entering into a transaction with a Hindu female. It lay upon him to acquaint himself with the extent of her powers. (*Mr. Ameer Ali.*) GUR NARAYAN *v.* SHEO LAL SINGH. **(1918) 46 I. A. 1 (12) = 46 C. 566 (578) = 17 A. L. J. 66 = 9 L.W. 335 = 23 C. W. N. 531 = 12 Bur. L. T. 122 = 49 I. C. 1 = 36 M. L. J. 68.**

HINDU LAW—(*Contd.*)

Widow—Power-of-Attorney by—Execution of.

———*Proof of—Quantum.*

Where the question was whether the respondent, a Hindu widow, had or had not executed the Mooktearnamah set up by the appellant, *held*, affirming the judgment of the High Court, which had reversed the judgment of the Court below, that there was no legal proof of the execution of the Mooktearnamah, and that the absence of such proof was not compensated by any legitimate inferences to be drawn from the other facts disclosed in the case. (*Lord Romilly.*) SEETHUL PERSHAD *v.* MUSSUMAT DOOLHIN BADAM KONWAR. (1867) **11 M. I. A. 268 = 8 W. R. P. C. 22 = 2 Suth. 83 = 2 Sar. 281.**

Widow—Property in possession of—Husband's or widow's own.

———*Presumption—Onus of Proof.*

It was alleged that when a widow is found in possession of property, of the acquisition of which no account is given, and it is shown that her husband died possessed of considerable property, then there is a presumption of law that the property found in the widow's possession was originally that of her husband. Their Lordships are not prepared to adopt this proposition. (*Sir Edward Fry.*) DIWAN RAN BIJAI BAHADUR SINGH *v.* INDRAPAL SINGH.

(1899) 26 I. A. 226 = 26 C. 871 (873) = 4 C. W. N 1 = 2 Bom. L. R. 1 = 7 Sar. 578.

Widow—Release in favour of female presumptive reversioner by.

———*Effect of.*

Two Hindu widows, who had inherited the estate of their husband, *B*, executed a deed in favour of *D*, his daughter by one of them, whereby, after stating that with the exeception of *D*, there was no heir of their husband or of themselves, they made a gift to her of certain lands and villages, only retaining to themselves a life interest in part of them.

In a suit by the plaintiffs, the presumptive heirs of *B*, subject to the interest of the widows, for a decision that the deed of gift in favour of *D* was null and void as regards the reversionary interests of the plaintiffs, it was contended by the widows and the daughter of *D*, who had died in the interval, that if a widow released her interest to her husband's heir presumptive, which *D*, was at the time of the said gift, the absolute interest became at once vested in such heir, and therefore the inheritance devolved on the daughter of *D*.

The Sub-Judge held that the conveyance to *D*, did not vest the inheritance in her, because she was heir only to a woman's estate, and the prescribed course of inheritance would be changed if she took an estate transmissible to her own heirs. The High Court, on appeal, did not express any opinion adverse to that of the Sub-Judge.

Their Lordships concurred with the Sub-Judge (157). (*Sir Arthur Hobhouse.*) ISRI DUT KOER *v.* MUSSUMUT HANSBUTH KOERAIN. (1883) **10 I. A. 150 = 10 C. 324 (334) = 13 C. L. R. 418 = 4 Sar. 459.**

Widow—Renunciation of claim to husband's estate by.

———Effect against reversioner of. *See* HINDU LAW—REVERSIONER—WIDOW—RENUNCIATION OF ETC.

(1926) 54 I. A. 5 (17) = 1 Luck. 583.

Widow—Residence of.

———*Husband's house—Residence in—Not necessary to maintain her reputation.*

The Hindu law does not require a Hindu widow, for the purpose of maintaining her reputation, necessarily to live with her husband's relatives. She does not injure her reputation by living with her own mother or her own father. It is laid down as a rule of law that she is not bound to live with her husband's relatives (207). (*Sir Barnes Peacock.*) RAJAH PRITHEE SINGH *v.* RANEE RAJ KOWER.

(1873) Sup. I. A. 203 = 12 B. L. R. 238 = 20 W. R. 21 = 3 Sar. 259 = 2 Suth. 846.

———*Place of—Husband's family.*

It is only in her husband's family that in the strict contemplation of law a Hindu widow ought to reside (191). (*Sir James W. Colvile.*) SRI RAGHUNADHA *v.* SRI BROZO KISHORO. **(1876) 3 I. A. 154 = 1 M. 69 (81) = 25 W. R 291 = 3 Sar. 583 = 3 Suth. 263.**

Widow—Revenue due upon estate—Wilful default to pay.

———*Mortgaged property—Revenue due upon—Mortgagee paying—Remedy of.*

A Hindu widow, who was in possession as her husband's heiress of property mortgaged by him to a third party, wilfully defaulted to pay the revenue due to the Government for the same. The mortgagee paid off the arrears to avert a sale of the property for the said arrears under Act I of 1845.

Held, that in such a case the proper course for the mortgagee was to institute a suit, making the reversioners also parties to it, to have an additional charge declared in his favour on the mortgaged property, subject to redemption, and seeking a sale only in default of redemption (267-8).

The reversioners are entitled to recoup out of the widow's life profits, the money which is advanced to avert a sale, if they redeem, as they are entitled to do, the actual salvors; and it would be obviously inequitable for a person with such knowledge of the dealings of the proprietress, determining to salve the estate, to seek indirectly its destruction by a sale of the whole estate under an ordinary execution, without giving the reversioners the means of protecting their interests (267-8). (*Lord Romilly.*) NUNGENDER CHUNDER GHOSE *v.* SREEMUTTY KAMINEE DOSSEE.

(1867) 11 M. I. A. 241 = 8 W. R. P. C. 17 = 2 Suth. 77 = 2 Sar. 275.

———*Reversioner paying arrears—Right of, to reimbursement out of life profits of widow.*

Where a Hindu widow in possession of her husband's estate as his heiress seeks to destroy the estate by causing it to be sold for arrears of revenue, and a mortgagee of the estate pays off the arrears to avert the sale, the reversioners are entitled to redeem the actual salvors by paying the money advanced by them to avert the sale. And if the reversioners do so, they are entitled to recoup out of the widow's life profits the money so paid by them to the actual salvors (267). (*Lord Romilly.*) NUGENDER CHUNDER GHOSE *v.* SREEMUTTY KAMINEE DOSSEE.

(1867) 11 M. I. A. 241 = 8 W. R. P. C. 17 = 2 Suth. 77 = 2 Sar. 275.

Reversioner's suit for possession on death of.

———*See* HINDU LAW — REVERSIONER—WIDOW—DEATH OF.

Widow—Sale by.

ABSOLUTE ESTATE UNDER—CONVEYANCE OF.
DEED OF— LIBERAL CONSTRUCTION OF.
HUSBAND'S DEBTS PAID OFF BY WIDOW DURING HIS LIFETIME—SALE FOR DICHARGE OF.
IMPROVEMENTS EFFECTED BY PURCHASER UNDER.
INTEREST AWARDED BY DECREE—SALE TO DECREE-HOLDER IN DISCHARGE OF—VALIDITY OF—DISALLOWANCE OF INTEREST SUBSEQUENTLY ON APPEAL.

HINDU LAW—(*Contd.*)

Widow—Sale by—(*Contd.*)

INTEREST CONVEYED UNDER—ABSOLUTE INTEREST IN PROPERTY OR LIFE INTEREST OF WIDOW ONLY.
NECESSITY—SALE FOR—PORTION OF PURCHASE-MONEY UN-ACCOUNTED FOR.
NECESSITY FOR—FUTURE NECESSITY.
NECESSITY FOR—ONUS OF PROOF OF.
NECESSITY FOR—PARTIAL NECESSITY ONLY.
PERSONS JOINING IN - PURCHASE BY, OF SAME PROPERTY FROM REVERSIONARY HEIRS OF LAST MALE OWNER.
PRICE OF—FAIRNESS OF.
REVERSIONER.
REVERSIONER'S HEIR.
VILLAGE—SHARE IN ENTIRE—SALE OF, NECESSARY—MODE OF.

ABSOLUTE ESTATE UNDER—CONVEYANCE OF.

———*Validity of—Condition.*

A Hindu widow may sell her husband's estate absolutely if it can be shown (and the burden of showing this is upon the purchaser) that to convey such an absolute estate was necessary in order to pay her husband's debts, and was for the benefit of his estate generally (16). (*Sir Robert P. Collier.*) MAHOMED SHUMSOOL *v.* SHEWERKRAM.
(1874) 2 I. A. 7 = 14 B. L. R. 226 = 22 W. R. 409 = 3 Sar. 405 = 3 Suth. 43.

DEED OF—LIBERAL CONSTRUCTION OF.

———Necessity—Principle laid down in 6 M. I. A. 393 (411)—Applicability of—Interest conveyed under deed—Question as to. *See* DEED — CONSTRUCTION OF—INDIANS. **(1915) 37 A. 369 (375, 378).**

HUSBAND'S DEBTS PAID OFF BY WIDOW DURING HIS LIFETIME—SALE FOR DISCHARGE OF.

———*Validity of—No evidence of obligation on husband's part to re-pay—Effect.*

The respondents (plaintiffs) sued to recover from the appellant (defendant) certain property in her possession which the plaintiffs alleged had originally belonged to their maternal grandfather and which they alleged had been sold by their maternal grandmother without legal necessity to the vendor of the appellant. It appeared that the plaintiff's grandmother had, during the lifetime of her husband, paid off certain debts of her husband, and that the sale impeached was made for the discharge of the said debts. There was, however, no evidence to show that there was any obligation on the part of the plaintiff's grandfather or his estate to pay the moneys which were paid by his wife.

Held, that the obligation lay upon the appellant to prove that there was any obligation on the part of the grandfather or his estate to pay the moneys which were paid by his wife, and that, the appellant not having adduced any such evidence, the sale was rightly held not to be binding upon the plaintiffs. (*Lord Macnaghten.*) BHAWANI KUNWAR *v.* HIMMAT BAHADUR. **(1911) 33 A 342 = 15 C. W. N. 466 = 13 C. L. J. 441 = 9 M. L T. 465 = 8 A. L. J. 474 = 13 Bom. L. R. 384 = (1911) 2 M. W. N. 445 = 10 I. C. 274 = 21 M. L. J. 641.**

IMPROVEMENTS EFFECTED BY PURCHASER UNDER.

———*Compensation for—Claim to—Maintainability of, in presumptive reversioner's suit for declaration of invalidity of alienation.*

The question whether a purchaser from a Hindu widow is entitled, prior to eviction, to compensation for money spent on the property purchased by him cannot arise till the death of the widow, and cannot therefore arise in a suit brought during her lifetime by the presumptive reversioner

HINDU LAW—(*Contd.*)

Widow—Sale by—(*Contd.*)

IMPROVEMENTS EFFECTED BY PURCHASER UNDER—(*Contd.*)

for a declaration of the invalidity of the alienation (113). (*Sir Arthur Wilson.*) RUP NARAIN *v.* GOPAL DEVI.
(1909) 36 I. A. 103 = 36 C. 780 (798) = 10 C.L.J. 58 = 13 C.W.N. 920 = 5 M. L. T. 423 = 11 Bom. L. R. 833 = 6 A. L. J. 567 = 3 I. C. 382 = 93 P. R. 1909 = 146 P. W. R. 1909 = 68 P. L. R. 1910 = 19 M. L. J. 548.

———*Compensation for—Measure of—Enhancement of property as marketable subject—Execution of temple on it.*

The suit was to recover possession of a house and compound in Delhi. The plaintiff claimed the said house and compound as the daughter's son of the last male owner thereof. On the death of the last male owner his widow succeeded to his estate for the usual life tenure of a Hindu widow ; and she, by a deed of sale, conveyed her interest in the suit property to the father of the appellant. The question was as to the amount payable by the plaintiff to the appellant as compensation for improvements as a condition of taking possession of the house and compound.

It appeared that in the course of the possession of the last holder a temple was erected upon the ground, and other expenditure was incurred to a considerable amount. The Court below assessed the sum of Rs. 1,400 as a fair sum to the extent of which the property, as a vendible subject, had been enhanced in value by the operations of the last holder.

Held, that the grounds upon which the Court below proceeded were sound (564).

In such a case it is always to be borne in mind that the amount of the expenditure made has occasionally very little to do with the real issue ; and that that issue is, to what extent has enhancement of the subject been produced ? Their Lordships agree with the Court below in thinking that it has been produced to the extent of Rs. 1,400. But with regard to the difference between that sum and the Rs. 7,000 claimed, a large part of that difference stands to the account of the erection of the temple upon the land. The erection of the temple would not of itself add to the selling value of the property, and the real question is, was the property, as a marketable subject, enhanced in value or not ? (564). (*Lord Shaw.*) KIDAR NATH *v.* MATHU MAL.
(1913) 40 C. 555 = (1913) M. W. N. 403 = 13 M. L. T. 434 = 127 P. L. R. 1913 = 17 C. W. N. 797 = 15 Bom. L. R. 467 = 77 P. R. 1913 = 18 I. C. 946 = 25 M. L. J. 176.

———*Compensation for—Right to—Purchaser from purchaser in possession at date of decree for possession—Right of.*

In a case in which compensation was claimed in respect of improvements executed on property purchased from a Hindu widow, it was argued that an allowance could nor be made because the improvements had in fact been executed by the person who had been the original purchaser from the widow, and that he had again sold and that it was the purchaser from him who was in possession at the time of the decree for possession of the property.

Held, that there was no substance in the contention.

The increased rent that is properly attributable to the improvements can be properly set off against the mesne profits, even although it was not actually executed by the person in possession at the moment when the decree for possession was made. (*Lord Buckmaster.*) RAJA RAI BHAGWAT DAYAL SINGH *v.* RAM NARAIN SAHU.
(1921) 15 L. W. 481 = (1922) M. W. N. 102 = 4 U.P. L. R. (P. C.) 7 = 24 Bom. L. R. 336 = 3 Pat. L. T. 229 = 35 C. L. J. 121 = (1922) P. C. 91 = 26 C. W. N. 257 = 20 A. L. J. 26 = 65 I. C. 69 = 42 M. L. J. 243 (246-7).

HINDU LAW—(*Contd.*)

Widow—Sale by—(*Contd.*)

IMPROVEMENT EFFECTED BY PURCHASER UNDER—(*Contd.*)

———*Increased rent due to—Set off of, against mesne profits—Purchaser's right to, in suit to recover property.*

In a suit to recover property sold by a Hindu widow with mesne profits, it was found that the purchaser had effected permanent improvements on the property purchased by him which improvements had increased the mesne profits from the property. *Held* that the purchaser was entitled to have the increased rent that was properly attributable to the improvements set off against the mesne profits to which the plaintiff was entitled.

Their Lordships affirmed the High Court which had allowed a deduction of 10 per cent in respect of such increased rent. (*Lord Buckmaster.*) RAJA RAI BHAGWAT DAYAL SINGH *v.* RAM RATAN SAHU. **(1921) 15 L. W. 481 = (1922) M. W. N. 102 = 4 U. P. L. R. (P. C.) 7 = 24 Bom. L.R. 336 = 3 Pat. L.T. 229 = 35 C.L.J. 121 = (1922) P. C. 91 = 26 C. W. N. 257 = 20 A.L.J. 26 = 65 I. C. 69 = 42 M. L. J. 243 (246-7).**

INTEREST AWARDED BY DECREE—SALE TO DECREE-HOLDER IN DISCHARGE OF—VALIDITY OF—DISALLOWANCE OF INTEREST SUBSEQUENTLY ON APPEAL.

———*Effect—Sale to stranger to avert execution of decree of Court below in such a case—Distinction.*

A mortgage decree was passed against one *K*. The decree disallowed interest subsequent to the decree. In proceedings taken to execute the decree the executing Court, however, passed an order, also during *K's* lifetime, allowing interest subsequent to the decree. That order was ultimately set aside on appeal on the ground that the executing Court had no power to alter or to add to the decree. During the interval *K* died, and his widow, who succeeded to a Hindu widow's estate in his property, executed a sale-deed in favour of the decree-holder conveying property appertaining to the estate. One of the items of consideration for the sale was the amount representing interest subsequent to the above-mentioned decree which was allowed by the Court executing the decree but disallowed on appeal.

Held that the sale, in so far as it was for the interest subsequent to the decree, was not justified by necessity (77).

Quaere what the result would have been if some outsider had advanced money to the widow in order to protect the estate against a claim by the decree-holder to realize the interest awarded to him by the Court executing the decree (77). (*Sir Arthur Wilson.*) DEPUTY COMMISSIONER OF KHERI *v.* KHANJAN SINGH. **(1906) 34 I. A. 72 = 29 A. 331 (338) = 2 M. L. T. 145 = 5 C. L. J. 344 = 11 C. W. N. 474 = 9 Bom. L.R. 591 = 4 A. L. J. 232 = 10 O. C 117 = 9 Sar. 208 = 17 M. L. J. 233.**

INTEREST CONVEYED UNDER—ABSOLUTE INTEREST IN PROPERTY OR LIFE INTEREST OF WIDOW ONLY.

———Question as to—Liberal construction of deed in case of—Necessity—Principle laid down in 6 M. I. A. 393 (411)—Applicability of. *See* DEED—CONSTRUCTION OF—INDIANS. **(1915) 37 A. 369 (375-378).**

———Reversioner's execution of deed of sale as mooktar of widow—Effect. *See* HINDU LAW—REVERSIONER—WIDOW—ALIENATION BY—CONSENT TO—EXECUTION OF DEED OF ETC. **(1895) 23 I. A. 1 = 18 A. 146.**

———*Test.*

R, a Hindu widow who had inherited the properties of her deceased husband, *K*, and *P*, the widow of the paternal uncle of *K*, who was entitled to maintenance out of the properties of *K* inherited by *R*, executed a deed of conveyance in favour of the appellant in respect of a portion of the property of *K*. The deed recited, *inter alia*, that the two

HINDU LAW—(*Contd.*)

Widow—Sale by—(*Contd.*)

INTEREST CONVEYED UNDER—ABSOLUTE INTEREST IN PROPERTY OR LIFE INTEREST OF WIDOW ONLY—(*Contd.*)

executants had jointly and severally agreed to sell and convey all their full and existing rights in the property sold to the purchaser for a sum to be paid in cash, and that *P* joined as an executant by virtue of her position in the family for the additional guarantee of the vendee. By the operative granting part of the deed *R* in the first place sold, conveyed, and transferred all the rights and interest in the property to the purchaser without any reservation. Then *P* transferred to him her only right in the property, namely, her right to maintenance. And then the two ladies jointly proceeded to sell and convey to him all their own existing right, title, and interest in, or belonging or appertaining to the property, and declared that from the execution of the deed thenceforth the purchaser should be—"the full owner and proprietor of the said houses" (the property sold) "in our stead, and shall own, possess, and enjoy them in the same way as we have been hitherto doing." Then there followed two very significant provisions, first that—"as proof of the existing debts and the necessity of conveying the property for purposes aforesaid *S*" (the husband of the respondent, the only daughter of *K*) "has signed as one of the witnesses of the deed," and secondly, that—"should at any time the said vendee or his heirs and representatives be deprived of whole or part of the property conveyed by the deed he or they would be entitled to recover the money in full or in part, as the case may be, from us and rest of our property."

While not dissenting from the finding of the Sub-Judge that the existence of the debts incurred by the predecessors of *K* to the amount mentioned in the deed, the necessity for the sale of the absolute interest in the property conveyed in order to discharge them, and the payment of them out of the purchase money when obtained, were clearly established, the High Court nevertheless held that the terms of the deed were inadequate to convey to the purchaser anything beyond *R's* own interest in the same, which they described as a life-interest. They held so, relying upon the following passages of the granting part of the deed, first:—

"*I*, the said *R*, do hereby convey, sell, and transfer all my rights and interest in the said houses" (the property sold) "which *I* inherited from my deceased husband, *K*."

And secondly.—

"We . . . sell all our existing rights, title, and interest."

Held, reversing the High Court, that by the deed the absolute interest in the property sold was conveyed to the vendee, and not merely the life interest of the widow, *R*, (379). (*Lord Atkinson,*) VASONJI MORARJI *v.* CHANDRA BIBI. **(1915) 37 A. 369 = 19 C. W. N. 873 = 17 Bom. L. R. 556 = 18 M. L. T. 31 = (1915) M. W. N. 449 = 2 L. W. 676 = 22 C. L. J. 180 = 29 I. C. 781 = 29 M. L.J. 130.**

NECESSITY—SALE FOR—PORTION OF PURCHASE—MONEY NOT ACCOUNTED FOR.

———*Sale must be upheld unconditionally notwithstanding.*

A Hindu widow, who was in possession of a moiety of an entire village as heiress to her husband, sold the same to defendants 3 and 4 for the sum of Rs. 5,300. The Courts below found that out of the said sum of Rs. 5,300, a sum of Rs. 4,588-2-2 was employed by the widow in discharging debts binding upon the estate, and that to that extent there was a legal necessity for selling the moiety of the village. As to the balance of Rs. 711-13-10, the Sub-Judge was of

HINDU LAW—(*Contd.*)

Widow—Sale by—(*Contd.*)

NECESSITY—SALE FOR—PORTION OF PURCHASE—MONEY NOT ACCOUNTED FOR—(*Contd.*).

opinion that there was no necessity for raising money to the extent of that sum by selling the property.

Held that, the Sub-Judge overlooked the fact that the Rs. 711-13-10 merely represented the balance of the sale price of Rs. 5,300 and that it was not to raise that Rs. 711-13-10 that the property was sold, that the sale would not have been invalid no matter what might have been the purpose to which the widow applied that Rs. 711 odd, and that the purchasers were not bound to see that the widow applied it to any particular purpose. (*Sir John Edge.*) MEDAI DALAVOI THIRUMALAIYAPPA MUDALIAR *v.* NAINAR THEVAN. **(1922) 16 L. W. 478 (481) = 31 M. L. T. 149 = (1922) P. C. 307 = (1922) M. W. N. 804 = 2 U. P. L. R. (P. C.) 192 = 27 C. W. N. 365 = 21 A. L. J. 282 = 74 I. C. 604.**

———*See* HINDU LAW—JOINT FAMILY—MANAGER—SALE BY—VALIDITY OF—NECESSITY—SALE FOR—BALANCE OF PRICE. **(1927) 54 I. A. 211 (216) = 8 Lah. 597.**

———Sale by Hindu widow for Rs. 19,000. Necessity established to the extent of Rs. 17,338. Balance not properly accounted for.

Held, following L. R. 54 I. A. 79 and L. R. 54 I. A. 211, that the sale must be upheld unconditionally. (*Lord Blanesburgh.*) SURAJ BHAN SINGH *v.* SAH CHAIN SUKH. **(1927) 46 C. L. J. 291 = 29 Bom. L. R. 1385 = 105 I. C. 25 = 32 C. W. N. 117 = A. I. R. (1927) P. C. 244 = 53 M. L. J. 300.**

NECESSITY FOR—FUTURE NECESSITY.

———*Sale in anticipation of—Validity of.*

Where in the case of a sale by a Hindu widow it appeared that at the date when the deed of sale was executed the widow had admittedly in her possession Rs. 1,600, and the expenses which it was alleged justified the sale on the ground that there was necessity might not even then have been in contemplation and certainly had not then been incurred, *Held* that, necessity for the sale had not been established. (*Lord Buckmaster.*) BALKISAN DEVCHAND *v.* KUNJALAL HIRALAL. **(1929) 58 M. L. J. 358.**

NECESSITY FOR—ONUS OF—PROOF OF.

———The burden of proving that there was necessity justifying a sale by a Hindu widow lies upon the purchaser. (*Lord Buckmaster.*) BALKISAN DEVCHAND *v.* KUNJALAL HIRALAL. **(1929) 58 M. L. J. 358.**

NECESSITY FOR—PARTIAL NECESSITY ONLY.

———Sale not altogether bad in case of—Vendee's right to charge in respect of portion of purchase-money advanced for binding purposes. *See* HINDU LAW—WIDOW—SALE BY—REVERSIONER—POSSESSION OF PROPERTY SOLD—SUIT FOR—DECREE ALLOWING—PROVISION IN, ETC.

PERSONS JOINING IN—PURCHASE BY, OF SAME PROPERTY FROM REVERSIONARY HEIRS OF LAST MALE OWNER.

———*Vendee from widow if entitled to benefit of—Transfer Property Act, S.* 43—*Applicability.*

In respect of property held by *M*, a Hindu widow, as the mother and heir of her son, *S*, she executed a sale-deed, in which her daughter, and *H*, her grandson, son of that daughter, joined. By the sale-deed, *M* conveyed her life-interest in the property, and the daughter and *H* purported to convey their future proprietary interest and right to possession after the death of *M*. After the death of *M*, *H* purchased the property covered by the sale-deed from the nearest reversionary heirs of *S*. In a suit brought by the

HINDU LAW—(*Contd.*)

Widow—Sale by—(*Contd.*)

PERSONS JOINING IN—PURCHASE BY, OF SAME PROPERTY FROM REVERSIONARY HEIRS OF LAST MALE OWNER—(*Contd.*)

sons of *H*, after his death, for the recovery of the property from the vendee, on the ground that the sale by *M* was not for purposes which would make it binding on the reversioners, the High Court held that *H's* purchase from the reversioners accrued for the benefit of the vendee in consequence of the fact that *H* had joined with *M* in conveying the property. The High Court rested their judgment on the equitable doctrine of what ir called "feeding the estoppel." and on the provisions of S. 43 of the Transfer of Property Act.

Held, reversing the High Court, that, as *H* did not acquire the property as a contingent reversioner to *M*, and as the title on which the plaintiffs brought their suit was based on an in dependent purchase by *H* from the rightful heirs, the doctrine relied on was inapplicable (13-4). (*Mr. Ameer Ali.*) GUR NARAYAN *v.* SHEO LAL SINGH. **(1918) 46 I. A. 1 = 46 C. 566 (579-80) = 17 A. L. J. 66 = 9 L. W. 335 = 23 C. W. N. 531 = 12 Bur. L. T. 122 = 49 I. C. 1 = 36 M. L. J. 68.**

PRICE OF—FAIRNESS OF.

———*Evidence of—Revenue Inspector's* ex parte *valuation years before for ascertaining stamp duty payable on deed relating to larger share—Value of.*

The question was whether the price for which a Hindu widow sold in November 1897 a moriety of one-third share in a village, *viz.*, the sum of Rs. 5,300, was a fair price. The Subordinate Judge, who came to the conclusion that Rs. 12,100 was the value of the moriety of the one-third share, was largely influenced in doing so by a valuation which was made in 1892 by a Revenue Inspector of the one-third share. That valuation was made by the Revenue Inspector for the purpose of ascertaining the stamp duty payable on a deed which related to that one-third share. The valuation was not a valuation of a moiety of the one-third share; it was a valuation of the whole one-third share, which the Revenue Inspector valued at Rs. 24,200. The Revenue Inspector in making that valuation was assisted by two local men, the Village Munsif and an assistant Kurnam. The Revenue Inspector valued each field, wet and dry, and each tree separately, with a total result of Rs. 24,200. That Revenue Inspector was not called as a witness, and there was nothing to explain on what principle he valued, but the two local men who assisted him said that the valuation was correct. It appeared, however, from their evidence that no one on behalf of the widow was present when the valuation was being made, and that neither of the local men nor the Revenue Inspector asked the owners for any account showing income and expenditure for the purpose of valuing the lands.

Held, agreeing with the High Court, that it would be easy to attach an exaggerated importance to the Revenue Inspector's valuation as a piece of evidence in the case (483) (*Sir John Edge.*) MEDAI DALAVOI THIRUMALAIYAPPA MUDALIAR *v.* NAINAR THEVAN. **(1922) 16 L. W. 478 = 31 M. L. T. 149 = (1922) M. W. N. 804 = 2 U. P. L. R. (P. C.) 192 = 27 C. W. N. 365 = 21 A. L. J. 282 = 74 I. C. 604 = A. I. R. (1922) P. C. 307**

———*Test of—Sale of considerable extent in lump—Sale of same in small quantities—Distinction.*

A Hindu widow, who was in possession of a moiety of an entire village as heir to her husband, sold the same to defendants 3 and 4 for necessity for the sum of Rs. 5,300. Defendants 3 and 4, who had been in the employment of the widow and her husband, had no capital and purchased the

HINDU LAW—(*Contd.*)
Widow—Sale by—(*Contd.*)
PRICE OF—FAIRNESS OF—(*Contd.*)

moiety as a speculation. They in their turm sold the moiety bit by bit to the cultivating ryots among whom there was great competition to acquire lands suitable for cultivation for some Rs. 11,500. Although the defendants 3 and 4 bought the moiety as a speculation, the sale was a genuine and not a sham sale.

In a suit by the reversionary heir of the last male owner for a declaration that the sale by the widow was not binding on the reversion, *held* that, in ascertaining whether the sale was for a fair price or not, it was not proper to take into consideration the price which competing tenants might pay for the component parts calculated at a regular scale, and regard must be had to the fact that the circumstance that the vendor was a widow would tend rather to low values (prices) being obtained owing to the risk of litigation which intending purchasers might apprehend. The price at a private sale of a considerable extent of land purchased in lump would depend not so much on the valuation of its component parts, calculated on a regular scale, as on the need of the vendor for money and the competition for lands in that locality at the time of the sale. (*Sir John Edge.*) MEDAI DALAVOI THIRUMALAIYAPPA MUDALIAR *v.* NAINAR THEVAN. **(1922) 16 L. W. 478 (483-4) = 31 M.L.T. 149 = (1922) P.C. 307 = (1922) M.W.N. 804 = 2 U. P. L. R. (P. C.) 192 = 27 C. W. N. 365 = 21 A. L. J. 282 = 74 I. C. 604.**

REVERSIONER.

———Execution of deed of sale as mooktar of widow—Consent to alienation by reason of—Reversionary interest if affected by. *See* HINDU LAW—REVERSIONER—WIDOW—ALIENATION BY—CONSENT TO—EXECUTION OF DEED ETC. **(1895) 23 I. A. 1 = 18 A. 146.**

———*Possession of property sold—Suit for—Decree allowing—Provision in, for portion of purchase-money advanced by vendee for binding purposes—Necessity.*

When an alienation by a Hindu widow is set aside on the ground that it was made in excess of her powers as a Hindu widow, the alienee is entitled to a charge upon the estate for all amounts advanced by him to the widow for purposes for which, according to the Hindu law, she would have been entitled to alienate the estate, as against the next heirs of her husband, in so far as she had not other estate of her husband to answer such purposes (555-). (*Lord Justice Turner.*) THE COLLECTOR OF MASULIPATAM—CAVALY VENCATA NARRAINAPAH.
(1861) 8 M. I. A. 529 = 2 W. R. 61 = 1 Suth. 476 = 1 Sar. 820.

When part of the consideration for an invalid sale made by a Hindu widow was, in a suit brought by the reversionary heir, found to have been applied in payment of a mortgage subsisting on the estate at the time of the sale, *held* that, in declaring the sale invalid as against the reversionary interest, it was equitable to provide that, when the plaintiff reclaimed the estate, credit should be given to the purchaser for the payment of the mortgage, which otherwise the plaintiff himself would have been liable to meet (17). (*Sir Robert P. Collier.*) MAHOMED SHUMSOOL *v.* SHEWAKRAM. **(1874) 2 I. A. 7 = 14 B. L. R. 226 = 22 W. R. 409 = 3 Sar. 405 = 3 Suth. 43.**

———*See* HINDU LAW — REVERSIONER—PRESUMPTIVE REVERSIONER — WIDOW—ALIENATION BY—DECLARATION OF INVALIDITY OF—SUIT FOR—PARTIAL NECESSITY FOR ALIENATION. **(1878) 5 I.A. 149 (162) = 4 C. 190 (204) & (1874) 2. I. A. 7 (17).**

———Where, in a suit by a reversioner for the recovery with mesne profits of possession of property alleged to have been improperly sold by the widow, the sale is found to be invaid as such, but a portion of the purchase-money is found to have been advanced for legitimate purposes, the proper course is to decree possession with mesne profits to the plaintiff, giving credit to the alienee for the amount properly advanced by him with interest at 6 per cent. (*Sir Arthur Wilson.*) BHAGWAT DAYAL SINGH *v.* DEVI DAYAL SAHU. **(1908) 35 I.A. 48 (59) = 35 C. 420 (430) = 7 C. L. J. 335 = 12 C. W. N. 393 = 5 A. L. J. 184 = 3 M.L.T. 344 = 10 Bom. L. R. 230 = 14 Bur. L. R. 49 = 18 M. L. J. 100.**

———*Possession of property sold—Suit for—Decree allowing, directing payment to purchaser with interest of amount paid by him to discharge mortgage binding upon estate—Period for which purchaser entitled to such interest.*

In a suit to recover property sold by a Hindu widow with mesne profits, the Sub-Judge decreed possession and mesne profits to the plaintiff and directed that the defendant-purchaser should be paid by the plaintiff the sums paid by him to discharge mortgages on the property executed by the widow for binding purposes, with interests on the said sams at 6 per cent. per annum. This decree was finally affirmed by their Lordships by their order in council. No date having been mentioned by the said order in council as the date from which the said interest should run, an application was made to their Lordships for the purpose of ascertaining the date from which the interest should run, when they made it clear that what they meant was that the interest should run concurrently with the mesne profits ; that as one sum was allowed on the one hand for the mesne profits, the sum for interest should be allowed upon the other (*Lord Buckmaster.*) RAJA RAI BHAGWAT DAYAL SINGH *v.* RAM RATAN SAHU. **(1921) 15 L. W 481 = (1922) M. W. N. 102 = 4 U. P. L. R. (P. C.) 7 = 24 Bom. L. R. 336 = 3 Pat. L. T. 229 = 35 C. L. J. 121 = (1922) P. C. 91 = 26 C. W. N. 257 = 20 A. L. J 26 = 65 I. C. 69 = 42 M. L. J. 243 (244-5).**

———*Pre-emption right in respect of sale—Suit during widow's lifetime to establish—Dismissal of—Suit after her death to set aside sale for want of necessity and to recover property—Not barred.*

During the lifetime of a Hindu widow, *A*, who ultimately succeeded as heir to her husband's estate after her death, brought a suit claiming a right of pre-emption in property of her husband sold by her. The vendee was also a party to that suit. That suit was dismissed on the ground that no right of pre-emption was proved.

Held that the decree dismissing that suit was not a bar, under S. 13, Expl. IV of C. P. C. of 1882, to a suit brought by *A* after the widow's death to set aside the sale for want of necessity and to recover the property sold (77).

What was in question in the former suit was the right of pre-emption in respect of what the widow had power to convey and did convey, that is, her widow's interest, and the introduction of any question as to the effect of the conveyance upon the reversion would have been incongruous to the matter of the suit (77-8). (*Sir Arthur Wilson*). DEPUTY COMMISSIONER OF KHERI *v.* KHANJAN SINGH. **(1906) 34 I. A. 72 = 29 A. 331 (338-9) = 2 M.L.T. 145 = 5 C. L. J. 344 = 11 C. W. N. 474 = 9 Bom. L. R. 591 = 4 A.L.J. 232 = 10 O. C. 117 = 9 Sar. 208 = 17 M. L. J. 233.**

———*Property subject of sale—Release or conveyance of right of inheritance to—Compromise effecting — What amounts to.*

HINDU LAW—(*Contd.*)

Widow—Sale by—(*Contd.*)

REVERSIONER—(*Contd.*)

A Hindu widow sold a portion of her husband's property, and died. *L* was the nearest reversioner at the time of her death. He died subsequently, and, on his death, a dispute arose between *P* and the respondent and another as to the right to succeed to the estate of the last male owner (widow's husband). A compromise was come to between the respondent and *P*, whereby a division was made of the estate. The compromise stated that *P* "has and shall have nothing to do with anything that may be acquired" by means of a suit which had been instituted by *L* to obtain possession of another item of property which had been sold, "or any other case instituted by virtue of the right of inheritance to the estate of *D*" (the widow's husband), "but that *S*" (the respondent) "alone shall derive benefit or suffer losses from the same."

Held that by the compromise *P* intended to release or convey to the respondent his right of inheritance to the parts of *D's* estate which had heen sold by his widow, and that the words were sufficient to effect that intention (226). (*Sir Richard Couch.*) SYED NURUL HOSSEIN *v.* SHEOSAHAI.

(1892) 19 I. A. 221 = 20 C. 1 (6) = 6 Sar. 205.

REVERSIONER'S HEIR.

———*Execution of deed of sale by, as mookhtar of widow —Effect—T. P. Act.—S.* 43—*Applicability of.*

The suit was to set aside a sale by a Hindu widow. At the time of the sale *L* was the nearest reversioner. He died after the death of the widow, leaving *P*, his son and heir. *P* transferred all his rights of inheritance in the properties sold by the widow to the plaintiff who instituted the suit to set aside the sale. The sale-deed sought to be set aside was executed by *P* as mookhtar of the widow under a mookhtarnama executed by her in his favour. By the sale-deed *P* did not purport to convey any other interest than that of the widow.

Held that, under the circumstances, S. 43 of the Transfer of Property Act could not be relied upon either against *P* or against the plaintiff (227).

P did not represent that he was authorised to transfer any other interest than that of his principal, the widow, and he did not profess to transfer any other (227). (*Sir Richard Couch.*) SYED NURUL HOSSEIN *v.* SHEOSAHAI.

(1892) 19 I. A, 221 = 20 C. 1 (7) = 6 Sar. 205.

———*Execution of deed of sale by, as mookhtar of widow —Right to dispute validity of sale—Estoppel by reason of such execution.*

During her lifetime a Hindu widow executed a mookhtarnama by which she appointed one *P* her general mookhtar, with power to alienate or sell any moveable or immoveable properties for any consideration. *P* executed a deed of sale by which he sold a portion of the property which the widow held as heiress of her husband absolutely. *P* was described in the deed of sale as "general mookhtar and executor under the will, dated 6-6-1853, and adopted son" of the widow "by virtue of a general power of attorney", and the deed contained the following passage:—"My client, the vendor, and her heirs and representatives, and I as mookhtar, who am the general mookhtar, adopted son, and executor under the will of the vendor, and my heirs, and representatives, have now no claim, right, demand, or contention in respect to the property sold and the said consideration money against the vendee and his heirs and representatives. I, as mookhtar, have made a general renunciation of the same. Such renunciation is legal and valid."

At the time of the widow's death *L* was the nearest reversionary heir. He died subsequently leaving *P* aforesaid as his heir. *P* executed a deed of release or conveyance in favour of the plaintiff of his (*P's*) right of inheritance to

HINDU LAW—(*Contd.*)

Widow—Sale by—(*Contd.*)

REVERSIONER'S HEIR—(*Contd.*)

the parts of the estate of the widow's husband which had been sold by her. In a suit brought by the plaintiff to set aside the deed of sale aforesaid on the ground that it had not been executed for necessity. *Held*, that neither *P*, nor the plaintiff was estopped from disputing the validity of that sale (227).

There is no declaration or representation in the deed of sale on which an estoppel could be founded. The description of *P*, as general mookhtar and executor under the will, and adopted son of the widow was sufficient to put the purchaser on notice and to make it his duty to inquire as to what the widow had power to sell. There is no allusion in the deed to any right of *P*, as heir of the widow's husband, which he was not either then or when the widow died. The fair construction of the deed is that *P*, as agent, was only selling what his principal had power to sell. There is no representation that *P* was selling on his own account, and the plaintiff is not denying the truth of any fact which is represented in the deed. The words "and my heirs and representatives have now to claim, etc.," must be read with the context, and refer to the character of mookhtar. The transaction was the ordinary one of a sale by a Hindu widow, and there was not any representation by *P*, which would prevent the plaintiff from bringing the present suit (226-7). (*Sir Richard Couch.*) SYED NURUL HOSSEIN *v.* SHEOSAHAI.

(1892) 19 I.A. 221 = 20 C. 1 (6-7) = 6 Sar. 205.

———*Execution of deed of sale by, jointly with widow during lifetime of reversioner—Effect of, on validity of sale.*

To a sale-deed executed by a Hindu widow in respect of property held by her as such, her daughter and her grandson, the son of that daughter, were parties. By the deed the widow conveyed her life-interest in the property, and the daughter and the grandson purported to convey their future proprietary interest and right to possession after the death of the widow.

Held, that the interest of the grandson at the time of the execution of the deed was a mere expectancy, contingent, firstly, on his mother surviving the widow, and, secondly, on his surviving his mother, and that his association in the deed of sale was wholly futile and had no legal effect in validating the transaction if otherwise invalid. (*Mr. Ameer Ali*) GUR NARAYAN *v.* SHEO LAL SINGH.

(1918) 46 I. A. 1 (12-3) = 46 C. 566 (579) = 17 A.L.J. 66 = 9 L. W. 335 = 23 C. W. N. 531 = 12 Bur. L. T. 122 = 49 I.C. 1 = 36 M. L. J. 68.

———*Suit to set aside sale on foot of plaintiff being— Relief in, on foot of his being purchaser from such heir— Grant of.*

The plaintiff sued to set aside a sale by a Hindu widow on the ground that it was not made for necessity and was not valid beyond her lifetime. *L* was the nearest reversioner at the time of the widow's death and the plaintiff stated in his plaint that he was the heir of *L*, and so entitled to question the alienation. In fact, however, he was only a purchaser from *P*, the heir of *L*. The High Court found that the plaintiff was not the heir of *L*, but nevertheless found that the sale in question was not for necessity, and gave the plaintiff a decree for possession.

On appeal to the Privy Council the defendant contended that the plaintiff ought not to be allowed to change his ground for relief and could not succeed on the footing that he was only a purchaser from *P*, the heir of *L*.

Held, that the objection was not tenable (225-6).

The substance of the case in the plaint is that the sale by the widow was invalid beyond her interest in or power over the estate. The plaintiff had the right of the heir of *L*, and

HINDU LAW—(*Contd.*)

Widow—Sale by—(*Contd.*)

REVERSIONER'S HEIR—(*Contd.*)

all the defences were taken by the defendant which would have been taken by him if the suit had been by the heir of *L* (225-6). (*Sir Richard Couch.*) SYED NURUL HOSSEIN *v.* SHEOSAHAI. (1892) 19 I. A. 221 = 20 C. 1 (5-6) = 6 Sar. 205.

VILLAGE—SHARE IN ENTIRE—SALE OF, NECESSARY—MODE OF.

———*Sale in small quantities—Duty of widow as to—Sale in lump—Permissibility.*

Where a Hindu widow, who is in possession of a moiety of an entire village as heir to her husband, has to sell the same for discharging pressing debts binding on the estate, it is not reasonable to suggest that she should go about endeavouring to find persons who would purchase her moiety in small quantities. She would, in such a case, be justified in selling the moiety in lump for a fair price. (*Sir John Edge.*) MEDAI DALAVOI THIRUMALAIYAPPA MUDALIAR *v.* NAINAR THEVAN. (1922) 16 L.W. 478 (481-2) = 31 M. L. T. 149 = A. I. R. 1922 P.C. 307 = (1922) M. W. N. 804 = 2 U. P. L. R. (P.C.) 192 = 27 C. W. N. 365 = 21 A. L. J. 282 = 74 I. C 604.

Widow—Settlement record—Record of name in regard to portion of joint property in.

———Effect—Central Provinces Land Revenue Act XVIII of 1881, S. 87—Effect. *See* CENTRAL PROVINCES LAND REVENUE ACT XVIII OF 1881, S. 87.

(1899) 27 I.A. 39 = 27 C. 515.

Widow—Stridhan of.

———*See* HINDU LAW—STRIDHAN—WIDOW.

Widow—Suit against.

———*See* HINDU LAW—WIDOW—DECREE AGAINST.

Widow—Suit by.

———(*See also* HINDU LAW—WIDOW—INHERITANCE TO HUSBAND—RIGHT OF.)

———*Husband's estate—Suit on behalf of—L. R. of widow in.*

On the death of a Hindu widow pending a suit brought by her on behalf of the estate of her deceased husband, the right of action vested in her devolves not upon her heirs, but upon the next heirs of her husband (596). (*Lord Justice Turner.*) KATAMA NATCHIAR *v.* THE RAJAH OF SHIVAGUNGA. (1863) 9 M. I. A. 539 = 2 W.R. P.C. 31 = 1 Suth. 520 = 2 Sar. 25.

———Husband's estate—Suit on behalf of—Right of—Authority to adopt - Possession of—Effect. *See* HINDU LAW—ADOPTION—AUTHORITY TO ADOPT—WIDOW'S RIGHT TO SUE ON BEHALF OF ESTATE.

(1858) 7 M. I. A. 169 (206).

Widow—Surrender by.

———*Acknowledged right—Admission that right did not exist—Deed of surrender drawn up on latter footing and not on former—Validity of surrender in case of—Transaction in substance effecting self-effacement by widow.*

A Hindu widow can renounce the estate in favour of the nearest reversioner, and by a voluntary act efface herself from the succession as effectively as if she had then died. This voluntary self-effacement is sometimes referred to as a surrender, sometimes as a relinquishment or abandonment of her rights; and it may be effected by any process having that effect, provided that there is a *bona fide* and total renunciation of the widow's right to hold the property.

Upon the death of a Hindu in 1872 his nephew obtained a certificate under Act XXVII of 1860 as sole survivor of his joint family; the widow of the deceased opposed the application and alleged a partition in 1864. Instead of filing a suit, the widow, acting through her brother and attorney, accepted the decision and executed an agreement in 1874, agreeing, in consideration of certain property being allotted to her for maintenance during her life, not further to contest the matter. On the same day the nephew executed another agreement in similar terms whereby he secured the agreed maintenance to the widow during her life. In pursuance of those documents the nephew was forthwith let into possession of the whole property; and from the date of those documents until her death in 1904 the widow duly received the agreed maintenance without dispute or objection. The nephew died in 1894 and the estate passed under his will to the first appellant. In 1907 the respondent sued to recover the estate as heir to the holder who died in 1872 upon his widow's death, and proved that a partition had taken place in 1864. *Held*, that though the agreements of 1874 were drawn up on the footing not of a surrender of an acknowledged right, but of an admission that the right did not exist, in substance there was a complete self-effacement by the widow which precluded her from asserting any further claim to the estate; and that the execution of the agreements, followed by the acceptance for thirty years of maintenance under the terms thereof, amounted to a complete relinquishment by the widow of her estate in favour of the nephew, and accordingly that the title of the nephew's representatives was established, and plaintiff's suit should be dismissed. (*Viscount Cave.*) BHAGWAT KOER *v.* DHANUKDHARI PRASHAD SINGH. (1919) 46 I.A. 259 (271) = 47 C. 466 (483-4) = 17 A. L.J. 1036 = (1919) M. W. N. 360 = 24 C.W.N. 274 = 53 I.C. 347 = 12 L.W. 105 = 1 Pat. L. T. 1 = 22 Bom. L. R. 477 = 37 M.L. J. 513.

———*Alienation—Distinction.*

A distinction must be drawn between the power of a Hindu widow to surrender or relinquish the estate of her deceased husband and her power to alienate it for necessity.

Distinction pointed out. (*Lord Dunedin.*) RANGASWAMI GOUNDEN *v.* NACHIAPPA GOUNDEN.

(1918) 46 I.A. 72 = 42 M. 523 (532-5) = 26 M. L. T. 5 = (1919) M.W.N. 262 = 17 A. L. J. 536 = 21 Bom. L. R. 640 = 23 C.W.N. 777 = 29 C. L. J. 539 = 10 L. W. 105 = 50 I.C. 498 = 36 M. L. J. 493.

———Bona fide *surrender—Device to divide estate with reversioner—Evidence—Compromise of suit with next reversioner—Surrender by way of.*

N, the succession to whose estate was governed by the Mithila law, died leaving a widow, 4 daughters, and an infant son, who died shortly after. After the death of the infant son, the daughters applied for letters of administration with the will annexed of the deceased father, under which will they took the immoveable property on failure of the son under burden of certain provisions to the widow. The application was opposed by *M*, who, upon the assumption that the will was inoperative, was the nearest reversioner according to Hindu law. Letters were, however, granted, whereupon *M*, sued for a declaration that the will was inoperative, and that, upon the death of the widow of *N*, the estate would devolve on the reversioner then entitled. That suit was compromised, and a decree was passed in terms of the compromise. By the compromise the rights under the will were given up; the moveable property, with the exception of certain animals and a small amount of grain, was given absolutely to the widow; the widow surrendered all right of succession to the immoveable property; the plaintiff (*M*) who by the surrender, became, as nearest reversioner,

HINDU LAW—(*Contd.*)

Widow—Surrender by—(*Contd.*)

entitled to the immoveable property, made over half of that property to the daughters; and *M* and the daughters each gave a small portion of the land to the widow for maintenance. The necessary deeds to carry out the arrangement were executed and the parties went into possession in accordance with the arrangement.

Held that the compromise was a *bona fide* surrender of the whole estate, and not a mere device to divide the estate between the widow and *M*, the then nearest reversioner.

The widow was, under the Mithila law governing the family, absolutely entitled to the moveable property of her husband, and the compromise, in leaving that property with her or allowing the same to be retained by her, merely recognised her right to it. As regards the immovable property, in which she had only a widow's interest, the surrender was total, not partial. The conveyance of small portions of land to the widowed mother was unobjectionable, as it was only for maintenance. Further, the fact of the arrangement being a compromise of a dispute which had culminated in a litigation is also important as showing that the arrangement was a *bona fide* surrender and not a mere device to divide the estate with the reversioner (238-9). (*Lord Dunedin*). SURESHWAR MISSER *v.* MAHESHRANI MISRAIN. **(1920) 47 I.A. 233 = 48 C. 100 (108-9) = 25 C.W.N. 194 = 18 A.L.J. 1069 = 12 L.W. 461 = (1920) M.W.N. 472 = 28 M.L.T. 154 = 57 I.C. 325 = 2 U.P.L.R. (P.C.) 128 = 39 M.L.J. 161.**

———Court of Wards—Estate under management of—Surrender deed executed during period of—Validity—Sanction of Court of Wards—Necessity. *See* BENGAL ACTS—COURT OF WARDS ACT IX OF 1879, S. 60—HINDU LAW—WIDOW. **(1925) 53 I.A. 11 (21 2) = 5 P. 290.**

———*Deed effecting—Deed declaring rights of grandson then alive and wishing to leave management in his hands, but not surrendering life estate if amounts to—Effect of, on other grandsons alive at death of widow.*

A Hindu died leaving behind him a widow, two daughters, and a grandson by one of them. The widow, who succeeded to the estate of her husband, executed in favour of the said grandson, then the apparent reversionary heir, an ikrarnamah which provided that she was to retain the estate for her life and that the said grandson was to enter upon the estate and enjoy the same after her death.

Held that the transaction did not amount to a valid surrender of the estate under the Hindu law, and that the said grandson did not, by virtue of the ikrarnama, acquire a valid title to the estate to the exclusion of other daughters' sons of the deceased subsequently born and alive at the date of the death of his widow (32-3).

The object of the widow in executing the ikrarnama was to declare the rights of the then existing grandson; she wished to leave the management in his hands, but not to surrender her life estate (33). (*Lord Morris*). BEHARI LAL *v.* MADHO LAL AHIR GYAWAL. **(1891) 19 I.A. 30 = 19 C. 236 (241-2) = 6 Sar. 88.**

———*Device to divide estate—What amounts to.*

To make a surrender by a Hindu widow, with consent of the next heir (necessity being out of the question), a mere device to divide the estate with the reversioner, it is not necessary that the lady surrendering should take part of the property directly. An arrangement, by which the reversioner as a consideration for the surrender promised to convey a portion of the property to a nominee or nominees of the lady surrendering, might well fall under the description of a device to divide the estate (238). (*Lord Dunedin*). SURESHWAR MISSER *v.* MAHESHRANI MISRAIN. **(1920) 47 I.A. 233 = 48 C. 100 (108) = 25 C.W.N. 194 = 18 A.L.J. 1069 = 12 L.W. 461 =**

HINDU LAW —(*Contd.*)

Widow—Surrender by—(*Contd.*)

(1920) M.W.N. 472 = 28 M.L.T. 154 = 57 I.C. 325 = 2 U.P.L.R. (P.C.) 128 = 39 M.L.J. 161.

———*Female presumptive heir—Release in favour of—Estate conveyed by.*

A Hindu died leaving two widows and a daughter by one of them, but no male issue. The widows executed a deed whereby they made a gift to the daughter of certain lands and villages, only retaining to themselves a life interest in part of them. Some of the property was described as mouzahs exclusively acquired by the widows out of their own fund, and the rest was described as having been left by their husband.

In a suit by the presumptive heirs of the last male owner, subject to the interest of the widows, for a declaration that the deed of gift was null and void as regards the reversionary interests of the plaintiffs, the widows and the daughter's daughter (the daughter having died before) contended that the release by the widows of their interest to their husband's heir presumptive which the daughter was gave her an estate transmissible to her own heirs.

The Sub-Judge held that the conveyance to the daughter did not vest the inheritance in her, because she was heir only to a woman's estate, and the prescribed course of inheritance would be changed if she took an estate transmissible to her own heirs.

Their Lordships affirmed the Sub-Judge (157). (*Sir Arthur Hobhouse*). ISRI DUT KOER *v.* MUSSUMUT HANSBUTTI KOERAIN. **(1883) 10 I.A. 150 = 10 C. 324 (334) = 13 C.L.R. 418 = 4 Sar. 459.**

———Next reversioner—Surrender of whole estate to—Mortgage by widow prior to—Reversioner's personal liability for—Agreement by him to pay of widow's liabilities—Effect. *See* HINDU LAW—WIDOW—MOTRGAGE BY—REVERSIONER—PERSONAL LIABILITY UNDER. **(1892) 19 I.A. 234 (237) = 20 C. 79 (85).**

———*Presumptive reversioner—Surrender to—Validity of,*

The High Court of Allahabad, indeed, does not recognise the validity of surrenders in favour, or alienations with the consent, of presumptive reversioners, so as to defeat the title of the actual reversioner at the time of the widow's death. But this restriction is at variance with the principle itself, and is not in accordance with the practice in other parts of India in which the Mithakshara prevails. (*Sir Andrew Scoble.*) BAJRANJI SINGH *v.* MANOKARNIKA BAKSH SINGH. **(1907) 35 I.A. 1 (15) = 30 A. 1 (20) = 12 C.W.N. 74 = 9 Bom. L.R. 1348 = 6 C.L.J. 766 = 3 M.L.T. 1 = 5 A.L.J. 1 = 11 O.C. 78 = 17 M.L.J. 605.**

———*Reversioner's right to question validity of—Mortgage by person to whom surrender made—Suit upon—Reversioner party to—Effect.*

A Hindu mother, who had inherited the share of one of her sons, gave it up to her remaining sons in consideration of an annuity. The interest of the deceased derived by three of the remaining sons under the surrender by their mother was amongst other properties subsequently mortgaged. On the death of those three sons, the mother inherited their shares. In a suit to enforce the mortgages instituted against her, the sole surviving son was joined as a party as a reversioner, the mother dying during the pendency of the suit.

Held that the fact that the sole surviving son was a party to the mortgage suits would not preclude him from questioning the validity of the surrender and establishing such right to the share surrendered by her as he might have as a reversioner entitled to possession (267). (*Sir John*

HINDU LAW—(*Contd.*)

Widow—Surrender by—(*Contd.*)

Edge.) MATI LAL DAS *v.* EASTERN MORTGAGE AND AGENCY CO., LTD. **(1920) 47 I.A. 265 = 25 C.W.N. 265 = 28 M.L.T. 351 = 2 U.P.L R. (P.C). 166 = (1920) M.W.N. 631 = 61 I.C. 486.**

———*Validity of—Conditions.*

According to Hindu law, a widow can accelerate the estate of the heir by conveying absolutely and destroying her life estate. But it is essentially necessary to withdraw her own life estate so that the whole estate should get vested at once in the grantee. The necessity of the removal of the obstacle of the life estate is a practical check on the frequency of such conveyances (32). (*Lord Morris.*) BEHARI LAL *v.* MADHO LAL AHIR GYAWAL.

(1891) 19 I.A. 30 = 19 C. 236 (241) = 6 Sar. 88.

———An alienation by a widow of her deceased husband's estate held by her may be validated if It can be shown to be a surrender of her whole interest in the whole estate in favour of the nearest reversioner or reversioners at the time of the alienatton. In such circumstances the question of necessity does not fall to be considered. But the surrender must be a *bona fide* surrender, not a device to divide the estate with the reversioner (84).

A partial surrender is invalid even if the surrender is to the nearest reversioner and absolute as to that part (80).

The principle on which the doctrine of surrender rests is the effacement of the widow—an effacement which in other circumstances is effected by actual death or by civil death—which opens the estate of the deceased husband to his next heirs at that date (80).

The surrender once exercised in favour of the nearest reversioner or reversioners, the estate became his or theirs, and it was an obvious extension of the doctrine to hold that inasmuch as he or they were in title to convey to a third party, it came to the same thing if the conveyance was made by the widow with his or their consent (80). (*Lord Dunedin.*) RANGASAMI GOUNDEN *v.* NACHIAPPA GOUNDEN. **(1918) 46 I. A. 72 = 42 M. 523 (532-3) = 26 M. L. T. 5 = (1919) M. W. N. 262 = 17 A. L. J. 536 = 21 Bom. L. R. 640 = 23 C. W. N. 777 = 29 C. L. J. 539 = 10 L. W. 105 = 50 I. C. 498 = 36 M. L. J. 493.**

———There are two conditions which must be fulfilled to make a surrender by a Hindu widow, with consent of the next heir (necessity being out of the question) valid. The first is that the surrender must be total, not partial. The second is that the surrender must be a *bona fide* surrender, not a device to divide the estate with the reversioner (237-8). (*Lord Dunedin.*) SURESHWAR MISSER *v*, MAHESHRANI MISRAIN. **(1920) 47 I. A. 233 = 48 C. 100 (108) = 25 C. W. N. 194 = 18 A. L. J. 1069 = 12 L. W. 461 = (1920) M. W. N. 472 = 28 M. L. T. 154 = 2 U. P. L. R. (P. C.) 128 = 57 I. C. 325 = 39 M. L. J. 161.**

———Two widows, who had inherited the estate of their deceased husband, were, on their own application, declared to be disqualified proprietors, Their estate was taken possession of by the Court of Wards, and each of the widows was allowed a monthly allowance of Rs. 625. While the estate was under the management of the Court of Wards, the widows executed a deed of surrender in favour of the grandsons of their deceased husband by a deceased daughter, by which they surrendered some of their interests in the estate to the grandsons in consideration of the latter giving them a monthly allowance of Rs 2,000 and also undertaking to defray the expenses of the daily and periodical worship of the family deities at a cost of Rs 100.

Held that, on the principles laid down in L. R. 46 I. A. 72, and affirmed in L. R. 47 I. A. 233, the so-called surrender was void under the Hindu law. (22-3). (*Sir John Edge.*) MAN SINGH *v.* NOWLAKHPATI.

HINDU LAW—(*Contd.*)

Widow—Surrender by—(*Contd.*)

(1925) 53 I. A. 11 = 5 P. 290 = 24 A. L. J. 250 = 43 C. L. J. 259 = (1926) M. W. N. 332 = 7 P. L. T. 223 = 28 Bom. L. R. 841 = 31 C. W. N. 49 = A. I. R. 1926 P. C. 2 = 94 I. C. 830 = 50 M. L. J. 332.

Widow—Trade of husband.

———*Estate consisting of, or including—Alienation in case of—Power of.*

There is no exception from the restriction on alienation by a Hindu widow when the estate consists of or includes a business (192). (*Lord Davey.*) SHAM SUNDER LAL *v.* ACHHAN KUNWAR, **(1898) 25 I. A. 183 = 21 A. 71 (82) = 2 C. W. N. 729 = 7 Sar. 417.**

———*Money business a losing concern—Duty to wind up—Mortgage for carrying it on—Validity.*

A mortgage of her husband's estate by a Hindu widow was sought to be made binding upon the estate on the ground that a money business of the husband, which had been carried on by the widow, was in a critical state, and that the mortgage amount was borrowed to ward off total insolvency. The evidence was to the effect that at the husband's death the business was solvent on paper, but that there were bad debts the losses on which were never recovered, though the business struggled on for a good many years. The High Court, without laying down any general rule for such cases, was of opinion that the widow ought to have wound up the business at once, and that not having done so, she could not allege necessity to mortgage the inheritance in order to keep the money business going. On appeal their Lordships felt great difficulty, in deciding the question and observed that they would require to know much more about the nature of the business in question, and of the condition and fluctuations of the particular business before venturing to endorse the opinion of the High Court (201-2). (*Lord Hobhouse.*) LALA AMARANATH SAH *v.* RANI ACHAN KUAR.

(1892) 19 I. A. 196 = 14 A. 420 (428) = 6 Sar. 197.

Widow—Waste by.

———*See* HINDU LAW—REVERSIONER—PRESUMPTIVE REVERSIONER—WIDOW—WASTE BY.

Widow—Will by, bequeathing husband's estate.

———Declaration of invalidity of, against reversionary interest—Grant of—Rule as to—Discretion as to, *See* HINDU LAW—REVERSIONER—PRESUMPTIVE REVERSIONER—WIDOW—WILL BY. **(1904) 31 I. A. 67 = 26 A. 238 (242-3).**

———*Validity against reversioner of.*

A Hindu widow, who has inherited the property of her deceased husband, cannot by the execution of a will or testament, transfer the same even to a near relation of her deceased husband. Such a transfer will be illegal without the consent of the heirs. And on the death of the widow the property will, notwithstanding such transfer, devolve on her husband's heirs (341). (*Dr. Lushington.*) KEERUT SINGH *v.* KOOLAHUL SINGH. **(1840) 2 M. I. A. 331 = 5 W. R. 131 = 1 Suth. 96 = 1 Sar. 196.**

Wife.

———*See* HINDU LAW—(1) GIFT—WIFE—GIFT TO (2) HUSBAND AND WIFE (3) STRIDHAN (4) WILL—WIFE.

WILL.

ADOPTED SON.

ADOPTION IN—MEANING OF WORD.

ADOPTIVE FATHER.

ADOPTIVE MOTHER.

ALIENATION—RESTRAINT UPON—CONDITION OF.

ANCESTRAL PROPERTY.

APPOINTMENT OF HEIR PRESENT AND IRREVOCABLE OR.

ARBITRATION IN REFERENCE TO.

HINDU LAW—(*Contd.*)
Will—(*Contd.*)
ASSOCIATION INCORPORATED AND LOCATED IN FOREIGN COUNTRY BENEFICIARY UNDER—OBJECTS OF—LAWFULNESS OF.
ATTESTATION OF.
ATTESTORS TO.
AURASA SON.
BENEFIT UNDER.
CHARITY.
CHILDREN—BEQUEST TO.
CLASS—GIFT TO A.
CODICIL.
CONDITION IMPOSED BY.
CONSTRUCTION OF.
CORPUS OF ESTATE.
DAUGHTER.
DAUGHTERS.
DAUGHTER'S CHILDREN.
DAUGHTER'S DAUGHTER.
DAUGHTER-IN-LAW.
DEBT—CHARGE ON IMMOVEABLE PROPERTY IN RESPECT OF.
DEED AMOUNTING TO A.
DHARAM.
DISPOSITIONS OF.
DRAFT OF.
EFFECTS—BEQUEST OF.
ENGLISH—WILL DRAWN UP IN.
ESTATE CONVEYED UNDER.
ESTATE FOR LIFE.
ESTATE IN REMAINDER.
ESTATE IN TAIL (INCLUDING ESTATE IN TAIL MALE).
ESTATE OF INHERITANCE.
ESTATE UNKNOWN TO LAW.
EVENTS WHICH HAVE NOT HAPPENED—RIGHTS OF PARTIES ON.
EXECUTION OF.
EXECUTOR.
FACTUM AND VALIDITY OF.
FAMILY ARRANGEMENT OR.
FORGERY OF.
FUTURE RIGHTS UNDER.
GENUINENESS OF.
GIFT *inter vivos*.
GIFT *inter vivos* OR.
GIFT OVER.
GRAND-DAUGHTERS BY PREDECEASED SON.
HEIRS—CLASS OF—LEADING MEMBER OF — ENUMERATION OF.
HEIRS OF TESTATOR AT DEATH OF WIDOW IN — MEANING OF.
HEIR-AT-LAW.
HINDU LAW—JOINT FAMILY—FATHER.
ILLEGAL PURPOSES—BEQUEST OF FUND FOR PURPOSES SOME OF WHICH ARE.
INCOME.
INCOME OF DEVISED ESTATE.
INHERITANCE.
INTENTION TO CONFER ESTATE—ABSENCE IN WILL OF.
INVALIDITY OF INSTRUMENT AS A.
ISSUE IN.
JOINT FAMILY—MEMBERS LIVING AS A—GIFT TO.
JOINT LEGATEES UNDER—SURVIVORSHIP BETWEEN —RIGHT OF, CONFERRED BY WILL—TRANSFER OF, BEFORE RIGHT ACCRUES.
JOINT TENANTS.
LEGACY PAYABLE UNDER.
LEGATEE UNDER.
LETTERS OF ADMINISTRATION.

HINDU LAW—(*Contd.*)
Will—(*Contd.*)
LIMITED INTERESTS—CREATION OF.
MAINTENANCE—BEQUEST FOR.
MANAGER UNDER.
MARRIAGE—UNCERTAIN EVENT OF—BEQUEST IN.
MINOR—WILL BY.
MUTUAL WILLS — REVOCATION OF EITHER OF — AGREEMENT RESTRAINING.
NAME GIVEN BY PARTIES—EFFECT.
NEPHEWS.
NEPHEW'S WIDOW—BEQUEST TO.
NUNCUPATIVE WILL.
OUDH TALUKDAR.
PARSEE—WILL BY.
PARTIES NOT BEFORE COURT—DECLARATION AS TO RIGHTS OF.
PERPETUITY—INTENTION TO CREATE.
PERSON TAKING UNDER — CONDITION IMPOSED BY WILL.
PERSONA DESIGNATA.
PERSONALTY NOT SETTLED WITH REALTY BUT TO BE MADE INTO A DISTINCT FUND AFTER DISPOSING OF LEGACIES AND ANNUITIES — PERSONS ENTITLED TO.
POWER OF APPOINTMENT OF HEIR—GIFT WITH — VALIDITY OF POWER.
PRECATORY TRUST.
PROBATE OF.
PROPERTY DISPOSED OF BY.
PROVISIONS OF—REASONABLENESS OR OTHERWISE OF.
PUBLICATION OF.
REGISTRATION OF.
RELIGIOUS ENDOWMENT.
RESIDENCE.
RESIDUARY BEQUEST.
RESIDUE OF PROPERTY BEQUEATHED BY — LIFE INTEREST IN—ATTACHMENT AND SALE OF.
REVOCATION OF.
SEPARABLE PROVISIONS OF—INVALIDITY OF ONE OR SOME OF—EFFECT OF, ON VALIDITY OF OTHER OR OTHERS.
SETTING ASIDE OF—SUIT FOR—DECLARATION THAT IT DOES NOT AFFECT PLAINTIFF'S RIGHTS—GRANT OF.
SETTLEMENT DEED OR.
SICK MAN—WILL BY.
SIGNATURE OF TESTATOR.
SIMPLE AND SHORT WILL—LENGTHY AND COMPLICATED WILL.
SON.
SONS.
TEMPLE — ERECTION OF — DIRECTION TO EXECUTORS AS TO.
TENANTS IN COMMON.
TESTAMENTARY POWER.
TRUST.
TRUSTEES UNDER.
UNBORN PERSONS—BEQUEST TO—VALIDITY OF.
VALIDITY OF.
VERNACULAR WILL.
WIDOW.
WIFE.
WOMAN.
WORDS IN.

Will—Adopted son.

———Bequest to a person described as an—Invalidity of adoption—Effect of, on validity of bequest. *See* HINDU LAW—ADOPTION—ADOPTED SON—GIFT TO A PERSON DESCRIBED AS AN.

HINDU LAW—(*Contd.*)

Will—Adoption in—Meaning of word.

———*Choice of male successor in property merely.*

When using the term adoption in his will, the testator may have been thinking merely of the choice of a male successor in the property (135). (*Lord Hobhouse.*) AMRITO LAL DUTT *v.* SURNOMOYEE DASI.

(1900) 27 I. A. 128 = 27 C. 996 (1003) = 4 C.W.N. 549 = 2 Bom. L.R. 446 = 7 Sar. 633.

Will—Adoptive father.

———Will by—Validity of, against adopted son under adoption, by widow. *See* HINDU LAW—ADOPTION—ADOPTED SON—ADOPTIVE FATHER—WILL BY.

(1927) 54 I. A. 248 (262) = 50 M. 508.

——— Will depriving adopted son of his property—Contract not to make—Agreement saying that he had constituted adopted son heir to his property if amounts to. *See* HINDU LAW—ADOPTION—ADOPTED SON —ADOPTIVE FATHER—WILL DEPRIVING ETC.

(1899) 26 I.A. 83 (88-9) = 22 M. 383 (390).

———Will depriving adopted son of property — Contract not to make—Implication of, from fact of adoption itself—Propriety. *See* HINDU LAW—ADOPTION — ADOPTED SON—ADOPTIVE FATHER—WILL ETC.

(1899) 26 I. A. 83 (89) = 22 M. 383 (390).

———Will postponing right of adopted son till after death of widow and making gift over in event of his death without issue before—Validity—Dayabhaga Law—Widow constituted executrix. *See* HINDU LAW — ADOPTION — ADOPTED SON—ADOPTIVE FATHER — WILL POSTPONING ETC. **(1915) 43 I.A. 12 (17-8) = 43 C. 432 (439).**

Will—Adoptive mother.

———*Maintenance and affectionate treatment by adopted son of—Condition as to—Precedent or subsequent—Breach of—Effect.*

By his will a Hindu directed his wife to adopt *S*, the second son of his elder brother and provided in strong language that the adopted son should keep the widow, treat her with affection, and give her maintenance.

Held, that the condition that the adopted son should keep the widow, etc., was one subsequent to the appointment, and not a condition precedent to the exercise of the power.

Quaere : as to what the effect of the will might be if the adopted son declined to exercise the duties which the will so imposed (206). (*Lord Buckmaster.*) SITABAI *v.* BAPU ANNA PATIL. **(1920) 47 I. A. 202 = 47 C. 1012 = (1920) M. W. N. 556 = 22 Bom. L. R. 1359 = 12 L. W. 386 = 16 N.L.R. 162 = 25 C. W. N 97 = 57 I. C. 1 = 2 U.P.L.R. (P. C.) 106 = 39 M. L. J. 106.**

Will—Alienation—Restraint upon—Condition of.

———*Estate created—Condition as to restraint inconsistent with—Validity of—Effect of.*

If the gift were in terms of an estate inheritable according to law, with superadded words, restricting the power of transfer which the law annexes to that estate, the restriction would be rejected, as being repugnant, or, rather, as being an attempt to take away the power of transfer which the law attaches to the estate which the giver has sufficiently shown his intention to create, though he adds a qualification which the law does not recognise (65). (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE. **(1872) Sup. I. A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.**

———The will of a Hindu lady, after creating a charge upon certain property for the expenses of the daily worship of the idol therein mentioned, as it was performed at the time of the death of the testatrix, and of the poojas, Shradhs, and

HINDU LAW—(*Contd.*)

Will—Alienation—Restraint upon—Condition of— (*Contd.*)

religious ceremonies for which provision was made by the will, bequeathed the surplus to the members of the joint family of her sons for their own use and benefit. The will, however, declared that that property should not be liable for the debts of any person, that none should be able to transfer it, and that none should have the rights of gift and sale.

Held that the last mentioned directions, being inconsistent with the interest given, were wholly beyond the power of the testatrix, and must be rejected as having no operation (188). (*Sir Barnes Peacock.*) ASHUTOSH DUTT *v.* DOORGA CHURN CHATTERJEE. **(1879) 6 I. A. 182 = 5 C. 438 (444) = 5 C. L. R. 296 = 4 Sar. 58 = 3 Suth. 694.**

———In a case in which the will of a deceased Hindu was contained in three documents the second and third of which were executed by the testator after intervals of some years, the High Court held that, upon the true construction of the three documents, there was a good gift of the testator's property to his sons in equal shares, and that restrictions upon the proprietary interest conferred by the first will endeavoured to be imposed by the testator by his second and third wills were opposed to law and were invalid and inoperative. That decision was affirmed by their Lordships. (*Sir Barnes Peacock.*) RAI KISHORI DASI *v.* DEBENDRANATH SIRCAR. **(1887) 15 I. A. 37 = 15 C. 409 = 5 Sar. 100.**

———*Held*, affirming the High Court, in a case in which there was a good bequest to the testator's sons in equal shares, that a prohibition of actual possession or alienation by any of the sons of his share, and a direction that the whole estate should be managed in a common cutchery with religious trusts and that the sons should get only the remaining profits in perpetuity were invalid restrictions. (*Sir Barnes Peacock.*) RAI KISHORI DASI *v.* DEBENDRANATH SIRCAR. **(1887) 15 I. A. 37 = 15 C. 409 = 5 Sar. 100.**

———*Held*, affirming the High Court, in a case in which there was a good bequest to the testator's sons in equal share, that a provision for defraying the son's marriage expenses from joint funds, together with a direction that they should have no right to partition until the youngest son should attain majority, and that any son separating from the others should only get maintenance and not his share of the property till he attained majority was not invalid. (*Sir Barnes Peacock.*) RAI KISHORI DASI *v.* DEBENDRANATH SIRCAR. **(1887) 15 I. A. 37 = 15 C. 409 = 5 Sar. 100.**

———There is no express prohibition in this will against alienation of the estates the beneficial enjoyment of which is given to the devisees. If there were such a clause added to a gift of a heritable estate, it would be repugnant and void. This is not like the case in 12 I. A. 103, in which it was held, independently of the provision against alienation, that there was no intention to pass the estate. (*Lord Davey.*) LALIT MOHUN SINGH ROY *v.* CHUKKUN LAL ROY. **(1897) 24 I. A. 76 (89) = 24 C. 834 (849) = 1 C. W. N. 387 = 7 Sar. 155.**

———A provision in a deed creating an estate of inheritance restricting the power to alienate would be repugnant as being an attempt to take away the power which the law attaches to that estate (157). (*Sir Richard Couch.*) RAJA PUDMANUND SINGH BAHADUR *v.* HAYES. **(1901) 28 I. A. 152 = 28 C. 720 (733) = 5 C. W. N. 806 = 3 Bom. L. R. 803 = 8 Sar. 125.**

———*Intention not to pass estate—Condition when confirmatory of.*

Held that in the case before their Lordships the provision against alienation was confirmatory of the other part of the

HINDU LAW—(*Contd.*)

Will—Alienation—Restraint upon—Condition of—(*Contd.*)

will which showed an intention not to pass the estate (110). (*Sir Richard Couch*). SOOKKHMOY CHUNDER DAS *v.* SRIMATI MONOHURRI DASI. **(1885) 12 I. A. 103 = 11 C. 684 (692) = 4 Sar. 639.**

———*Validity—Intention to pass estate clear.*

Where the testator has expressed an intention to pass the estate and has added a clause against alienation, the clause against alienation would be void (110). (*Sir Richard Couch.*) SOOKKHMOY CHUNDER DAS *v.* SRIMATI MONOHURRI DASI. **(1885) 12 I. A. 103 = 11 C. 684 (692) = 4 Sar. 639.**

Will—Ancestral property.

———Father'S will disposing of. *See* HINDU LAW—JOINT FAMILY — FATHER — ANCESTRAL PROPERTY—WILL BEQUEATHING.

Will—Appointment of heir present and irrevocable or.

———*See* HINDU LAW. WILL—DEED AMOUNTING TO A.

Will—Arbitration in reference to.

———Construction of will—Dispute as to—Submission of—Authority of arbitrator in case of—Scope of. *See* ARBITRATION—ARBITRATOR—AUTHORITY OF—SCOPE OF. **(1928) 3 Luck. 372 = 56 M. L J. 601.**

———Terms of will—Decision according to—Submission to—Award based on—Validity of—Will different referred to in that will—Non-production of—Effect. *See* ARBITRATION—AWARD—WILL—DECISION ACCORDING TO TERMS OF. **(1876) 3 I. A. 209 (217).**

Will—Association incorporated and located in Foreign country beneficiary under—Objects of—Lawfulness of.

———*View of authorities of foreign estate itself as to—Value of.*

When the question was whether the objects of the appellant association, which had been incorporated in the State of New York and which had its principal office there, were such as to render the gift to it in a will void for illegality, their Lordships observed that it was important to note that the authorities of the place where the Association had its head-quarters and had been incorporated did not treat its objects as unlawful (121). (*Viscount Haldane.*) UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION *v.* MORTER. **(1928) A. I. R. 1928 P. C. 119.**

Will—Attestation of.

———(*See also* DEED—ATTESTATION OF.)

———Sufficiency of—Acknowledgment to fellow witness of attestation in his absence—Sufficiency of. *See* WILLS ACT XXV OF 1838, S. 7. **(1845) 3 M. I. A. 395 (403-4).**

Will—Attestors to.

———(*See also* DEED—ATTESTORS).

EVIDENCE OF—VALUE OF.
EXAMINATION OF—FAILURE.
PERSONS LIKELY TO BE.
POSITION OF—ATTACK ON WILL BASED ON—FORCE OF.
RESPECTABLE PERSONS' AVERSION TO BE.
YOUNG BOYS—ATTESTORS BEING.

EVIDENCE OF—VALUE OF.

———Attestation without knowledge of execution of will or believing it to be a forgery—Admission by attestor of—Effect. *See* HINDU LAW—WILL—FORGERY OF—EVIDENCE—ATTESTOR, ETC. **(1871) 14 M. I. A. 67 (78-9).**

HINDU LAW—(*Contd.*)

Will—Attestors to—(*Contd.*)

EXAMINATION OF—FAILURE.

———Presumption against capacity of testator from—Propriety. *See* HINDU LAW—WILL—EXECUTION OF—CAPACITY—PRESUMPTION AGAINST. **(1919) 24 C. W. N. 626 (633).**

———Presumption against execution from—Propriety—Failure not due to fault of propounder—Effect. *See* HINDU LAW—WILL—EXECUTION OF—PRESUMPTION AS TO—ATTESTORS—EXAMINATION OF. **(1919) 24 C. W. N. 626 (630).**

PERSONS LIKELY TO BE.

———Of those who signed the will as witnesses some were relations of the testator, some were neighbours of his, some were men in his employmeut, and some lived at places more or less distant from the village where his home was. The witnesses were persons who might reasonably be expected to have been present at his house at the time of the alleged execution of the will. (*Sir John Edge.*) BANKIM BIHARI MAITI *v.* SRIMATI MATANGINI DASI. **(1919) 24 C. W. N. 626 (630).**

POSITION OF—ATTACK ON WILL BASED ON—FORCE OF.

———*Connection with family—Family Priest—Attestor the.*

Where one of the grounds on which the High Court held that a will set up was not genuine was that the witnesses to it were not such as they would have expected to find attesting the will, their Lordships observed that the family priest was an attesting witness to the will, and that such an attesting witness might well be supposed, by those at least who placed confidence in him, to be sufficient to save the will from the objection of being attested only by persons unconnected with the family, or too low to give support to such an instrument. (*Sir James Colvile.*) SOORENDRONATH ROY *v.* MUSSUMAT HEERAMONEE BURMONEAH. **(1868) 12 M. I. A. 81 (101-2) = 10 W. R. P. C. 35 = 1 B. L. R. P. C. 26 = 2 Suth. 147 = 2 Sar. 372.**

———*Low position—Attestors being men of.*

Where the will, the genuineness of which is in question, is not one which a Hindu gentleman situated as the testator was might not reasonably and naturally have made, and there is nothing in the case to suggest that the will had been forged or that the witnesses, who gave evidence as to the preparation, and as to the due execution of the will had committed perjury, the contention that the will should not be accepted as the genuine will of the testator because the witnesses to its execution were not of a superior position is not sound, and is contrary to law. Something more than mere suspicion is necessary in such a case to make convincing an argument based on the social position of the witnesses.

If the will had been executed at the home of the testator, it is possible that he might, by way of precaution, have obtained as witnesses to his will some neighbours of a superior class, but this will was executed at another place in the confusion which must have resulted from the outbreak of a severe epidemic of cholera, and the breaking up of the bathing fair by the Government's orders in consequence of the cholera. The attesting witnesses were such as one would reasonably expect to be available on the occasion (*Sir John Edge.*) DULHIN GENDA KUNWAR *v.* HARNANDAN PRASHAD SINGH. **(1916) 20 C. W. N. 617 = (1916) 1 M. W. N. 358 = 4 L. W. 214 = 33 I. C. 790 = 30 M. L. J. 624 (632-3).**

———In a case in which the question was as to the genuineness of a will, the Court below, which held against its genuineness, was of opinion that a certain amount of suspicion was created by the circumstances that the will propounded had the appearence of having been written on a paper which

HINDU LAW—(*Contd.*)

Will—Attestors to—(*Contd.*)

POSITION OF—ATTACK ON WILL BASED ON—FORCE OF—(*Contd.*)

already bore the signature of the alleged testator, and that it was proved that the deceased had left blank papers, bearing his signature, and that the legatees under the will or their men were in possession of those papers. The Court below was also of opinion that the oral evidence was not satisfactory, none of the witnesses to the execution of the will being men of any status. Nothing was suggested, in the course of cross-examination, which was sufficient to discredit those witnesses, nor indeed were any questions put to them, which challenged the accuracy of the accounts they gave.

Their Lordships, who reversed the Court below, observed :—" It may be true that the witnesses to the will did not appear to be men of any status, the majority of them being cultivators, but their Lordships do not think that under the facts of this case, and having regard to the measure of suspicion hereinbefore indicated, there is sufficient ground for disbelieving their evidence as regards the execution of the will (702). ((*Lord Carson.*) WAMAN GANESH *v.* SAKUBAI. **(1924) 19 L. W. 699 = A. I. R. 1924 P. C. 106 = 7 N. L. R. 126 = (1924) M. W. N. 445 = 80 I. C. 641.**

———*Same village—Attestors people of.*

Against the genuineness of a will it was said it was curious that the testator did not have any of the villagers at the place that he lived in, for witnesses.

Their Lordships did not consider that that fact by itself was at all of sufficient weight to get over the circumstances in favour of the genuineness of the will.

It really becomes rather a matter of speculation to settle who are most likely to be taken as witnesses. (*Lord Dunedin.*) CHANDIKA BAKSH SINGH *v.* MADHO SINGH. **(1924) 20 L. W. 699 = 10 O. & A. L. R. 931 = 40 C. L. J. 466 = A. I. R. 1924 P. C. 231 = (1924) M. W. N. 913 = 27 O. C. 304 = 29 C. W. N. 582 = 87 I. C. 95.**

———*Servants and dependants—Attestors being.*

Held, that the proposition that the will of a Hindu gentleman, attested by his own servants and dependants, must be held to be invalid, unless it was shown that the testator, at the time assigned for its execution, was placed in such circumstances that he could not secure the attendance of persons of a higher rank, was a proposition which verged two closely on the absurd to be seriously entertained (23-4).

There may be cases in which attestation by servants only is an important element to be taken into account in considering whether a will has been validly executed—cases, for example, in which there is reasonable ground for suspicion that the will is not the voluntary act of the testator, but has been procured by the undue influence of members of his household (24). (*Lord Watson.*) CHOTEYNARAIN SINGH *v.* MUSSAMAT RATAN KOER. **(1894) 22 I. A. 12 = 22 C. 519 (531-2) = 6 Sar. 564.**

———It cannot be laid down that the will of a Hindu gentleman, attested by his own servants and dependants, must be held to be invalid unless it is shown that the testator, at the time assigned for its execution, was placed in such circumstances that he could not secure the attendance of persons of a higher rank. There may, however, be cases in which attestation by servants only is an important element to be taken into account in considering whether a will has been validly executed—cases for example, in which there is reasonable ground for suspicion that the will is not the voluntary act of the testator, but has been procured by the undue influence of members of his household. (*Lord*

HINDU LAW—(*Contd.*)

Will—Attestors to—(*Contd.*)

POSITION OF—ATTACK ON WILL BASED ON—FORCE OF—(*Contd.*)

Shaw.) JAGRANI KOER *v.* KUAR DURGA PRASAD. **(1913) 41 I.A. 76 = 36 A. 93 (98-9) = 16 O. C. 386 = (1914) M. W. N. 137 = 22 I. C. 103 = 12 A. L. J. 125 = 19 C. L. J. 165 = 18 C. W.N. 521 = 16 Bom. L. R. 141 = 15 M. L. T. 125 = 26 M. L. J. 153.**

RESPECTABLE PERSONS' AVERSION TO BE.

———The known aversion of persons of respectable position to be connected with cases likely to be the subject of litigation may be one reason why attesting witnesses to Hindu wills are seldom found to be of a class from which it would be most desirable to select them (102). (*Sir James W. Colvile.*) SOORENDRONATH ROY *v.* MUSSUMAT HEERAMONEE BURMONEAH. **(1868) 12 M. I. A. 81 = 10 W. R. 35 = 1 B. L. R. P. C. 26 = 2 Suth. 147 = 2 Sar. 372.**

YOUNG BOYS—ATTESTORS BEING.

———Presumption against forgery from. *See* HINDU LAW—WILL—FORGERY OF—YOUNG BOYS. **(1871) 14 M. I. A. 67 (83).**

Will—Aurasa son.

———Person described as an—Bequest to—Donee not in fact an aurasa son—Effect of, on validity of bequest. *See* HINDU LAW—GIFT—AURASA SON. **(1899) 26 I. A. 83 (89-90) = 22 M. 383 (390-1).**

Will—Benefit under.

Barry v. *Butlin* and *Tyrrel* v. *Painton*—RULE IN—BENEFIT WITHIN.

CLIENT'S WILL—LEGAL PRACTITIONER APPOINTED EXECUTOR AND TAKING BENEFIT UNDER.

FORFEITURE OF IN CERTAIN CONTINGENCIES.

PERSON TAKING.

SUSPICION—BENEFIT CREATING.

Barry v. *Butlin* and *Tyrrel* v. *Painton*—RULE IN—BENEFIT WITHIN.

———*Appointment as manager of testator's estate for life with salary if amounts to a.*

Where a will appointed a person manager of the testator's estate for life at a salary, *held* that that person received a benefit under the will within the rule in *Barry* v. *Butlin* and *Tyrrel* v. *Painton*. (*Sir Lancelot Sanderson.*) SARAT KUMARI BIBI *v.* RAI SAKHI CHAND BAHADUR. **(1928) 56 I. A. 62 = 8 Pat. 382 = 33 C. W. N. 374 = (1929) M. W. N. 149 = 113 I. C. 471 = 27 A. L. J. 137 = 27 L. W. 370 = 31 Bom.L.R. 270 = I. D. (1929) PC. 31 = 10 Pat. L. J. 1 = A. I. R. 1929 P.C. 45 = 56 M.L.J. 130 (134).**

———*Meaning of.*

Where the High Court held that the "benefit" contemplated in the rule in *Barry* v. *Butlin* and *Tyrrel* v. *Painton* was "a pecuniary benefit, a legacy, for instance, more or less of a substantial nature", *held* that the principle laid down in the said cases was not limited to such a benefit as that indicated by the High Court. (*Sir Lancelot Sanderson.*) SARAT KUMARI BIBI *v.* RAI SAKHI CHAND BAHADUR. **(1928) 56 I. A. 62 = 8 Pat. 382 = 33 C. W. N. 374 = (1929) M W. N. 149 = 113 I.C. 471 = 27 A. L J. 137 = 27 L. W 370 = 31 Bom. L. R. 270 = I. D. (1929) P. C. 31 = 10 Pat. L. J. 1 = A. I. R. 1929 P. C. 45 = 56 M. L. J. 130 (134-5).**

———*Person receiving, taking active part in preparation of will—Onus on, of proving testator's knowledge and approval of that provision.*

Where a will conferred a benefit on a person and it appeared that that person took an active part in the preparation of the will, *held* that the onus was on him of establish-

HINDU LAW—(*Contd.*)

Will—Benefit under—(*Contd.*)

BARRY *v.* BUTLIN AND TYRREL *v.* PAINTON—RULE IN—BENEFIT WITHIN—(*Contd.*)

ing that the testator knew and approved of the said provision in his favour. (*Sir Lancelot Sanderson.*) SRIMATI SARAT KUMARI BIBI *v.* RAI SAKHI CHAND BAHADUR.
(1928) 56 I. A. 62 = 8 Pat. 382 = 33 C. W. N. 374 = (1929) M W.N. 149 = 113 I. C. 471 = 27 A. L. J. 137 = 27 L. W. 370 = 31 Bom. L. R. 270 = I. D. (1929) P. C. 31 = 10 Pat L. J. 1 = A. I. R. 1929 P. C. 45 = 56 M. L. J. 130 (134).

CLIENT'S WILL—LEGAL PRACTITIONER APPOINTED EXECUTOR AND TAKING BENEFIT UNDER.

———Independent person to prepare or write—Duty to see to client having services of. *See* LEGAL PRACTITIONER—WILL OF CLIENT, ETC.
(1905) 32 I. A. 142 (163) = 29 B. 530 (563).

FORFEITURE OF, IN CERTAIN CONTINGENCIES.

———*Clause of—Validity and binding character of.*

A Hindu, who had first adopted the plaintiff, and subsequently adopted one *B*, made a will, giving a nine-annas share of his real estate to the plaintiff, and a seven-annas share to *B*, dividing his personal estate equally between them. The will contained a clause to the effect that if either devisee disputed it, he should forfeit all benefit under it.

Held, that the clause of forfeiture in the will would, according to the case of *Cook* v. *Turner* (15 M. & W. 727), be valid and operative (219). (*Sis Robert P. Collier.*) SOORJOMONEE DAYEE *v.* SUDDANUND MOHAPATTER.
(1873) Sup. I.A. 212 = 12 B. L. R. 304 = 20 W.R. 377 = 3 Sar. 285 = 2 Suth. 899.

PERSON TAKING.

———*Preparation or writing of will by—Onus of proof on him in case of—Nature of proof required.*

If a party writes or prepares a will under which he takes a benefit, that is a circumstance that ought generally to excite the suspicion of the Court, and calls upon it to be vigilant and jealous in examining the evidence in support of the instrument, in favour of which it ought not to pronounce unless the suspicion is removed, and it is judicially satisfied that the paper propounded does express the true will of the deceased (158-9).

But there is no rule of law as to the particular kind or description of evidence by which the Court must be satisfied. The degree of suspicion excited and the weight of the burden imposed on the person taking the benefit must, however, depend largely on the nature and amount of the benefit taken by him and all the circumstances of the case (159). (*Lord Davey.*) BAI GUNGABAI *v.* BHUGWANDAS VALJI. **(1905) 32 I.A. 142 (158-160) = 29 B. 530 (559) = 9 C. W. N. 769 = 7 Bom. L.R. 854 = 3 A. L. J. 68 = 8 Sar. 813 = 15 M. L. J. 271.**

———*See* HINDU LAW—WILL—BENEFIT UNDER—*Barry* v. *Butlin* AND *Tyrrel* v. *Painton*—RULE IN—BENEFIT WITHIN—PERSON RECEIVING, ETC.
(1928) 56 I. A. 62 = 8 P. 382.

———Where a person who propounds a will is the principal beneficiary under it and has taken a leading part in giving intructions for the will and in procuring its execution and registration, and circumstances exist in the case that would excite the suspicion of any Probate Court and require it to examine the evidence in support of the will with great vigilance and scrutiny, such person is not entitled to probate unless the evidence removes such suspicion and clearly proves that the testator approved of the will. (*Sir Binod Mitter.*) VELLASWAMY SERVAI *v.* SIVARAMAN SERVAI.
(1929) 31 L. W. 185 = A. I. R. 1930 P. C. 24 = 58 M. L. J. 114 (P. C.)

HINDU LAW—(*Contd.*)

Will—Benefit under—(*Contd.*)

PERSON TAKING—(*Contd.*)

———Right to dispute condition imposed by will—Estoppel. *See* HINDU LAW—WILL—OUDH TALUKDAR—WIFE OF.
(1922) 49 I. A. 262 (274) = 44 A. 435 (447).

———*Suspicion—Circumstances exciting—Removal of—Duty of—Rule in* Tyrrel *v.* Painton *as to—Inapplicability of, to case where only suspicion is whether witnesses for will are telling truth.*

The rule in *Tyrrell* v. *Painton*, (1894) P. 151, (that whenever circumstances excite the suspicion of the Court, and whatever their nature may be, it is for those who propound the will to remove such suspicion and to prove affirmatively that the testator knew and approved of the contents of the document) is in applicable to a case in which there is nothing to excite suspicion if the witnesses for the will were telling the truth, and the only suspicion, if any, is whether they were telling the truth. (*Sir Richard Couch.*) SHAMA CHURN KUNDU *v.* KHETROMONI DASI.
(1899) 27 I. A. 10 = 27 C. 521 (528) = 4 C. W. N. 501 = 2 Bom. L. R. 568 = 7 Sar. 638.

SUSPICION—BENEFIT CREATING.

———*Solicitor appointed executor—Professional work done by, or by firm of which he is member—Charge for—Provision as to, if such a benefit.*

Where a member of a firm of solicitors is appointed an executor, it is so usual to allow him to charge for professional work done by him or his firm that the insertion of such a clause would hardly raise a suspicion (159-60). (*Lord Davey.*) BAI GUNGABAI *v.* BHUGWANDAS VALJI.
(1905) 32 I. A. 142 = 29 B. 530 (559) = 9 C. W. N. 769 = 7 Bom. L. R. 854 = 3 A. L. J. 68 = 8 Sar. 813 = 15 M. L. J. 271.

Will—Charity.

———Bequest to. *See* CHARITY—BEQUEST TO.

Will—Children—Bequest to.

———*Children not born during lifetime of testator but living at time of distribution if take under.*

The real doctrine of the court is that when children are mentioned in a will, that means *prima facie*, if no intervening interest be given, that which is considered to be the testator's meaning in the case of a gift to individuals, namely, those who may be living at the death of the testator. If the gift be not immediate, it may be that he intends to include all those children who may be living at the time of distribution; and the court judges of the intention in this respect from the whole scope of the will. The rule is not altered by the addition of words of futurity as if the gift be to children "born and to be born" or to children "begotten and to be begotten" (62).

The fact that the above rule of English law is a rule of convenience is some reason for applying it to Hindu wills, and an additional reason may be found in the well-known doctrine of Hindu law that a gift to an object not in existence is absolutely void (63). (*Lord Macnahten.*) BHAGABATI BARMANYA *v.* KALICHARAN SINGH.
(1911) 38 I. A. 54 = 38 C. 468 (471-3) = 15 C. W. N. 393 = 9 M. L. T. 411 = 13 C. L. J. 434 = 8 A.L.J. 433 = 13 Bom. L. R. 375 = (1911) 2 M. W. N. 295 = 10 I, C. 641 = 21 M. L. J. 387.

———*Children to be born—Gift to, along with children in existence—Children born after testator's death if take under.*

The will of a childless Hindu executed on the day prior to his death was in the following terms:—

My mother and my wife shall, as long as they live, hold possession of all my properties, and enjoy and possess the same on payment of the collectorate revenue and the

HINDU LAW—(*Contd.*)

Will—Children—Bequest to—(*Contd.*)

Zemindar's rents; and shall pay off my debts and realise my dues. They shall not be competent in any way to transfer the immoveable property to any one. On the death of my mother and my wife, the sons of my sisters *G*, & *A*, that is to say, their sons who are now in existence, as also those who may be born hereafter, shall, in equal shares, hold the said properties in possession and enjoyment by right of inheritance.

Semble, on the proper construction of the will, the bequest to the after-born nephews of the testator should be confined to nephews coming into existence between the date of the will and the testator's death (62).

If an English will expressed in similar terms were before an English court it would probably be held that the gift to after-born children was confined to children coming into existence between the date of the will and the testator's death. There is nothing in the circumstances in which this will was made, though the testator died the next day, to render that view improbable, for he expressly provides that if he recovers the will shall hold good unless altered. (*Lord Macnaghten.*) BHAGABATI BARMANYA *v.* KALICHARAN SINGH. **(1911) 38 I. A. 54 = 38 C. 468 (471-3) = 15 C. W. N. 393 = 9 M. L. T. 411 = 13 C. L. J. 434 = 8 A. L. J. 433 = 13 Bom. L. R. 375 = (1911) 2 M. W. N. 295 = 10 I. C. 641 = 21 M. L. J. 387.**

———*Illegitimate children if take under—English law—Natural law.*

In English law there is a technical rule of construction that, under a testamentary gift to children as a class, illegitimate children, although recognised by a testator in his lifetime, cannot be permitted to share jointly with natural lawful children (309). (*Lord Westbury.*) BARLOW *v.* ORDE. **(1870) 13 M. I. A. 277 = 13 W. R. P. C. 41 = 5 B. L. R. 1 = 2 Suth. 324 = 2 Sar. 540 = 6 Moo. P. C. (N. S.) 437 = Punj. (P. C. J.) 1870.**

———In the English Law the word "children," when used as the designation of a class, and not as *descriptio personarum*, means only natural lawful children, and does not include illegitimate children, although recognised by a testator in his lifetime (309). That limited signification is probably the result of the Christian law of marriage (312). (*Lord Westbury.*) BARLOW *v.* ORDE. **(1870) 13 M. I. A. 277 = 13 W. R. P. C. 41 = 5 B. L. R. 1 = 2 Suth. 324 = 2 Sar. 540 = 6 Moo. P. C. (N. S.) 437 = Punj. (P. C. J.) 1870.**

———*Held*, that the English rule of construction, that, under a testamentary gift to children as a class, illegitimate children, although recognised by a testator in his lifetime, could not be permitted to share jointly with natural lawful children, was inapplicable to the will of a person whose succession was not to be administered according to English law, but according to the principles of natural justice; and that the word "children," where it occurred in such will, must be taken in that sense, and receive that signification, in which it was plain from the language of the will, and the dispositions it contained, that it was used by the testator, that is to say, its extent of meaning in the vocabulary and mind of the testator must be determined in the will itself (310). *Held further*, on the construction of such a will, that the word "children" denoted and included as well illegitimate as legitimate children, whenever such illegitimate children were acknowledged or treated as his children by their putative father (312). (*Lord Westbury.*) BARLOW *v.* ORDE. **(1870) 13 M. I. A. 277 = 13 W. R. P. C. 41 = 5 B. L. R. P. C. 1 = 2 Suth. 324 = 2 Sar. 540 = 6 Moo. P. C. (N. S.) 437 = Punj. (P. C. J.) 1870.**

———Where a gift is made by will of the corpus of a fund, or a life interest in a fund, to the "children" of the testator or of another as a class, there may be good reason for holding that in India the word "children" includes illegitimate children. (*Lord Atkinson.*) BHAIYA SHER BAHADUR *v.* BHAIYA GANGA BAKHSH SINGH. **(1913) 41 I. A. 1 = 36 A. 101 (121-2) = 18 C. W. N. 401 = 15 M. L. T. 169 = (1914) M.W.N. 184 (196) = 19 C. L. J. 277 = 16 Bom. L. R. 306 = 17 O. C. 68 = 12 A. L. J. 188 = 22 I. C. 293 = 26 M. L. J. 291.**

———According to natural law, the children of a man mean the issue begotten by him, and the *criteria* of this condition are, the being born of a wedded wife or wives, or, if born of other women, the being recognised and acknowledged as children by the father (312). (*Lord Westbury.*) BARLOW *v.* ORDE. **(1870) 13 M. I. A. 277 = 13 W. R. P. C. 41 = 5 B. L. R. 1 = 2 Suth. 324 = 2 Sar. 540 = 6 Moo. P. C. (N. S.) 437 = Punj. (P. C. J.) 1870.**

Will—Class—Gift to a.

———(*See also* HINDU LAW—GIFT—CLASS—GIFT TO A.)

———*Gift over, on death of any of members, of his share to survivors—Accrued and original shares of deceased—English rule as to—Basis of—Inapplicability to Hindu wills.*

It is undoubtedly a rule of English law that, when a fund is given to a class of persons, with direction that, on the death of any of them, their shares are to go over, the original shares only, and not the accruing shares, will go over. This rule was stated by Lord Hardwicke in *Pain* v. *Benson*, and has been followed, not always without expressions of reluctance, by a long series of decisions (60).

But an intention that the accruing shall go over with the original shares has been inferred where there is what has been called "an aggregate fund" which the testator desires to keep unsevered (when the gift has been to several with benefit of survivorship), when, in addition to the word "share," the word "interest" is used, or where the words are his "or her share or shares," so that the application of the doctrine to English wills has sometimes given rise to questions of some nicety. The rule, founded in a great measure on our peculiar doctrine, that the heir at-law is not to be disinherited but by express words or necessary implication, has no application to the wills of Hindus. It may be observed that such a course of devolution is the ordinary course for Hindu property as between brothers inheriting from brothers, and would present itself most readily to the mind of a Hindu testator; so that, even if the English rule should be applied anywhere beyond the domain of English law, it could hardly be applied to Hindu wills without defeating the intention (60-1). (*Sir Robert P. Collier.*) KUMAR TARAKESWAR ROY *v.* KUMAR SHOSHI SHIKHARESWAR. **(1883) 10 I.A. 51 = 9 C. 952 (960-1) = 13 C. L. R. 62 = 4 Sar. 439.**

———*Gift over, on death of any of members, of his share to survivors—Accrued and original shares of deceased—Survivor's right to.*

A Hindu by his will gave property to his three nephews. The will provided: "The said three nephews shall hold possession of the same in equal shares, and shall pay the Government revenue of the same into the Collectorate. They shall have no right to alienate the same by gift or sale; but they, their sons, grandsons, and other descendants in the male line, shall enjoy the same, and shall perform acts of piety as they respectively shall see fit for the spiritual welfare of our ancestors. If any of them die without leaving a male child (which God forbid), then his share shall devolve on the surviving nephews and their male descendants, and not on their other heirs."

HINDU LAW—(*Contd.*)

Will—Class—Gift to a—(*Contd.*)

The three nephews of the testator were living at his death; two of them died subsequently, one unmarried, the other leaving a widow but no issue. On a question arising whether upon the death of the brother dying secondly, his original share only, or the share also of his deceased brother which had accrued to him, went over to the last survivor of the nephews, *held*, that on the death of the first brother his share went to his two brothers, and that on the death of one of those, the share which he had at his death, made up of his original and his accrued share, went to the surviving brother (61).

Such a course of devolution is the ordinary course for Hindu property as between brothers inheriting from brothers, and would present itself most readily to the mind of a Hindu testator (61.)

Quaere, as to the effect of the words in question had they been found in an English will (61.) (*Sir Robert P. Collier.*) KUMAR TARAKESWAR ROY. *v.* KUMAR SHOSHI SHIKHARESWAR. **(1883) 10 I.A. 51=9 C. 952 (960-1)= 13 C. L. R. 62=4 Sar. 439.**

Will—Codicil.

———*Effect of—Alteration of will merely or new testamentary bequest—Codicil altering bequests in will by reference to will.*

An Oudh taluqdar made a will in 1906, disposing of his whole estate in favour of his next heir, and *inter alia* bequeathed to his widow a monthly sum of Rs. 500 "from the estate." A fortnight before his death he executed a codicil, which was as follows :—"Will of 1906. In this 500 given to Rani. In place of this wants to give Rs. 1,000 per month. From this date to be given Rs. 1,000."

The codicil was inoperative to affect the talukdari property because it was not executed three months before the death of the testator as required by S. 13-A of the Oudh Estates Act of 1869. There was no such objection, however, to its affecting non-taluqdari property. It was contended that the codicil was intended to be a mere alteration of the will, not a new testamentary bequest, that its effect was, therefore, merely to read 500 plus 500 into the will instead of 500; that, upon a just construction of the will, the 500 was made a charge upon the taluqa and the taluqa alone; and that the codicil, not being dated more than three months prior to death, was powerless to further burden the taluqdari property and did not apply to the non-taluqdari property,

Held, that the view put forward was much too a technical view of the codicil.

Their Lordships think that the words (used in the codicil) clearly mean that the testator provided his widow with 500 rupees more than she would get under the existing will, and that he did not signify the source from which that additional provision was to come. The reference to the will is not meant as the expression of a wish that the bequest in it should be textually altered so as to leave the altered figure to be governed grammatically by the words of the original context, but is merely historically mentioned to show what total provision he wished his widow to take. The result follows that the whole estate so far as burdenable is burdened with the provision then made (988.) (*Lord Dunedin.*) DEPUTY COMMISSIONER OF KHERI *v.* RANI BIJAI RAJ KOER. **(1917) 43 I.C. 987=8 L.W.1= (1918) M. W. N. 324=22 C. W. N. 305=20 O. C. 260= 4 O. L. J. 739.**

———*Reference to, for construing will.*

The testator made a codicil to his will dated on the day of his death. It contains a recital of the will which in some respects varies from the actual language of the will, but it does not appear to their Lordships that any light or assistance can be obtained from it on the construction of the will

HINDU LAW—(*Contd.*)

Will—Codicil—(*Contd.*)

itself, even if it be permissible to refer to it for that purpose. (*Lord Davey.*) LALIT MOHUN SINGH ROY *v.* CHUKKUN LAL ROY. **(1897) 24 I.A. 76 (88)= 24 C 834 (848-9)=1 C. W. N. 387=7 Sar. 155.**

———*Testamentary instrument or* inter vivos *conveyance —Allowance—Bequest of, "From this date"—Codicil creating.*

An Oudh talukdar made a will, disposing of his whole estate in favour of his next heir, and *inter alia* bequeathed to his widow a monthly sum of Rs. 500 "from the estate." *A* fortnight before his death he executed a codicil, which was as follows :—"Will of 1906. In this 500 rupees given to Rani. In place of this wants to give Rs.1,000 per month. From this date to be given Rs, 1,000."

The Subordinate Judge held that the so-called codicil was not a document of a testamentary nature, relying upon the words :—"From this date" in the same.

Held, agreeing with the appeal Court, that the document was of a testamentary nature.

The words "From this date" are amply satisfied by construing them as a wish that the allowance should begin to run at once after death, and the idea that the talukdar was creating an annuity during his own lifetime by *inter vivos* conveyance is opposed to the whole circumstances surrounding the execution of the document (988). (*Lord Dunedin.*) DEPUTY COMMISSIONER OF KHERI *v.* RANI BIJAI RAJ KOER. **(1917) 43 I.C. 987 =8 L. W. 1= (1918) M. W. N. 324=22 C. W. N. 305=20 O. C. 260= 4 O. L. J. 739.**

Will—Condition imposed by.

———*Absolute estate—Defeasance on failure of issue living at time of death of donee and reverter to donor and his heirs—Condition of—Validity.*

A condition making the gift of an absolute estate to *A* defeasible in the event of a failure of issue living at the time of his death, in which event the estate was to revert to the donor and his heirs, is not repugnant to Hindu Law (148). (*Sir Robert P. Collier.*) BHOOBUN MOHINI DEBYA *v.* HURRISH CHUNDER CHOWDHRY. **(1878) 5 I. A. 138=4 C. 23 (28)=2 C. L. R. 339= 3 Suth. 537=3 Sar. 815.**

———Alienation—Restraint upon — Condition of. *See* HINDU LAW — WILL — ALIENATION — RESTRAINT UPON.

———*Breach of—Advantage of—Right to take—Estoppel — Person claiming advantage responsible for breach — Effect.*

The will of a Hindu testator contained a clause for the cesser and determination of the life interest of the respondent in case he ceased to use as his residence the testator's Boitokanah house. The appellant was the person entitled to succeed as heir on such cesser and determination of the life interest of the respondent. He brought the suit out of which the appeal to the Privy Council arose to obtain possession of the property on the ground that the interest of the respondent ceased by reason of his non-fulfilment of the condition.

It appeared, however, that immediately after the death of the testator the appellant had instituted a suit disputing the title of the respondent and his right to possession, that, if the appellant had succeeded in his suit, he would have ejected the respondent from the house with the loss of any money he might have expended upon it, and with the liability to accouut for mesne profits, and that the respondent's failure to get possession of the house and to reside in it was due to the said litigation started by the appellant.

Quaere : whether, under those circumstances, the appellant was not estopped by his own conduct from taking advantage

HINDU LAW—(*Contd.*)

Will—Condition imposed by—(*Contd.*)

of the condition (398). (*Sir Montague E. Smith.*) GANENDRO MOHUN TAGORE *v.* RAJAH JUTTENDRO MOHUN TAGORE. (1874) 1 I. A. 387 = 14 B. L.R. 60 = 22 W. R. 377 = 3 Sar. 395 = 3 Suth. 47.

———Maintenance — Bequest for — Humble request for subsistence — Condition as to—If condition precedent — Compliance with it—What amounts to. *See* HINDU LAW—WILL—MAINTENANCE — BEQUEST FOR — HUMBLE REQUEST FOR SUBSISTENCE.

(1905) 32 I. A. 105 (108-9, 111) = 28 M. 173.

———*Non-performance of—Determination of life interest on—Provision for—Condition declared void—Effect of non-performance thereof in case of.*

Where a clause in a will provided for the cesser and determination of the life interest of the respondent in the event of the conditions in it not being performed, *held* that his interest would cease when that event happened, notwithstanding the conditions over had been declared void (395). (*Sir Montague E. Smith.*) GANENDRO MOHUN TAGORE *v.* RAJAH JUTTENDRO MOHUN TAGORE.

(1874) 1 I. A. 387 = 14 B. L. R. 60 = 22 W. R. 377 = 3 Sar. 395 = 3 Suth. 47.

———Precedent or subsequent—Adoptive mother—Maintenance and affectionate treatment by adopted son of—Condition as to—Breach of—Effect. *See* HINDU LAW—WILL—ADOPTIVE MOTHER. (1920) 47 I.A. 202 (206) = 47 C. 1012.

———Repugnant condition—Estate of inheritance—Condition repugnant to—Rejection of. *See* HINDU LAW—WILL—ESTATE OF INHERITANCE—BEQUEST OF—CONDITION REPUGNANT TO. (1872) Sup. I. A. 47 (76).

———Residence—Condition as to. *See* HINDU LAW—WILL—RESIDENCE.

———Right to dispute—Person taking under will—Right of. *See* HINDU LAW—WILL—OUDH TALUKHDAR—WIFE OF. (1922) 49 I. A. 262 (274) = 44 A. 435 (447).

———*Subsequent condition—Divesting of estate once vested by—Validity.*

A Hindu by his will gave an ordinary widow's estate to his wife, and upon her death, an absolute estate to his daughter's daughter. The will further provided: "If no son or daughter should be born to me, or if my granddaughter (daughter's daughter) should die before she bears a son, or if she should be barren or become a sonless widow, or be otherwise disqualified, then the whole of my properties shall pass into the hands of the Government."

Quaere: whether the disqualifications, if they had been conditions subsequent to the vesting of the estate in the granddaughter, would or would not be in violation of Hindu Law (64). (*Sir Robert P. Collier.*) RAM LAL MOOKERJEE *v.* SECRETARY OF STATE FOR INDIA. (1881) 8 I. A. 46 = 7 C. 304 (317) = 10 C. L. R. 349 = 4 Sar. 225.

Will—Construction of.

(*N.B.* For cases relating to position whether a deed amounts to a will or not *see* under Hindu Law—Will—Deed amounting to a).

ADDITION TO TESTAMENTARY DISPOSITIONS.

Archer v. *Jegon* — RULE IN, AS TO GIFTS AFTER PRIOR INTERESTS TO PERSONS "THEN" LIVING.

ARMCHAIR OF TESTATOR.

BASIS PROPER OF—JUST REASONING.

BEQUEST UNDER WILL—EXTENT OF—TEST OF.

CIRCUMSTANCES OF TESTATOR REFERRED TO IN WILL AND SURROUNDING HIM AT ITS DATE—REFERENCE TO.

CLAUSE IN WILL.

CLAUSES IN WILL—CONFLICT BETWEEN.

HINDU LAW—(*Contd.*)

Will—Construction of—(*Contd.*)

CONTEMPORANEOUS DOCUMENT REFERRED TO IN WILL.

CONTINGENT EVENT—RIGHTS OF PARTIES ON—DECLARATION OF.

CONVEYANCE CLAUSE — CONTROL CLAUSE—CONFLICT BETWEEN.

DISPOSITIONS OF WILL.

DISPOSITIVE WORDS CLEAR AND UNAMBIGUOUS.

ENGLISH—WILL DRAWN UP IN.

ENGLISH DECISIONS—REFERENCE TO.

ENGLISH RULES.

ENTIRE WILL TO BE CONSIDERED.

EVENTS WHICH HAVE NOT HAPPENED—RIGHTS OF PARTIES ON.

FUTURE RIGHTS—DECLARATION OF.

HINDU'S GENERAL DESIRE TO RETAIN ESTATE, ESPECIALLY ANCESTRAL ESTATE, IN HIS OWN FAMILY.

HINDU'S KNOWLEDGE AS TO NATURE OF ESTATE TAKEN BY WOMAN AS A RULE.

HINDU'S ORDINARY NOTIONS AND WISHES WITH RESPECT TO DEVOLUTION OF PROPERTY.

INDIA—RULE APPLICABLE IN.

INTENTION OF TESTATOR.

LANGUAGE OE WILL.

MEANING OF TESTATOR—MODE OF ASCERTAINMENT OF.

NAME GIVEN BY PARTIES TO INSTRUMENT.

NEW WILL HAVING EFFECT OF CREATING ESTATE INCONSISTENT WITH THAT CREATED BY TESTATOR—INVENTION OF.

OTHER WILLS—CONSTRUCTION OF—REFERENCE TO—PERMISSIBILITY.

PARTIES NOT BEFORE COURT—DECLARATION AS TO RIGHTS OF.

PARTIES TAKING UNDER WILL—CONSTRUCTION PUT BY.

PROVISIONS OF WILL—REASONABLENESS OR OTHERWISE OF.

REVOKED WILLS.

RULES OF.

SUIT FOR—COSTS OF.

SURROUNDING CIRCUMSTANCES.

TEMPLE—ERECTION OF—DIRECTIONS TO EXECUTORS AS REGARDS.

VERNACULAR WILL.

WORDS IN WILL.

ADDITION TO TESTAMENTARY DISPOSITIONS.

———*Court's power of.*

So soon as the construction is settled, the duty of the Court is to carry out the intentions of the testator as expressed in the will, and none other. The Court is in no case justified in adding to testamentary dispositions. If they transgress any legal restrictions, they must be disregarded. If they leave any eventuality unprovided for, the estate must in case that eventuality arises, be dealt with according to the law which provides for succession of property in the absence of testamentary directions applying thereto. But the Court never adds to a will anything which needs to be done by testamentary disposition. In all cases it must loyally carry out the will as properly construed, and this duty is universal, and is true alike of wills of every nationality and every religion or rank of life. (*Lord Moulton.*) VENKATA NARASIMHA APPA ROW *v.* PARTHASARATHY APPA ROW. (1913) 41 I.A. 51 = 37 M. 199 (222) = 18 C. W. N. 554 = (1914) M. W. N. 299 = 16 Bom. L R. 328 = 19 C.L.J. 369 = 15 M. L. T. 285 = 12 A. L. J. 315 = 23 I. C 166 = 26 M. L. J. 411.

HINDU LAW—(*Contd.*)

Will—Construction of—(*Contd.*)

ARCHER *v.* JEGON—RULE IN, AS TO GIFT AFTER PRIOR INTERESTS TO PERSONS "THEN" LIVING.

———*Applicability—Benefit to subsequent beneficiaries through medium of trust—Effect.*

By his will a testator devised to his wife during the term of her natural life the house called Capadia House, and he directed his executors during the lifetime of his wife to let another house of his called Rutton Villa, the rent of Rutton Villa being to count as part of the residuary income.

The clauses of the will material to the decision of the appeal were clauses 19, 20, 21 and 25.

"*Clause* 19. I further direct that after the decease of my said wife or in case she shall predecease me then forthwith after my death my executors shall stand seized and possessed of the Capadia House and the furniture therein and Rutton Villa and all my residuary property upon the several trusts in that behalf hereinafter declared, that is to say:—*Cl.* 20. My trustees shall stand seized of the Capadia House upon trust for my said son *J* for life and in the event of his death upon trust for his widow and issue in such shares and proportions as the said *J* may by his will direct, provided that it shall not be lawful for the said *J* to appoint more than one fourth part of the said premises to his widow and subject thereto and in default of any such appointment upon trust for the issue of the said *J* such issue to take *per stirpes* and not *per capita* and if more than one in the same class equally between them and in default of any such issue and subject to any appointment for his widow as aforesaid upon trust for his brother the said *K* if then living and failing him upon trust for the right heirs of me as if I had died possessed thereof intestate in equal shares and proportions but the issue of any heir shall take *per stirpes* and not *per capita* and if more than one in the same class equally between them and excluding from such heirs and such division the widowers of my said daughters and the widows of my said sons."

Clause 21 had similar limitations with regard to Rutton Villa, the two brothers being put in inverse order.

"*Clause* 25. My trustees shall divide the rest residue and remainder of my property equally between my said sons *J* & *K* but the property or the proceeds thereof shall be held by my executors for the benefit of the said *J* & *K* respectively upon the trusts which are hereinbefore declared of and concerning Capadia House and Rutton Villa respectively as fully and effectually as if the share of the said residue given to my son *J* were part and parcel of Capadia House and the share of the said residue given to my son *K* were part and parcel of Rutton Villa."

J died without leaving widow or issue; but the widow of the testator was living. *K*, claiming that he had fulfilled the condition imposed in clause 20, inasmuch as at the date of his brother he was "then living," instituted a suit to have the construction of the will determined.

Held that, on the true construction of the material clauses of the will, upon the death of *J*, Capadia House vested absolutely in *K* subject to the life interest of the testator's widow (264).

The case fell within the rule (in *Archer* v. *Jegon*) "that when there is a gift after prior interests to persons then living, the word "then" refers most naturally to the last antecedent. The fact that the gift to the wife of the house for her life was direct, while the subsequent limitations were to trustees for the benefit of the subsequent beneficiaries, far from taking the dispositions of this will out of the rule, rather tended in the contrary direction (261 3.) (*Lord Phillimoro.*) CAPADIA *v.* CAPADIA.

(1918) 45 I. A. 257 = 43 B. 88 (100 1) = 21 Bom. L. R. 133 = 23 C. W. N. 419 = 9 L. W. 485 = 51 I. C. 481.

HINDU LAW—(*Contd.*)

Will—Construction of—(*Contd.*)

ARMCHAIR OF TESTATOR.

———Court placing itself in position of—Meaning of. *See* HINDU LAW—WILL—CONSTRUCTION OF—INTENTION OF TESTATOR—ASCERTAINMENT OF—MODE OF—LANGUAGE OF WILL. **(1913) 41 I.A. 51 = 37 M. 199 (221-2).**

BASIS PROPER OF—JUST REASONING.

———*Speculative doubts.*

A Court of construction must found its conclusions upon just reasoning, and not upon mere speculative doubts. (*Lord Justice Turner.*) SREEMUTTY SOORJEEMONEY DOSSEE *v.* DENOBUNDOO MULLICK.

(1857) 6 M. I. A. 526 (550-3) = 4 W. R. 114 P. C. = 1 I. J. N. S. 37 = 1 Bour. Rep. 228 = 1 Suth. 291 = 1 Sar. 583.

BEQUEST UNDER WILL—EXTENT OF—TEST OF.

———*Legatee's character and position if and to what extent a.*

The character and position of a legatee may well form the inducement to the gift in his favour, but it is going too far to say that in the absence of express declaration or necessary inference, the extent of the gift can be measured by the legatee's continuing or not continuing to hold that character and position. Such considerations do not form legitimate elements in the construction of a will (555). (*Lord Justice Turner*,) SREEMUTTY SOORJEEMONEY DOSSEE *v.* DENOBUNDOO MULLICK. **(1857) 6 M. I. A. 526 = 4 W. R. 114 = 1 Suth. 291 = 1 I. J. N. S. 37 = 1 Bour. Rep. 228 = 1 Sar. 583.**

CIRCUMSTANCES OF TESTATOR REFERRED TO IN WILL AND SURROUNDING HIM AT ITS DATE—REFERENCE TO.

———*Necessity.*

The circumstances of the testator referred to in his will and surrounding him at its date are not irrelevant upon the question of the construction of the will. (*Lord Balnesburgh.*) JAYDURGA DASI *v.* SAROJ RANJAN SINHA.

(1929) 33 C.W.N. 1117 = 30 L. W. 494 = 50 C.L.J. 481 = A.I.R. 1929 P.C. 214 = 57 M. L. J. 794 (796.)

CLAUSE IN WILL.

———*Construction natural of, giving effect to it—Forced construction defeating its operation—Court's duty.*

Where the natural interpretation of a clause in a will gives effect to it, the Court will by no means be disposed to give it a forced construction which will defeat its operation (62-3). (*Sir Robert P. Collier.*) RAM LAL MOOKERJEE *v.* SECRETARY OF STATE FOR INDIA.

(1881) 8 I. A. 46 = 7 C. 304 (316) = 10 C. L. R. 349 = 4 Sar. 225.

———*Construction of, virtually defeating it—Reluctance of Court to adopt.*

Their Lordships would be reluctant to put a construction on a clause in a will which would have the effect of virtually defeating it (395). (*Sir Montague E. Smith.*) GANENDRO MOHUN TAGORE *v.* RAJAH JUTTENDRO MOHUN TAGORE. **(1874) 1 I. A. 387 = 14 B. L. R. 60 = 22 W.R. 377 = 3 Sar. 395 = 3 Suth. 47.**

———*Effect of—Ascertainment of—Other relevant provisions of will—Reference to—Necessity.*

To find out the effect of a clause in a will, that clause must be read in connection with the other relevant provisions of the will. (*Lord Blanesburgh.*) JOYDURGA DASI *v.* SAROJ RANJAN SINHA. **(1929) 33 C.W.N. 1117 = 30 L.W. 494 = 50 C L.J. 481 = A.I R. 1929 P.C. 214 = 57 M. L. J. 794 (797).**

———*Nugatory provision in—Language of, if may be guide to construction of whole clause.*

The fact that this provision is nugatory does not prevent its language being some guide to the construction of the whole clause (660). (*Lord Phillimore.*) KULSAMBAI *v.* KHENSABAI. **(1919) 13 L.W. 657.**

HINDU LAW—(*Contd.*)

Will—Construction of—(*Contd.*)

CLAUSE IN WILL—(*Contd.*)

———Striking out portion of—Permissibility. *See* HINDU LAW—WILL—WORDS IN—STRIKING OUT OR ALTERING OF. **(1883) 10 I. A. 51 (58-9) = 9 C. 952 (958-9).**

CLAUSES IN WILL—CONFLICT BETWEEN.

———*Earlier one giving entire estate absolutely to* A—*Later one giving portion thereof to* B—*Effect.*

The terms of the will of a Hindu lady, so far as material, were as follows:—Under the will of my husband I am the sole owner in possession (malik-o-qabiz) of his entire estate and possess all proprietary powers. I bequeath the entire estate of my husband to Fateh Chand....subject to the following conditions:—(1) So long as I live, I shall continue to be the owner in possession of the entire estate, the subject of the will, and possess all the powers, such as making sales, mortgages, gifts, etc. (2) After my death the said person (the legatee) shall become owner in possession of the entire estate of my husband and he, too, shall possess all powers of alienation like myself....(4) I have bequeathed Mauza Khudda, with all the property, to Mussumat *G*. After my death she shall be the owner in possession of the entire property in Mauza Khudda aforesaid."

Held that, on the true construction of the will, the entire estate granted in the first place to Fateh Chand was subject to an exeception in regard to Mauza Khudda which Mussumat *G* took absolutely under the will.

This is not a repugnancy in the proper sense of the term, and taking the clauses of the will together, it simply means that Fateh Chand takes the entire estate with the exception of this village, while it, in proper conveyancing terms, is disposed of in favour of Mussumat *G* (186). (*Lord Shaw.*) FATEH CHAND *v.* RUP CHAND. **(1916) 43 I. A. 183 = 38 A. 446 (451-2) = 21 C. W. N. 102 = 18 Bom. L. R. 900 = 20 M. L. T. 481 = 4 L.W. 597 = (1916) 2 M. W. N. 567.**

———*Earlier one giving item to widow—Later one giving entire property in general terms to nephews—Effect.*

A testator by clause 3 of his will gave his half share in mitta *K* to his wife, *A*, on account of her maintenance and other absolute use on the terms that she was at liberty to enjoy the same with powers of alienation by sale, etc., by clause 4, he gave his property in general terms to the two infants of his eldest brother.

Held that clause 3 gave an absolute interest in the moiety to the testator's wife, and that clause 4 operated upon the remaining property only.

The effect of the will was not to vest the moiety in Mitta *K* in the testator's wife for her life only and to pass it on her death to his nephews (288-9). (*Viscount Cave.*) VARATHA PILLAI *v.* JEEVARATHAMMAL. **(1919) 46 I. A. 285 = 43 M. 244 (248-9) = 24 C. W. N. 346 = 27 M. L. T. 6 = 18 A. L. J. 274 = 22 Bom. L. R. 444 = (1919) M. W. N. 724 = 10 L. W. 679 = 53 I. C. 901 = 38 M. L. J. 313.**

CONTEMPORANEOUS DOCUMENT REFERRED TO IN WILL.

———*Reference to.*

In judging of the light in which the directions of the testator are to be regarded, it is legitimate to look at the contemporaneous document referred to in the will which he wrote or caused to be written with the express intent to render clear his wishes with regard to his succession.

N. B. The contemporaneous document was a petition caused by the testator to be written and sent to the Collector of the District. (*Lord Moulton.*) VENKATA NARASIMHA APPA ROW *v.* PARTHASARATHY APPA ROW. **(1913) 41 I. A 51 = 37 M. 199 (223-4) =**

HINDU LAW—(*Contd.*)

Will--Construction of—(*Contd.*)

CONTEMPORANEOUS DOCUMENT REFERRED TO IN WILL—(*Contd.*)

18 C. W. N. 554 = (1914) M. W. N. 299 = 16 Bom. L. R. 328 = 19 C. L. J. 369 = 15 M. L. T. 285 = 12 A. L. J. 315 = 23 I. C. 166 = 26 M. L. J. 411.

CONTINGENT EVENT—RIGHTS OF PARTIES ON—DECLARATION OF.

———Propriety. *See* HINDU LAW—WILL—FUTURE RIGHTS UNDER.

CONVEYANCE CLAUSE—CONTROL CLAUSE—CONFLICT BETWEEN.

———*Which prevails—False description in will—Effect.*

The will of a Khoja resident of Bombay started by a direction that the trustees were to set apart Rs. 3,000, and pay the income to his eldest son, *A*, for life, with a provision against his disposing of it, the sum so set apart to fall into residue at *A*'s death. The will then ran as follows:—

I direct my said trustees of the survivor or survivors of them to set apart a sum of Rs. 80,000 and the house No. 83 situate at Dhoorga Moholla, and I declare that my said trustees or the survivor or survivors of them shall invest the said sum of Rs. 80,000 in such manner as they, she or he may think proper, and shall out of the net income or produce thereof give to my daughter-in-law *R*, the wife of *A*, every month a sum of rupees not exceeding Rs. 200 for the maintenance and household expenses of herself, her husband, the said *A*, and of their children present and future, if and so long as my said son *A* should live with the said *R* my daughter-in-law and her children and if the said *A* live separate from his wife the said *R* and family, then I direct my said trustees or the survivor or survivors of them to pay Rs. 150 a month to my said daughter-in-law *R* for the purposes aforesaid and the sum of Rs. 50 to the said *A*, and my said trustees or the survivor or survivors of them shall invest the surplus of such produce or income in such manner as they shall think proper, such surplus to be spent on the marriage of the children of my said son *A* by the said *R*....I declare that after my said son *A*, his wife and children have removed from my house they shall be allowed to reside in the said house No. 83, and I direct that on the youngest son of my said son *A*, by the said *R* or any other lawful wife attaining the age of twenty-one years, my said trustees or the survivor or survivors of them shall convey to them jointly the said house No. 83 and shall divide amongst them equally the said sum Rs. 80,000 and the accumulations thereof if any for their sole and absolute use and benefit free from all control, power and authority of my said trustees or any of them or of their father the said *A*.

Later on in the will there was a bequest of Rs. 10 a month to each of the two daughters of *A*, to commence upon their marriage and to last during their lives free of the control of their husbands.

In a suit by the two daughters of *A*, the question arose whether or not they were sharers in the capital sum of Rs. 80,000 and the house No. 83.

Held, agreeing with the Court of Appeal, that the plaintiffs were entitled to the benefit of the directions contained in the will regarding the house No. 83, and the sum of Rs. 80,000 and the accumulations thereof, and that the word "them" in the clause of conveyance referred to *A*, his wife *R* and their children.

The language of the clause about control does not operate to destroy the plain language of the clause of conveyance.

If the control clause had ever come into operation it would probably have been right to read it as meaning that the beneficiaries other than *A* should be free from his con-

HINDU LAW—(*Contd.*)

Will—Construction of—(*Contd.*)

CONVEYANCE CLAUSE—CONTROL CLAUSE—CONFLICT BETWEEN—(*Contd.*)

trol, and that the words "their father" was an inaccurate description, a *falsa demonstratio* of *A*. (*Lord Phillimore*). KULSAMBAI *v.* KHENSABAI. (1919) 13 L.W. 657.

DISPOSITIONS OF WILL.

———*See* HINDU LAW—WILL—DISPOSITIONS OF.

DISPOSITIVE WORDS CLEAR AND UNAMBIGUOUS.

———*Control or qualification of, by general expression of intention.*

One of the cardinal principles in the construction of wills, deeds, and other documents is that clear and unambiguous dispositive words are not to be controlled or qualified by any general expression of intention. (*Lard Davey.*) LALIT MOHUN SINGH ROY *v.* CHUKKUN LAL ROY.
(1897) 24 I.A. 76 (85) = 24 C. 834 (846) = 1 C.W.N. 387 = 7 Sar. 155.

ENGLISH—WILL DRAWN UP IN.

———*See* HINDU LAW—WILL—ENGLISH.

ENGLISH DECISIONS—REFERENCE TO.

———Permissibility. *See* HINDU LAW—WILL—CONSTRUCTION OF—OTHER WILLS.
(1896) 23 I.A. 18 (26-7) = 23 C. 563 (572).

ENGLISH RULES.

———*Applicability of.*

It is no new doctrine that rules established in English Courts for construing English documents are not as such applicable to transactions between natives of this country (India). Rules of construction are rules designed to assist in ascertaining intention, and the applicability of many such rules depends upon the habits of thought and modes of expression prevalent amongst those to whose language they are applied. English rules of construction have grown up side by side with a very special law of property and a very artificial system of conveyancing, and the success of those rules in giving effect to the real intention of those whose language they are used to interpret, depends not more upon their original fitness for that purpose than upon the fact that English documents of a formal kind are ordinarily framed with a knowledge of the very rules of construction which are afterwards applied to them. It is a very serious thing to use such rules in interpreting the instruments of Hindus, who view most transactions from a different point, think differently, and speak differently, from Englishmen, and who have never heard of the rules in question (64-5)—and who have never heard of the rules in question (64-5)—Per Wilson, J in 12 C. 663 approved. (*Lord Macnaghten.*) BHAGABATI BARMANYA *v.* KALICHARAN SINGH.
(1911) 38 I. A. 54 = 38 C. 463 (474) = 15 C.W.N 393 = 9 M.L.T 411 = 13 C.L.J. 434 = 8 A.L.J. 433 = 13 Bom. L.R. 375 = 10 I.C. 641 = (1911) 2 M.W.N. 295 = 21 M.L.J. 387.

———*See* WILL—SKINNER FAMILY.
(1913) 40 I.A. 105 (114-5) = 35 A. 211 (224).

———English rules of construction of wills amount in many cases to nothing more than saying that a special phrase which may be used in more than one sense shall *prima facie* be deemed to be intended to bear one particular meaning, unless from the consideration of the context or the surrounding circumstances, the Court can come to the conclusion that it is there used in a different sense. In other cases the rules are the expression of such tendencies in the Court as the desire to avoid an intestacy or the presumption in favour of the immediate vesting of an estate. Such rules are purely an English pooduct based on English necessities and English habits of thought and there would

HINDU LAW—(*Contd.*)

Will—Construction of—(*Contd.*)

ENGLISH RULES—(*Contd.*)

be no justification in taking them as our guide in the case of Indian wills. (*Lord Moulton.*) VENKATA NARASIMHA APPA ROW *v.* PARTHASARATHY APPA ROW.
(1913) 41 I.A. 51 = 37 M. 199 (222) = 18 C.W.N. 554 = (1914) M.W.N. 299 = 16 Bom. L.R. 328 = 19 C.L.J. 369 = 15 M.L.T. 285 = 12 A.L.J. 315 = 23 I.C. 166 = 26 M.L.J. 411.

———*See* PARSEE—WILL OF—CONSTRUCTION OF—ENGLISH RULES. (1922) 49 I. A. 323 (329-30) = 49 C. 1005 (1012).

ENTIRE WILL TO BE CONSIDERED.

———*See* FOLLOWING CASES UNDER HINDU LAW—WILL—CONSTRUCTION OF—INTENTION OF TESTATOR.
(1885) 12 I.A. 103 (110) = 11 C. 684 (692):
(1925) 52 I.A. 214 (228-9) = 48 M. 312:
(1872) Sup. I.A. 47 (79).

and cases under HINDU LAW—WILL—WORDS IN—ALL TO BE TAKEN TOGETHER.

EVENTS WHICH HAVE NOT HAPPENED —RIGHTS OF PARTIES ON.

———Declaration as to—Propriety. *See* HINDU LAW—WILL—FUTURE RIGHTS UNDER.

FUTURE RIGHTS—DECLARATION OF.

———Practice as to. *See* HINDU LAW—WILL—FUTURE RIGHTS UNDER.

HINDU'S GENERAL DESIRE TO RETAIN ESTATE, ESPECIALLY ANCESTRAL ESTATE, IN HIS OWN FAMILY.

———*Assumption of.*

In construing the will of a Hindu it may be assumed that a Hindu generally desires that an estate, especially an ancestral estate, shall be retained in his family. (*Sir Robert P. Collier.*) MAHOMED SHUMSOOL *v.* SHEWAKRAM.
(1874) 2 I.A. 7 (14-5) = 14 B.L.R. 226 = 22 W.R. 409 = 3 Sar. 405 = 3 Suth. 43.

———(2) (*Sir Andrew Scoble.*) RADHA PROSAD MULLICK *v.* RANIMONI DASSI.
(1908) 35 I. A. 118 (128-9) = 35 C. 896 (902) = 4 M.L.T. 23 = 8 C.L.J. 48 = 12 C. W. N. 729 = 10 Bom. L.R. 604 = 5 A. L. J. 460 = 18 M. L. J 287.

HINDU'S KNOWLEDGE AS TO NATURE OF ESTATE TAKEN BY WOMEN AS A RULE.

———Assumption of. *See* HINDU LAW—WILL—WOMAN—ESTATE TAKEN BY.

HINDUS' ORDINARY NOTIONS AND WISHES WITH RESPECT TO DEVOLUTION OF PROPERTY.

———*Consideration of.*

In construing the will of a Hindu it is not improper to take into consideration what are known to be the ordinary notions and wishes of Hindus with respect to the devolution of property. (*Sir Robert P. Collier.*) MAHOMED SHUMSOOL *v.* SHEWKRAM. (1874) 2 I. A. 7 (14) = 14 B.L.R. 226 = 22 W. R 409 = 3 Sar. 405 = 3 Suth 43.

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HINDU LAW—(*Contd.*)

Will—Construction of—(*Contd.*)

INDIA—RULES APPLICABLE IN.

———Nothing peculiar. *See* DEED—CONSTRUCTION OF —INDIA. **(1847) 4 M. I. A 137 (173.)**

INTENTION OF TESTATOR.

———*Ascertainment of—Data for—Words of will—Surrounding circumstances.*

There is no difference between the English and the Hindu laws as to the materials from which the intention of the testator is to be collected. Primarily the words of the will are to be considered. They convey the expression of the testator's wishes; but the meaning to be attached to them may be affected by surrounding circumstances, and where this is the case those circumstances no doubt must be regarded. Amongst the circumstances thus to be regarded, is the law of the country under which the will is made and its dispositions are to be carried out. If that law has attached to particular words a particular meaning, or to a particular disposition a particular effect, it must be assumed that the testator, in the dispositions which he has made, had regard to that meaning or to that effect, unless the language of the will or the surrounding circumstances displace that assumption (550 1). (*Lord Justice Turner.*) SREEMUTTY SOORJEEMONEY DOSSEE *v.* DENOBUNDOO MULLICK.

(1857) 6 M.I.A. 526=4 W.R. 114=1 Suth. 291= 1 I.J.N.S. 37=1 Boulr. Rep. 228=1 Sar. 583.

———*Ascertainment of—Entire will to be looked at for purposes of.*

To find the intention of the testator, the whole of the provisions of the will must be looked at (110). (*Sir Richard Couch.*) SOOKKHMOY CHUNDER DAS *v.* SRIMATI MONOHURRI DASI.

(1885) 12 I.A. 103=11 C. 684 (692)=4 Sar. 639.

———Ascertainment of—Evidence extrinsic for purpose of —Admissibility. *See* HINDU LAW—WILL—CONSTRUCTION OF—LANGUAGE OF WILL—AMBIGUITY IN.

(1888) 15 I.A. 127 (147)=15 C. 725 (749-50.)

———*Ascertainment of—Mode of—Language of will—Surrounding circumstances—Regard for—Necessity—What are such circumstances—Purpose of reference to them.*

In all cases the primary duty of a Court is to ascertain from the language of the testator what were his intentions, *i e.*, to construe the will. It is true that in so doing they are entitled and bound to bear in mind other matters than merely the words used. They must consider the surrounding circumstances, the position of the testator, his family relationships, the probability that he would use words in a particular sense, and many other things which are often summed up in the somewhat picturesque figure. "The Court is entitled to put itself into the testator's armchair." Among such surrounding circumstances which the Court is bound to consider none would be more important than race and religious opinions, and the Court is bound to regard as presumably (and in many cases certainly) present to the mind of the testator influences and aims arising therefrom. But all this is solely as an aid to arriving at a right construction of the will, and to ascertain the meaning of its language when used by that particular testator in that document. (*Lord Moulton.*) VENKATA NARASIMHA APPA ROW *v.* PARTHASARATHY APPA ROW. **(1913) 41 I. A. 51= 37 M. 199 (221-2)=18 C. W. N. 554= (1914) M. W. N. 299=16 Bom. L R. 328= 19 C.L.J. 369=15 M.L.T. 285=12 A. L. J 315= 23 I.C. 166=26 M. L. J. 411.**

———*Ascertainment of—Mode of—Words used by him—Giving of ordinary meaning to—Every part of will—Considering of—Surrounding circumstances—Reference to.*

HINDU LAW—(*Contd.*)

Will—Construction of—(*Contd.*)

INTENTION OF TESTATOR—(*Contd.*)

The first duty of the Court expounding a will is to ascertain what is the meaning of the words used by the testator. That which he has written is to be construed by every part being taken into consideration according to its grammatical construction and the ordinary acceptation of the words used, with the assistance of such parol evidence of the surrounding circumstances as is admissible, to place the Court in the position of the testator (228-9). (*Sir John Edge.*) VENKATADRI APPA RAO *v.* PARTHASARATHY APPA RAO.

(1925) 52 I.A. 214=48 M. 312=23 A.L.J. 261= 6 L.R.P.C. 82=27 Bom. L. R. 823= (1925) M. W. N. 441=3 Pat. L R 208= 29 C. W. N. 989=A. I. R. 1925 P. C. 105= 87 I.C. 324=48 M.L.J. 627

———*Ascertainment of—Mode true of.*

The true mode of construing a will is to consider it as expressing in all its parts, whether consistent with law or not, the intention of the testator, and to determine upon a reading of the whole will, whether, assuming the limitations therein mentioned to take effect, an interest claimed under it was intended under the circumstances, to be conferred (79). (*Mr. Justice Willes.*) JUTTENDRO MOHUN TAGORE *v.* GANENDRO MOHUN TAGORE.

(1872) Sup. I. A. 47=9 B.L.R. 377=18 W.R. 359= 3 Sar 82=2 Suth. 692.

———*Ascertainment of—Necessity—Defects in expressions employed—Disregard of.*

That native testators should be ignorant of the legal phrases proper to express their intentions, or of the legal steps necessary to carry them into effect, is one of the most important of the "surrounding circumstances" which the Court must bear in mind, and it is justified in refusing to allow defects in expression in these matters to prevent the carrying out of the testator's true intentions. But those intentions must be ascertained by the proper construction of the words he uses, and once ascertained they must not be departed from. (*Lord Moulton.*) VENKATA NARASIMHA APPA ROW *v.* PARTHASARATHY APPA ROW.

(1913) 41 I.A. 51=37 M. 199 (222-3)= 18 C. W. N. 554=(1914) M. W. N. 299= 16 Bom. L.R. 328=19 C. L. J. 369=15 M.L.T. 285= 12 A.L.J. 315=23 I C. 166=26 M. L. J. 411.

———*Facts stated or referred to in will—Inference from, of intention not expressly or unambiguously stated in will—Permissibility.*

The intention of a testatrix, when not expressly and unambiguously stated in her will, may be inferred by a Court from other facts stated or referred to in her will that legacies bequeathed by the will should not be paid until the conclusion of litigation in which she was engaged when she made her will (228). (*Sir John Edge.*) VENKATADRI APPA RAO *v.* PARTHASARATHY APPA RAO.

(1925) 52 I.A. 214=48 M. 312=23 A. L. J. 261= 6 L. R. P. C. 82=27 Bom. L.R. 823= (1925) M. W. N. 441=3 Pat. L.R. 208= 29 C. W. N. 989=A. I. R. 1925 P.C. 105= 87 I.C. 324=48 M. L. J. 627.

———General expression of—Control or qualification by, of clear and unamliguous dispositive words. *See* HINDU LAW—WILL—CONSTRUCTION OF—DISPOSITIVE WORDS CLEAR ETC. **(1897) 24 I. A. 76 (85)=24 C. 834 (846).**

———*Giving effect to—Duty of Court.*

———*See* HINDU LAW — WILL — WORDS IN WILL— MEANING TO BE GIVEN TO—RULES REGARDING.

(1914) 38 Bom. 399 (412-3).

HINDU LAW—(*Contd.*)

Will—Construction of—(*Contd.*)

INTENTION OF TESTATOR—(*Contd.*)

———The rule of law is to ascertain the intention of the testator as declared by him, and apparent in the words of his will, and to give effect to this intention so far as, and, as nearly as may be, consistent with law. (*Lord Parmoor.*) DINBAI *v.* NUSSERWANJI RUSTOMJI.

(1922) 49 I. A. 323 (326) = 49 C. 1005 (1008) = 27 C. W. N. 199 = 17 L. W. 174 = 37 C.L.J. 420 = 25 Bom. L. R. 625 = A. I. R. (1922) P. C. 311 = 31 M. L. T. 213 = (1922) M.W.N. 787 = 69 I.C.323 = 45 M. L. J. 572.

———Giving effect to, albeit indirectly, within limits of law—Court's duty as to.

It would in an ordinary case be the duty of a court of construction or administration to inquire whether within the limits of the law the manifest intentions of the testator in favour of a devisee could not be given effect to albeit indirectly (167). (*Lord Blanesburgh.*) KRISHNA KUMARI DEVI *v.* BHAIYA RAJENDRA SINHA. (1929) 56 I.A. 156 = 27 A. L. J. 686 = 116 I. C. 397 = 4 Luck. 122 = 30 L. W. 301 = A. I. R. 1929 P. C. 121 = 57 M.L.J. 496.

———Guide to determine effect of testamentary dispositions. *See* HINDU LAW—WILL—DISPOSITIONS OF—EFFECT OF. (1857) 6 M I. A. 526 (550).

———*Language of will—Intention gatherable from—Control of, by intention gatherable from extrinsic circumstances—Condition.*

If, therefore, we are to impute to the testator any intention different fron that which is to be collected from the words of his will, it must be upon the ground that there are extrinsic circumstances which disprove the expressed intention, and prove the different intention. The expressed intention ought, as we conceive, to prevail, unless the different intention be clearly demonstrated (552-3). (*Lord Justice Turner*). SREEMUTTY SOORJEEMONEY DOSSEE *v.* DENOBUNDOO MULLICK. (1857) 6 M. I. A. 526 = 4 W. R. 114 = 1 Suth. 291 = 1 I. J. N. S. 37 = 1 Bour. Rep. 228 = 1 Sar. 583.

———Reasonable and probable intention—Construction bespeaking—Duty of court to give. *See* HINDU LAW—WILL—CONSTRUCTION—LANGUAGE OF WILL—AMBIGUITY IN. (1888) 15 I.A. 127 (147) = 15 C. 725 (749-50).

———Speculations as to—Permissibility—Language of will clear and consistent. *See* HINDU LAW—WILL—CONSTRUCTION—LANGUAGE OF WILL—CLEAR AND CONSISTENT LANGUAGE.

———*Unreasonable and capricious intention—Construction obviating—Court's power to put—Language ambiguous—Language unambiguous.*

Where, by acting on one interpretation of the words used by a testator we are driven to the conclusion that the person using them is acting capriciously, without any intelligible motive, contrary to the ordinary mode in which men in general act in similar cases, then, if the language admits of two constructions, we may reasonably and properly adopt that which avoids these anomalies, even though the construction adopted is not the most obvious or the most grammatically accurate. But if the words used are unambiguous, they cannot be departed from merely because they lead to consequences which we consider capricious, or even harsh and unreasonable (229). (*Sir John Edge.*) VENKATADRI APPA RAO *v.* PARTHASARATHY APPA RAO.

(1925) 52 I. A. 214 = 48 M. 312 = 23 A. L. J. 261 = 6 L. R.P. C. 82 = 27 Bom. L. R. 823 = (1925) M. W. N. 441 = 3 Pat. L. R. 208 = 29 C. W. N. 989 = A. I. R. (1925) P. C 105 = 87 I. C. 324 = 48 M. L. J. 627.

HINDU LAW—(*Contd.*)

Will—Construction of—(*Contd.*)

INTENTION OF TESTATOR—(*Contd.*)

———*Words in will—Intention expressed by—Construction giving effect to—Necessity.*

There is nothing specifically either English or Indian in the idea that the will of a testator must be construed on that principle which would enable courts of law most fully to give effect to the intention expressed by his words (412-3). (*Lord Shaw.*) CHUNILAL PARVATISHANKAR *v.* BAI SAMARATH. (1914) 38 B. 399 = 18 C.W. N. 844 = 19 C.L.J. 563 = 16 Bom.L. R. 366 = 12 A. L. J. 742 = 16 M. L. T. 59 = 1 L. W. 762 = (1914) M. W. N. 441 = 23 I. C. 645 = 26 M. L. J. 647.

LANGUAGE OF WILL.

———(*See also* HINDU LAW—WILL—WORDS IN.)

———*Ambiguous language—Reasonable and probable intention on part of testator—Construction bespeaking—Court's duty to adopt—Extrinsic evidence of intention—Admissibility of.*

Where the question was whether the expression "Maharani Sahiba" was used in the will of an Oudh talukdar as a collective term comprehending both his widows, or whether it applied to his senior widow alone, *held* that the case was not one in which it would be proper to admit extrinsic evidence of the testator's intention (147).

It is rather a case in which the difficulty created by the particular expression ought to be solved by adopting the construction which bespeaks a reasonable and probable intention and rejecting that which would indicate an intention unreasonable, capricious, and inconsistent with the testator's views, as evidenced by his conduct and by the dispositions of his will which are not open to controversy. The rule is laid down by Lord, Cranworth thus: "When, by acting on one interpretation of the words used, we are driven to the conclusion that the person using them is acting capriciously, without any intelligible motive, contrary to the ordinary mode in which men in general act in similar cases, then, if the language admits of two constructions, we may reasonably and properly adopt that which avoids these anomalies, even though the construction adopted is not the most grammatically accurate (144). (*Lord Macnaghten.*) MAHARANI INDAR KUNWAR *v.* MAHARANI JAIPAL KUNWAR. (1888) 15 I. A. 127 = 15 C. 725 (749-50) = 5 Sar. 150 = R. & J's. No. 102.

———Ambiguous language—Unambiguous language—Unreasonable and capricious intention on part of testator—Construction obviating—Courts' power to put. *See* HINDU LAW—WILL—CONSTRUCTION OF—INTENTION OF TESTATOR—UNREASONABLE AND CAPRICIOUS INTENTION. (1925) 52 I. A. 214 (229) = 48 M. 312.

———*Clear and consistent language—Speculations as to intention of testator in case of—Permissibility.*

Conjecture is quite inadmissible to control the clear expressions of a will. Fortunately their Lordships are precluded from all this guessing by the sound principle of construction, that where the language of a will is clear and consistent it shall receive its literal construction unless there is something in the will itself to suggest departure from it (128). (*Lord Hobhouse.*) GURUSAMI PILLAI *v.* SIVAKAMI AMMAL. (1895) 22 I. A. 119 = 18 M. 347 (358) = 5 M. L. J. 106 = 6 Sar. 610.

———Speculations as to the intention of the testator in regard to a particular provision in the will are, in a case in which the language of that part of the will is clear, and there is nothing in other parts of the will inconsistent with it, quite beyond the legitimate range of judicial interpretation (135). (*Lord Hobhouse.*) AMRITO LAL DUTT *v.* SURNOMOYEE DASI. (1900) 27 I. A. 128 =

HINDU LAW—(*Contd.*)

Will—Construction of—(*Contd.*)

LANGUAGE OF WILL—(*Contd.*)

27 C. 996 (1003) = 4 C. W. N. 549 = 2 Bom. L. R. 446 = 7 Sar. 633.

———Intention of testator gatherable from—Control of. by intention gatherable from extrinsic circumstances—Condition. *See* HINDU LAW—WILL—CONSTRUCTION OF—INTENTION OF TESTATOR—LANGUAGE OF WILL.

(1857) 6 M. I. A. 526 (552-3).

———*Meaning to be given to—Ordinary legal meaning.*

It is possible that a testator may have imperfectly understood the words he has used, or may have misconceived the effect of conferring a heritable estate, but this would not justify the Court in giving an interpretation to the language other than the ordinary legal meaning. (*Lord Davey.*) LALIT MOHUN SINGH ROY *v.* CHUKKUM LAL ROY.

(1897) 24 I. A. 76 (89) = 24 C. 834 (850) = 1 C. W. N. 387 = 7 Sar. 155.

MEANING OF TESTATOR—MODE OF ASCERTAINMENT OF.

———*Wards used by him—Law applicable to the case—Regard for.*

It is a question upon the construction of the will, and the meaning of the testator is to be ascertained by the words which he has made use of, having regard to the laws which prevail in India relative to those subjects. (*Lord Romilly.*) BISSONAUTH CHUNDER *v.* SREEMUTTY BAMASOONDERY DOSSEE. (1867) 12 M. I. A. 41 (59) = 9 W. R. 1 = 2 Suth. 90 = 2 Sar. 344.

NAME GIVEN TO INSTRUMENT.

———Effect of. *See* HINDU LAW—WILL—NAME GIVEN, ETC.

NEW WILL HAVING EFFECT OF CREATING ESTATE INCONSISTENT WITH THAT CREATED BY TESTATOR—INVENTION OF.

———*Court's power of.*

Courts are not at liberty to invent for a testator a will which will have the effect of creating an estate at variance not merely in details but in substance and effect with what he has said (77). (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDRAMOHUN TAGORE.

(1872) Sup. I. A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.

OTHER WILLS—CONSTRUCTION OF—REFERENCE TO—PERMISSIBILITY OF.

———Their Lordships would reluctantly allow, in the construction of a will, the construction of one will to be an imperative guide for the construction of another, where the expressions are not identical (64). (*Lord Romilly.*) BISONAUTH CHUNDER *v.* SREEMUTTY BAMASOONDERY DOSSEE. (1867) 12 M. I. A 41 = 9 W. R. P. C. 1 = 2 Suth. 90 = 2 Sar. 344.

———*English cases—Reference to—Permissibility.*

To construe one will by reference to expression of more or less doubtful import to be found in other wills is for the most part an unprofitable exercise. Happily that method of interpretation has gone out of fashion in this country (England). To extend it to India would hardly be desirable. To search and sift the heaps of cases on wills which number our English law reports, in order to understand and interpret wills of people speaking a different tongue, trained in different habits of thought and brought up under different conditions of life, seems almost absurd. In the Subordinate Courts of India such a practice. if permitted, would encourage litigation and lead to idle and endless arguments. (*Lord Macnaghten.*) NORENDRA NATH SIRCAR *v.* KAMALABASINI DASI. (1896) 23 I. A. 18 (26-7) = 23 C. 563 (572) = 6 Sar. 667 = 6 M. L. J. 71.

HINDU LAW—(*Contd.*)

Will—Construction of—(*Contd.*)

OTHER WILLS—CONSTRUCTION OF—REFERENCE TO—PERMISSIBILITY OF—(*Contd.*)

———It is always dangerous to construe the words of one will by the construction of more or less similar words in a different will, which was adopted by a court in another case. (*Sir John Edge.*) SASIMAN CHOWDHURAIN *v.* SHIB NARAYAN CHOWDHURY. (1921) 49 I. A. 25 (32) = 1 P. 305 (311) = 15 L. W. 434 = 26 C. W. N. 425 = 20 A. L. J. 362 = 35 C. L. J. 427 = 24 Bom. L. R. 576 = (1922) M. W. N. 368 = A. I. R. (1922) P. C. 63 = 3 Pat. L. T. 133 = 30 M. L. T. 242 = 68 I. C. 193 = 42 M. L. J. 492.

———To construe the reasonably clear words in the present will by the light of the construction given to the somewhat similar provisions in that (another) will would be to offend against the principles clearly laid down in Scale *v.* Rawlins and in many other cases. The present will is one in which very little, if any, assistance is to be derived from the interpretation of other wills (467). (*Sir Charles Sargant.*) GANAPATHY PILLAY *v.* ALAMALOO. (1929) A. C. 462 = 27 A.L.J. 1075.

PARTIES NOT BEFORE COURT—DECLARATION AS TO RIGHTS OF.

———Propriety. *See* HINDU LAW—WILL—FUTURE RIGHTS UNDER.

PARTIES TAKING UNDER WILL—CONSTRUCTION PUT BY.

———*Control by, of clear provisions of will—Permissibility.*

In a case in which the question was whether a manager under the terms of a will was entitled to the 10 per cent. commission provided for by the will upon the gross collections or upon the net income of the estate *held*, that if the question was clear one way or the other, upon the construction of the will, that construction should prevail, whatever variations there might have been in practice (207). (*Sir James W. Colvile.*) ORDE *v.* SKINNER.

(1880) 7 I. A. 196 = 3 A. 91 (103) = 7 C. L. R. 295 = 4 Sar. 178 = 3 Suth. 788.

———*Reference to—Permissibility.*

On a question of the true construction of the will of a deceased Hindu giving authority to his two widows to make an adoption to him, their Lordships referred, for what it was worth, to the interpretation put upon the will by the widows themselves as supporting the construction put upon the will by their Lordships. (*Lord Moulten.*) VENKATA NARASIMHA APPA ROW *v.* PARTHASARATHY APPA ROW.

(1913) 41 I. A. 51 = 37 M. 199 (224) = 18 C. W. N. 554 = (1914) M. W. N. 299 = 16 Bom. L. R. 328 = 19 C. L. J. 369 = 15 M. L. T. 285 = 12 A. L. J. 315 = 23 I.C. 166 = 26 M. L. J. 411.

PROVISIONS OF WILL—REASONABLENESS OR OTHERWISE OF.

———Court's concern with. *See* HINDU LAW—WILL—DISPOSITIONS OF—REASONABLENESS, ETC.

REVOKED WILLS.

———*Reference to, for finding out meaning of expressions used by testator and his leaving, as to dispositions of property—Permissibility.*

This will was made on 1-2-1873, and it is not now disputed that all former wills were revoked by it, or that it is the only instrument now to be construed. But it is not unimportant, especially with reference to the arguments founded on the testator's preference of primogeniture for his talook, to see how he had dealt with it by former wills, and what were his dispositions immediately before the will of 1873 (82). It is not shown from any of the testator's

HINDU LAW—(*Contd.*)

Will—Construction of—(*Contd.*)

REVOKED WILLS—(*Contd.*)

former dispositions that the testator was in the habit of using any of its expressions in any but their ordinary sense, or that he looked upon the gift of the lumbardari as carrying the whole beneficial interest, or that he leant in favour of the rule of primogeniture (83). (*Lord Hobhouse.*) FAIZ MUHAMMAD KHAN *v.* MUHAMMAD SAEED KHAN.
(1898) 25 I. A. 77 = 25 C. 816 (821) = 2 C. W. N. 385 = 7 Sar. 320.

RULES OF.

———No peculiar rule. *See* DEED—CONSTRUCTION—RULE OF, IN INDIA. **(1847) 4 M.I.A. 137 (173).**

———*Object and applicability of.*

Rules of construction are rules designed to assist in ascertaining intention, and the applicability of many such rules depends upon the habits of thought and modes of expression prevalent amongst those to whose language they are applied (64-5). (*Lord Macnaghten*). BHAGABATI BARMANYA *v.* KALICHARAN SINGH.
(1911) 38 I. A. 54 = 38 C. 468 (474) = 15 C.W.N. 393 = 9 M.L.T. 411 = 13 C.L.J. 434 = 8 A. L. J. 433 = 13 Bom. L. R. 375 = (1911) 2 M.W.N. 295 = 10 I.C. 641 = 21 M.L.J. 387.

SUIT FOR—COSTS OF.

———*Estate in dispute—Payment of costs of parties out of—Order for.*

———(*Lord Justice Turner*). SREEMUTHY SOORJEEMONEY DOSSEE *v.* DENOBUNDOO MULLICK.
(1857) 6 M.I.A. 526 (556) = 4 W.R. 114 = 1 Suth. 291 = 1 I.J.N.S. 37 = 1 Bour. Rep. 228 = 1 Sar. 583.

———In an appeal arising out of a suit for the construction of a will, considering that the important questions litigated arose from the novelty and difficulty of the will, their Lordships were of opinion that the costs as between attorney and client of all parties in the lower Court, upon appeal to the High Court (Appellate Jurisdiction), and of the appeals to Her Majesty in Council ought to be paid out of the estate, taking first the *corpus* of the personal or moveable estate, and that future costs ought to be reserved until the taking of the account, and be then disposed of by the High Court (84). (*Mr. Justice Willes*). JUTTENDROMOHUN TAGORE *v.* GANENDRAMOHUN TAGORE.
(1872) Sup. I.A. 47 = 9 B.L.R. 377 = 18 W.R. 359 = 3 Sar. 82 = 2 Suth. 692.

———In a suit relating to the construction of a will, their Lordships directed the costs of all parties to be paid out of the testator's estate, in view of the fact that the difficulty had been created by the testator himself and of the position of the parties (148-9). (*Lord Macnaghten*) MAHARANI INDAR KUNWAR *v.* MAHARANI JAIPAL KUNWAR.
(1888) 15 I.A. 127 = 15 C. 725 (751) = 5 Sar. 150 = R. & J.'s No. 102.

———In a suit brought to have the residuary devise in a will construed, and the rights of the parties declared, *held* that the case was one in which it was just to pay the costs of all parties out of the residue in dispute, because (1) the will was a perplexing will, (2) all the parties interested had necessarily to be, and were, brought before the Court, and (3) the suit was necessary and was not too extensively framed (43). (*Lord Hobhouse*). SREEMUTTY KRISTOROMONEY DOSSEE *v.* MAHARAJAH NORENDRO KRISHNA BAHADOOR. **(1888) 16 I.A. 29 = 16 C. 383 (396) = 5 Sar. 285.**

———In an appeal arising out of a suit relating to the construction of the will of one *K*, their Lordships directed

HINDU LAW—(*Contd.*)

Will—Construction of—(*Contd.*)

SUIT FOR—COSTS OF—(*Contd.*)

that the costs of all parties in the appeals to the High Court and in the First Court should be paid out of the estate of *K*, but that the appellant, who was unsuccessful in the appeal to their Lordships, should pay the costs thereof (174). (*Sir Richard Couch*). TARACHURN CHATTERJI *v.* SURESH CHUNDER MOOKERJI.
(1889) 16 I. A. 166 = 17 C. 122 (130) = 5 Sar. 379.

———In a suit in effect for the administration of the will of a deceased Hindu, their Lordships, considering that the disputes to which the suit related had arisen mainly out of the testator's will, and the apparently quite honest attempt of his widows and heirs to fulfil his intentions, *held* that justice required that the costs of the parties in both the Courts below, including the costs of the appeal to the Privy Council, should be defrayed out of the *corpus* of his estate (134). (*Lord Hobhouse.*) SURENDRAKESHAV ROY *v.* DOORGASUNDARI DASSEE. **(1892) 19 I.A. 108 = 19 C. 513 (537-8) = 6 Sar. 150.**

———The case being one of construction of a will, and apparently one of some difficulty, and having given rise to difference of judicial opinion, their Lordships held that it would be proper that the party and party costs of the plaintiff-appellant and the defendants-respondents should come out of the estate. (*Lord Phillimore*). CAPADIA *v.* CAPADIA. **(1918) 45 I.A. 257 (264) = 43 B. 88 (101-2) = 21 Bom. L.R. 133 = 23 C.W.N. 419 = 9 L.W. 485 = 51 I.C. 481.**

———The litigation has been occasioned by dispositions made by a wealthy testator in contravention of the law of India. The points so raised have given rise to much difficulty and complication. Under these circumstances the costs of all parties of the Appeal to the Privy Council as between solicitor and client should be paid out of the estate. (*Viscount Haldane.*) PUTLIBAI *v.* SORABJI NAOROJI GAMADIA. **(1923) P. C. 122 = (1923) M. W. N. 626 = 25 Bom. L. R. 1099 = 33 M. L. T. 401 (P C.) = 28 C. W. N. 737 = 76 I.C. 996 = (1923) 45 M. L. J. 780 (791).**

———Order made in a case in which the litigation was caused by the looseness of the testator's directions (122). (*Viscount Haldane.*) UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION *v.* MORTER.
(1928) A. I. R. (1928) P. C. 119.

———*Successful party—Disallowance to.*

In consequence of the difficulties in the case, and the great obscurity of the will the construction of which was in question, their Lordships disallowed costs to the respondent while affirming the decrees of the courts below. (*Mr. Baron Parke.*) KHOORSHEDJEE MANIKJEE *v.* MEHRWANJEE KHOORSHEDJEE. **(1837) 1 M. I. A. 431 (445) = 5 W. R 57 P. C. = 1 Suth. 73 = 1 Sar. 138.**

———*Successful party to pay unsuccessful party's costs—Order for.*

In view of the special difficulties in the construction of the suit will, the plaintiff who succeeded before their Lordships was directed to pay to the unsuccessful defendant all costs incurred by her before their Lordships and in the courts below (415). (*Lord Shaw.*) CHUNILAL PARVATISHANKAR *v.* BAI SAMARATH. **(1914) 38 B. 399 = 18 C. W. N. 844 = 19 C. L. J. 563 = 16 Bom. L. R. 366 = 12 A. L. J. 742 = 16 M. L. T. 59 = 1 L. W. 762 = (1914) M. W N. 441 = 23 I. C. 645 = 26 M. L. J. 647.**

———*Unsuccessful party—Liability of.*

In a case in which the difficulty as regards the construction of a will arose, not from any uncertainty in the langu-

HINDU LAW—(*Contd.*)

Will—Construction of—(*Contd.*)

SUIT FOR—COSTS OF—(*Contd.*)

age of the will, but from the respondent's contention that it ought to be interpreted by English law, which had no application, their Lordships, in reversing the judgment of the Court below, *held* that the ordinary rule should prevail as regards costs, and directed the respondent to pay the costs of the appellant in the Court below and in the appeal to the Privy Council. (*Lord Westbury.*) BARLOW *v.* ORDE.
(1870) 13 M. I. A. 277 (316-7) = 13 W. R. P. C. 41 = 5 B. L. R. P. C. 1 = 2 Suth. 324 = 2 Sar. 540 = 6 M. P. C. (N.S.) 437 = Punjab (P. C. J.) 870.

SURROUNDING CIRCUMSTANCES.

———*See* HINDU LAW—WILL—CONSTRUCTION OF—INTENTION OF TESTATOR—ASCERTAINMENT OF—MODE OF—LANGUAGE OF WILL.
(1913) 41 I. A. 51 = 37 M. 199 (221-2).

———*See* HINDU LAW—WILL—CONSTRUCTION OF—INTENTION OF TESTATOR—ASCERTAINMENT OF—MODE OF—WORDS USED BY HIM.
(1925) 52 I. A. 214 (228-9) = 48 M. 312.

——— Law of country under which will made if part of. *See* HINDU LAW—WILL—CONSTRUCTION OF—SURROUNDING CIRCUMSTANCES—MEANING OF WORDS, ETC. (1857) 6 M. I. A. 526 (550-1).

———*Meaning of words in will if may be affected by—What are surrounding circumstances—Law of country under which will made if amongst.*

The meaning to be attached to the words of a will may be affected by surrounding circumstances, and where this is the case those circumstances no doubt must be regarded. Amongst the circumstances thus to be regarded, is the law of the country under which the will is made and its dispositions are to be carried out. If that law has attached to particular words a particular meaning, or to a particular disposition a particular effect, it must be assumed that the testator, in the dispositions which he has made, had regard to that meaning or to that effect, unless the language of the will or the surrounding circumstances displace that assumption (550-1). (*Lord Justice Turner.*) SREEMUTTY SOORJEEMONEY DOSSEE *v* DENOBUNDOO MULLICK.
(1857) 6 M. I. A. 526 = 4 W. R. 114 = 1 Suth. 291 = 1 I. J. N. 537 = 1 Bour. Rep. 228 = 1 Sar. 583.

———Reference to—Permissibility. *See* HINDU LAW—WILL—CONSTRUCTION—CIRCUMSTANCES OF TESTATOR, ETC. (1929) 57 M. L. J. 794 (796).

TEMPLE—ERECTION OF—DIRECTION TO EXECUTORS AS REGARDS.

———*Direction express as to erection of temple at one place—Direction as to erection of some work at another—Erection of temple at latter place if authorised.*

The will of a Hindu addressed to his executors provided as follows :—" It is my desire to perform some work at Brindabun and Juggernath.... ; should good or harm happen to me before the completion of these, you will perform all these acts, and defray the expense thereof from the residue of my estate, which remains in your charge. It is my wish to make a temple at Ombica ; should I die before the completion of this, you will make the temple and consecrate it, *from the residue of my estate which remains under your charge.*

Held that, on the right construction of the will, the testator did not intend that a temple should be built and consecrated at Brindabun (249).

When the deceased intended that a temple should be built, he has said so in express words ; but he has not directed that a temple was to be built at Brindabun, and there is no evidence from which that could be ascertained to have been his intention. It must therefore be assumed that the testator meant some other building to be erected at Brindabun (249-30).

Case referred to the Master to inquire whether there were any cheaper religious buildings than temples (250). (*Lord Wynford.*) RAMTONOO MULLICK *v.* RAMGOPAUL MULLICK. (1829) 1 Knapp. 245 = 1 Sar. 6.

VERNACULAR WILL.

———*See* HINDU LAW—WILL—VERNACULAR WILL.

WORDS IN WILL.

———*See under* HINDU LAW—WILL—WORDS IN.

Will—Corpus of estate.

———*Bequest of—Bequest of rents and profits if and when amounts to.*

Where there is a bequest of rents and profits, and it appears that it was the intention of the testator to pass the estate, the words bequeathing the rents and profit would be sufficient to pass the estate (109-10). (*Sir Richard Couch.*) SOOKKHMOY CHUNDER DAS *v.* SRIMATI MONOHURRI DASI. (1885) 12 I. A. 103 = 11 C. 634 (692) = 4 Sar. 639.

———In order to show that an unlimited gift of profits is less than a gift of the corpus some evidence should be found in the context or in the circumstances affecting the property (82). (*Lord Hobhouse.*) FAIZ MUHAMMAD KHAN *v.* MUHAMMAD SAEED KHAN. (1898) 25 I. A. 77 = 25 C. 816 (822) = 2 C. W. N. 385 = 7 Sar. 320.

———Bequest only of—Bequest of accumulations also—Test—Such fund—Meaning of. *See* CHARITY—BEQUEST TO—CORPUS ONLY. (1920) 24 C. W. N. 1026 (1030).

———Bequest of income only and not of—What amounts to. *See* HINDU LAW—WILL—ALIENATION—RESTRAINT UPON—CONDITION OF—INTENTION NOT TO PASS ESTATE. (1885) 12 I. A. 103 (110) = 11 C. 684 (692).

———*Bequest of, to a person at end of 8 years after testator's death—Income of estate during that period—No provision as to—Person entitled to it—Heir-at-law or donee of corpus.*

N, who was a man of very large means real and personal, by his will, dated 15—3—1856, appointed his widow and his younger brother, *S*, his executors, to manage his estate ; and he directed that his widow should receive for maintenance and for the expenses of religious acts and observances one lakh of rupees. Having no son, he, by the 9th clause of his will, made the following provision in regard to his general estate :—"Should my executor, *S*, my younger brother, have more than two sons within eight years from this date, in that case such son shall be made my adopted son. Should such adopted son die within the said appointed period of eight years, in that case should there be other sons of my brother within the specified time of eight years power is reserved for adopting up to the extent of a third time. Should brother have no more than two sons, or the adopted sons shall die one after the other, in that case the share belonging to me of company's papers and lands and houses and gardens and so-forth, the whole real and personal estate will be received by my younger brother *S*." That which was the only clause in the will regulating the disposal of the general estate of the testator, made no special provision in regard to the income of the estate during the eight years in the course of which the testator's brother might have a son who could be validly adopted as the testator's heir,

HINDU LAW—(*Contd.*)

Will—Corpus of estate—(*Contd.*)

S had one son only, and consequently the power of adoption conferred by the testator on his widow could not be exercised. During the eight years which elapsed after the testator's death, *S* himself administered the estate, and received the income and retained it.

The widow claimed the eight years' income which had not been specially disposed of by the will, on the ground that it was intestate succession falling to her as her husband's widow and heiress. *S* maintained, on the other hand, that the income of those years became his property under the general destination to him of the real and personal estate of the testator.

Their Lordships observed that it would be difficult to suggest a reason for holding that the eight years' income was not covered and conveyed by the general destination to *S* of the testator's whole real and personal estate (22). (*Lord Shand.*) SOWDAMINEE DOSSEE *v.* ADMINISTRATOR-GENERAL OF BENGAL. **(1892) 20 I. A. 12 = 20 C. 433 (441) = 6 Sar. 272.**

Will—Daughter.

———Widow—Bequest for life to — Bequest to daughter absolutely after death of widow—Estate taken under—Death of daughter before widow—Effect—Succession Act, S. 106 *—Effect.*

Where the will of a Hindu provided, *inter alia*, that his wives should up to the terms of their respective lives remain proprietresses and possessors of his estate and that after the death of both of them his daughter if one should be born to him should become the proprietress and should perpetuate the name and reputation of his family by residing in his house and maintaining the same as the absolute proprietress and the testator had a posthumous daughter who however died subsequently, *held* that on the true construction of the will and in the events which happened the estate was given to the testator's widows successively for life, and after the death of the survivor to the daughter who became entitled to birth to a reversionary estate under S. 106 of the Succession Act. (*Viscount Cave.*) BHAGWAT KOER *v.* DHA. NUKHDHARI PRASHAD SINGH.

(1919) 46 I. A. 256 (268) = 47 C. 466 (480) = 17 A.L.J. 1036 = (1919) M.W.N. 360 = 24 C.W.N. 274 = 53 I. C. 347 = 12 L. W. 105 = 1 Pat. L. T. 1 = 22 Bom. L. R. 477 = 37 M. L. J. 513.

Will—Daughters.

———Bequest to—Estate conveyed under—Absolute estatte —Life estate.

The will of a Hindu, after directing the formation of a fund for the payment of a monthly sum to his widow for life, directed that the trustees were "to apportion the residuary trust funds into as many equal parts or shares as there may be daughters of mine living at the time of my decease or who having predeceased me shall have left issue her or them or me surviving." The trustees were then to "pay the income of each of such equal parts or shares to my said daughters respectively during their respective lives. And from and after the decease of each of my said daughters to stand possessed of the share of the residuary trust funds so appropriated as aforesaid to such daughter upon trust for the children of such daughter who shall attain the age of 21 years." The testator then directed that in the event of any of the daughters dying without leaving lawful issue the trustees were to "stand possessed of the share or shares so appropriated to her or them as aforesaid" on trust for her children who should attain 21. He went on to introduce a proviso under which, if a daughter died in his lifetime leaving lawful issue, such issue as should attain 21 years were to take the share " which would have been so appropriated as aforesaid to such daughter of mine and her issue if she had survived me."

HINDU LAW—(*Contd.*)

Will—Daughters—(*Contd.*)

The appellate Court held that, upon the true construction of the will, the intention of the testator was, in the first instance, to make an absolute gift in favour of each of his daughters, the provisions which followed being a mere settlement of the gift thus absolutely made, and that consequently, under S. 126 of the Succession Act, the daughters of the testator took absolutely when those provisions failed of effect.

Held, reversing the appellate Court, that there were not to be found in the will the absolute bequests required by S. 126, and that the daughters took only for life.

The first trust for appointment directed merely division of the fund into as many equal parts or shares as there were daughters living at the testator's death or sets of issue then living of daughters then dead. The words of apportionment are introduced for merely arithmetical purposes and so far do not dispose of property. In order to find the interest given under the will it is necessary to proceed to the further words, and these, in the case of a daughter, confine her interest to a right to income for life. They are followed by words of disposition in favour of the children and issue. This view of what may be called the apportionment clause is even more apparent as ragards the suggested gift to issue of a deceased daughter. There is no unqualified gift to them by the apportionment clause. The effective gift, in the later words of the will is to such of a deceased daughter's children as attain 21. And if of this will it could be said that the testator had used the words "issue" and "children" interchangeably then the limitation to such children only as attained 21 could, if there were a prior gift to them without that qualification, be merely otiose. If so much cannot be said, then there is no room for the operation of the rule. (*Viscount Haldane.*) SOUNDAR RAJAN *v.* NATARAJAN.

(1925) 52 I. A. 310 = 48 M. 906 = 6 L. R. P. C. 180 = 23 A. L. J. 1010 = (1926) M. W. N. 22 = 43 C.L.J. 70 = 28 Bom. L. R. 204 = A. I. R. (1925) P. C. 244 = 92 I. C. 289 = 49 M. L. J. 836.

———Bequest to—Estate conveyed under—Absolute estate—Life estate in equal shares with benefit of survivorship.

The clause of the will of a Hindu relating to his daughters was as follows :—

"But in case none of such adopted sons servive my said wife, or in case of either surviving my said wife and dying under the said age without leaving a son or sons, I desire and direct my executors, after the death of my said wife, or the death of such sons after her, but under the age of 18 years without leaving a son or sons, to make over and divide the whole of my estate, both real and personal, into and between my daughters in equal shares, to whom and their respective sons I give, devise and bequeath the same, but should either of my said daughters die without leaving any male issue surviving, but leaving my other daughter her surviving, then in such case the surviving daughter and her sons shall be entitled to the share of the deceased daughter, or in the case of the death of either daughter leaving sons, the share of such daughter is to be paid to such her son or sons share and share alike."

Held, reversing the judgments below, that, according to the true construction of the will, the intention of the testator was to create in favour of his daughters an estate for life with a remainder over to their sons, and, in the events that had happened, the daughters of the testator were entitled to the testator's estate in equal shares for life and with benefit of survivorship between themselves.

The testator has clearly succeeded in shewing that his daughters, whom be incontestably intended to benefit, were

HINDU LAW—(*Contd.*)

Will—Daughters—(*Contd.*)

not to have more than what is generally known to be a woman's estate in his property. This is established by the gift to them " and their respective sons", and by the proviso that in the event of one of the daughters dying " without leaving any male issue surviving," then the share of the deceased daughter is to go to the surviving daughter and her sons, to the exclusion in both cases of female issue. Moreover, "in the case of the death of either daughter leaving sons, the share of such daughter is to be paid to such her son or sons share and share alike." No language could more clearly show that the intention of the testator was to exclude his daughter's daughters from the succession, to which they would have been entitled under the ordinary Hindu law, if their mother's estate had been absolute. (*Sir Andrew Scoble.*) RADHA PRASAD MULLICK *v.* RANIMONI DASSI. **(1908) 35 I. A. 118 = 35 C. 896 = 4 M. L. T. 23 = 8 C. L. J. 48 = 12 C. W. N. 729 = 10 Bom. L. R. 604 = 5 A. L. J. 460 = 18 M. L. J. 287.**

——— *Bequest to—Estate conveyed under—Absolute estate—Life estate with right of survivorship as regards pre-deceased daughter's share—Test.*

The will of a Hindu provided, by Clause 2 : " After my death my said two daughters shall be my lawful heirs, and they alone shall in equal shares become owners of all my properties subject to the provisions of this will ; the (said) two daughters shall acquire all manner of rights consistent with Hindu Law, in the properties that shall be left by me. God forbid, if my death takes place after the marriage of another, then the unmarried daughter shall not be entitled to claim the entire property by virtue of her not being given in marriage, nor shall she get the same ; even if such a circumstance should happen, both the daughters shall inherit in equal shares. The daughters and their sons, that is to say, my heirs, shall enjoy the properties, etc., so long as they shall live in this house at Boalmari. Nobody shall ever by fixing the abode at any other place than this be entitled to own or enjoy the property. None shall be competent to succeed to property who may go to live elsewhere. Nobody shall at any time be competent to remove the Sadar Cutchery at Balidanga to any other place, the Sadar Cutchery shall always remain there. Such is the injunction also from my ancestors."

In other clauses of the will, notably in clauses 3, 5 and 6 the word " heirs " was used to denote not the daughters only, but those daughters and their sons.

Again, when referring in terms only to the testator's daughters, the will fettered their power over the property. Clause 7 provided that if either of the daughters, elder or younger, desired to have a partition of the property effected, she should not be competent to do so. Clause 8 was as follows : " When the daughters shall attain majority, the executors shall make over to their satisfaction the properties, etc, and everything, if they decline to accept the properties, etc. into their own hands as being incapable, the executors shall, when the daughter's sons attain majority, retire after making over everything to them to their satisfaction."

Held that, on the true construction of the will, the only interest thereby given to the testator's daughters respectively in his property was the interest of a daughter as recognised by the Hindu Law, and not an absolute interest.

A power to alienate is an essential incident of an absolute interest in property. Not only is no such power in terms conferred upon the daughters, but the prohibition against partition by them and the provision of clause 8 for the benefit of their sons indicate clearly that the whole scheme of the will is that the property shall remain intact after the death of both daughters for the benefit of their sons as the heirs of the testator.

HINDU LAW—(*Contd.*)

Will—Daughters—(*Contd.*)

Held futher that, under the will, after the death of one of the daughters, the survivor would, by virtue of the *jus accrescendi*, be entitled for the reminder of her life to the enjoyment of her sister's moiety as well as of her own. (*Lord Blanesburgh.*) JOYDERGA DASI *v.* SAROJ RANJAN SINHA. **(1929) 33 C.W.N. 1117 = 30 L.W. 494 = 50 C.L.J. 481 = A.I.R. 1929 P.C. 214 = 57 M. L. J. 794.**

——— *Bequest to—Survivorship on one of daughters predeceasing other—Right of, conferred upon survivor—Transfer of before accrual of—Validity—T. P. A., S. 6 (a)—Principle of—Applicability.*

Quaere whether an arrangement between two daughters, legatees under their father's will, by which each daughter gives up in favour of the sons of the other the interest to which she would, under the will, be entitled by the operation of the *jus accresendi* in the moiety given to her sister in the event of her sister predeceasing her, would be void on the ground that it is a transfer of a mere expectancy. (*Lord Blanesburgh*). JOYDURGA DASI *v.* SAROJ RANJAN SINHA. **(1929) 33 C.W.N. 1117 = 30 L.W. 494 = 50 C.L.J. 481 = A.I.R. 1929 P.C. 214 = 57 M. L. J. 794 (799-800).**

——— *Bequest to, and to their sons in equal shares—Death of a daughter without leaving sons—Gift over in event of, to survivor—Provision for—Death of one leaving sons born during testator's lifetime and thereafter—Right of sons.*

By his will a Hindu directed his executors as follows: "to make over and divide the whole of my estate between my daughters in equal shares, to whom and their respective sons I give, devise, and bequeath the same, but should either of my said daughters die without leaving any male issue surviving but leaving my other daughter her surviving, then the surviving daughter and her sons shall be entitled to the share of the deceased daughter, or, in case of the death of either daughter leaving sons, the share of such daughter is to be paid to such her son or sons' share and share alike." The testator died leaving two daughters, one of whom alone had sons at the time. The latter died sometime after the death of the testator leaving behind her, her sister, her sons born during the testator's lifetime, and other sons born subsequently. On a question arising as to whether in the events that happened the share of the deceased daughter passed over for life to the surviving sister or to her sons born during the testator's lifetime, *held* that it passed to the latter and not to the former.

The question whether sons of the deceased daughter born after the death of the testator were or were not entitled to take under the will was left open by their Lordships. (*Lord Multon.*) RANIMONI DASSI *v.* RADHA PRASAD MULLICK. **(1914) 41 I. A. 176 = 41 C. 1007 = 23 I. C. 713 = 18 C. W. N. 873 = 1 L. W. 731 = 16 M. L. T. 217 = 16 Bom L. R. 787 = 20 C. L. J. 348 = (1914) M. W. N. 624 (657) = 26 M. L. J. 653.**

———Residence and maintenance of—Provision for—Husbands and families of daughters — Family of deceased daughter—Right of,to benefit of provision. *See* HINDU LAW—WILL—RESIDENCE (1923). **45 M. L. J. 780 (787-8).**

———Wife—Bequest of absolute estate to—Direction that whatever property there might remain after her death she should leave the said property to daughters in such manner as she might like—Effect of—Expression of wish merely or creation of obligation also. *See* HINDU LAW—WILL—WIFE—ABSOLUTE ESTATE TO—BEQUEST OF—DERECTION THAT, ETC. **(1921) 49 I. A. 1 (8) = 46 B. 153. (161).**

———Wife—Bequest of absolute estate to—Derection that she should leave to daughters " Whatever property there may remain after her death "—Trust in favour of daughters if created by—Horwood *v.* West—Rule in—Applica-

HINDU LAW—(*Contd.*)

Will—Daughters—(*Contd.*)

bility of. *See* HINDU LAW—WILL—WIFE—ABSOLUTE ESTATE TO—BEQUEST OF—DERECTION THAT, ETC.

(1921) 49 I.A. 1 (7-8) = 46 B. 158 (159-60).

Will—Daughter's children.

———*Bequest to—Joint tenants—Tenants in common—Bequest to them as.*

G, a deceased Hindu, had no male issue, but had two daughters, *P* aged seven years, and *S* aged three, born of his fourth wife Sivagangai. By his will, dated 19—10—1864, he gave away his estate, which he described, to his said two daughters. Then occurred the following sentences in the said will :—

" The aforesaid two daughters after their marriage shall with their husbands remain is this family and enjoy as one family the income of the aforesaid properties without division and without alienating by sale, etc."

" If in so doing there should be disagreement between them, the income thereof minus the just expenses, shall be enjoyed by them both in equal shares. If both the said daughters have issue, they shall divide the said properties equally. Those who have no issue shall as aforesaid enjoy the income for their lives and those who have issue shall enjoy the whole property. Till then the miras shall continue in my name. In case your mother and you disagree and live separately you shall pay 21 kalams of paddy and 7 Rupees a year for her maintenance "

G, further provided that if he should recover and get a male child, the entire property should go to that child He died, however, a few days afterwards, and there was no male child born. *P*, married and had issue, the appellants, and *S*, also married, and died subsequently. Whether or no she had a child was matter of dispute. She had none living at the time of her death.

The Courts below held, on the construction of the will, that on the birth of children to both the daughters, they took absolute interests in severalty. On appeal to their Lordships it was contended that the testator's intention was to let the estate devolve as joint family property.

Held, overruling the contention, that it was manifestly inconsistent with the position assigned to the testator's widow, and with the gift first of the income and afterwards of the property to his daughters in moieties (127). (*Lord Hobhouse.*) GURUSAMI PILLAI *v.* SIVAKAMI AMMAL.

(1895) 22 I. A. 119 = 18 M. 347 (357) = 6 Sar. 610 = 5 M. L. J. 106.

Will—Daughter's daughter.

———*Bequest to—Estate conveyed—Absolute estate—Words—"Poutradikrame"—Effect.*

After providing for a widow's estate for his wife, a Hindu by his will directed as follows:—

"If no daughter or daughter's son of mine should be living at the time of the death of my wife, then my grand daughter (daughter's daughter) shall become the proprietress of my property, and shall remain in undisputed possession thereof from generation to generation."

Held, that that provision, if it stood alone, would confer an absolute estate on the grand-daughter upon the death of the widow (62).

The next clause in the will was as follows:—"If the death of my wife should take place before my grand-daughter (daughter's daughter) arrives at majority and bears a son, then the whole of the estate shall remain in charge of the Court of Wards until she arrives at majority and bears a son." Reliance was placed on this clause for enforcing the argument that the testator's object was to benefit the sons of his grand-daughter.

Held, that that object the testator might reasonably suppose best effectuated by giving complete power over the

HINDU LAW—(*Contd.*)

Will—Daughter's daughter—(*Contd.*)

estate to his grand-daughter, and that the provision for management by the Courts of Wards obviously did not affect the granddaugter's estate (62). (*Sir Robert Collier.*) RAM LAL MOOKERJEE *v.* SECRETARY OF STATE FOR INDIA.

(1881) 8 I. A. 46 = 7 C. 304 (315-6) = 10 C. L. R. 349 = 4 Sar. 425.

Will—Daughter-in-law.

———*Bequest to—Estate conveyed—Absolute estate—Life estate—Words "Heir and malik"—Effect.*

At the time when the testator executed the will, the construction of which was in question in the appeal, the state of his family was as follows:—There were living only *D*, the widow of his pre-deceased son, and her two daughters by that son, who at that time were unmarried.

The testator recited that the property of which he was about to dispose by the will was ancestral property. He recited the death of his son. *D's* husband, and the death of his own wife, and he recited that *D*, the widow of his son, was alive, that she had no heirs except her two daughters, who would be her heir. And he continued: "And my wife too died before, only *D*, widow of *K*, my deceased son above mentioned, who too, excepting her two daughters born of her womb, has no other heirs, is my heir." And then he further went on to say, "excepting *D*, aforesaid, none other is nor shall be my heir and malik." He proceeded, however, to again refer to the daughters of D, and went on to say, "Furthermore, to the said *D*, too, these very two daughters named above, together with their children, who after their marriage may be given in blessing to them by God Almighty, are and shall be heir and malik."

Held, affirming the Courts below, that, on the right construction of the will, the intention of the testator was that *D*, the widow of his son, should not take an absolute estate which she should have power to dispose of absolutely, but that she took an estate subject to her daughters succeeding her in that estate (15).

It would appear that that the testator uses the word " heir " as signifying the person who is to take immediately in succession to another ; that he applies it to *D*, as the person who is to take in immediate succession to him, and to the two daughters as the persons who are immediately to succeed to *D* ; and their Lordships think that, viewing the will as a whole, when he uses the expression " except *D*, aforesaid, none other is nor shall be my heir and malik," it may be fairly construed as meaning that she shall take a life interest immediately succeeding him, without that interest being shared by her daughters or by any other person. On the whole, therefore, the courts below were right in construing the will as not giving an estate of inheritance to *D*, which she was able absolutely to alienate (15). (*Sir Robert P. Collier.*) MAHOMED SHUMSOOL *v.* SHEWERKRAM.

(1874) 2 I. A. 7 = 14 B. L. R. 226 = 22 W. R. 409 = 3 Sar. 405 = 3 Suth. 43.

———Life estate take under will by—Sale of estate by—Necessity justifying—Discharge of testator's debts if—Income of estate ample—Onus of Proof of necessity. *See* HINDU LAW—WILL—WOMAN—LIFE ESTATE TAKEN UNDER WILL BY. **(1874) 2 I. A 7 (16-7).**

———Widow—Life estate to, without power of alienation—Bequest to daughter-in-law subject to—Estate taken under—Life estate without power of alienation. *See* HINDU LAW—WILL—ESTATE CONVEYED UNDER—WIDOW.

(1929) 56 I. A. 156 (163).

Will—Debt—Charge on immoveable property in respect of.

———*Will creating.*

A will by which *S*, devised property to the defendant ran as follows : " Therefore,..I give you under this will the

HINDU LAW—(*Contd.*)

Will—Debt—Charge on immoveable property in respect of—(*Contd.*)

whole of my moveable and immoveable properties specified in the said decrees, under these conditions, *viz.*, that you will perform, and cause to be performed, antim-krya (cremation) and rites and ceremonies in the proper manner at a reasonable cost. The loan of Rs. 15,000 which I took from your father you will repay with interest from the properties specified in the decrees, and so set me free from liability for that debt."

Held, that, on the true construction of the will, the debt payable to the defendant's father was charged upon the immoveable properties specified in the decrees referred to in the will, and that a suit by the auction-purchaser of the father's claim was governed by Art, 132 of the Limitation Act, of 1877, (*Sir Richard Couch.*) GIRISHCHUNDER MAITI *v.* RANI ANUNDMOYI DEBI.

(1887) 14 I. A. 137 = 15 C. 66 = 5 Sar. 78.

Will—Deed amounting to a.

APPOINTMENT OF HEIR PRESENT AND IRREVOCABLE OR.
AUTHORITY TO ADOPT OR.
DEED DECLARING RIGHT OF INHERITANCE OR.
EXECUTORS—APPOINTMENT OR—DEED CONTAINING, AND DISPOSING OF PROPERTY.
MINOR.
NAME GIVEN TO INSTRUMENT.
OUDH TALUKDAR.
PETITION TO COLLECTOR IF A.
PRIOR WILL.
SETTLEMENT DEED OR.
WAJIB-UL-ARZ—ENTRY IN.
WISH OR DIRECTION OR.

APPOINTMENT OF HEIR PRESENT AND IRREVOCABLE OR.

———*Test—Hindu widow with power of appointing heir —Deed by.*

By his will an Oudh talookdar declared his wife "representative. and proprietor, of my estate, and property, moveable and immoveable," and provided that "until she make some one representative, let her remain representative, like myself, without power to aliene."

In August, 1872, the widow of the talookdar, who had died before, executed a document which, after reciting that she should make a will regarding the appointment of an heir and representative, after herself, in place of her husband, provided as follows:—

"I have appointed the youth Triloki Nath, nephew of my husband, heir and representative in place of my husband, of all the rights and dignities conferred on my husband by the British Government, and of the entire estate, and all property, moveable and immoveable. The said youth shall, after my death, remain, from generation to generation, in the enjoyment of all the rights and dignities, in place of my husband; and the said youth will also own, and enjoy the property belonging to me, moveable and immoveable. I will fix such maintenance as I may think fit for *P*, and for *D*. These allowances shall continue to be paid by the said youth, and by his successors, for ever, after my death; and the said youth, and his successors, shall also discharge any money debts, or verbal contracts, binding on me, or on the estate. I have, therefore, written these few words of the nature of a will, that after my death they may be of use when required."

Held, on a construction of the deed of 1872, that it was not a present irrevocable appointment, but that it was a will taking effect only on the death of the Maharanee (the executant), and ambulatory and revocable in her lifetime (207-8).

HINDU LAW—(*Contd.*)

Will—Deed amounting to a—(*Contd.*)

APPOINTMENT OF HEIR PRESENT AND IRREVOCABLE OR—(*Contd.*)

The document commences with a recital of the will of the Maharaja (the husband) styling it "a will." The Maharanee then says that life is uncertain, and that after her death disputes might arise as to the succession to the raj, and proceeds, "It is therefore right that I should make a will regarding the appointment of an heir and representative, after myself, in the place of the Maharaja; I therefore, being of good health and sound mind, have appointed the youth, Triloki Nath, nephew of my husband, heir and representative." She proceeds to say that the youth will enjoy the property after her death. She also bequeaths to him her own property. She says she will fix allowances for maintenance to relatives, which are to be paid after her death by Triloki Nath, who is also to pay her debts. She concludes by saying she has written these few words "in the nature of a will," "that after her death they may be of use" (208).

The document, both in its beginning and its end is expressly styled a will. In the beginning, it is so styed after reference to the Maharajah's "will," and an instrument of the same nature as his was evidently contemplated. It is also plainly declared by the Maharanee that Triloki Nath was to become representative only after her death, and there is no indication whatever that she intended to divest herself of her husband's property during her lifetime, any more than of her own, which she also bequeaths (208).

Further when the Maharanee sent a copy of the document to the Superintendent of the Court of Wards to inform him that she proposed Triloki Nath, to be successor of the Maharajah after her death, she calls it "a will" (208).

It was argued that the document was evidence that she had made an immediate appointment, because the words "I have appointed" are used. There is no pretence for saying that she had appointed Triloki Nath otherwise than by the instrument itself. These words therefore can only have operation according to the nature of the instrument. They are not in themselves inconsistent with a disposition by will and are altogether insufficient to countervail the express description of the document as a will, and its general tenor (208-9). (*Sir Montague E. Smith.*) PARTABNARAIN SINGH *v.* TRILOKINATH SINGH.

(1884) 11 I. A. 197 = 11 C. 186 (197-8) = 4 Sar. 567 = Bald. 174 = R. & J's. No. 86.

AUTHORITY TO ADOPT OR.

———*See* HINDU LAW—ADOPTION—AUTHORITY TO ADOPT—WILL OR.

DEED DECLARING RIGHT OF INHERITANCE OR.

———The will of a childless Hindu, after giving his wife and his mother possession of his property, moveable and immoveable, for their lives, provided: "On the death of my mother and my wife, the sons of my sisters, that is to say, their sons who are now in existence as also those who may be born hereafter shall in equal shares hold the said properties in possession and enjoyment by right of inheritance, and shall maintain intact and continue the service of the established deities and ancestral rites according to the practice heretofore obtaining."

Their Lordships rejected the contention that there was really no bequest in favour of the nephews, and that so far as they were concerned the will only declared a right of inheritance.

It is not very easy to determine the proper meaning of the expression translated by the words "by right of inheritance". Whatever the exact meaning of this doubtful expression may

HINDU LAW--(*Contd.*)

Will—Deed amounting to a—(*Contd.*)

DEED DECLARING RIGHT OF INHERITANCE OR—(*Contd.*)

be, it cannot in their Lordships' opinion have been inserted for the purpose of rendering meaningless words which had only just been used (63). (*Lord Macnaghten.*) BHAGABATI BARMANYA *v.* KALICHARAN SINGH.

(1911) 38 I. A. 54 = 38 C. 468 (472-3) = 15 C. W. N. 393 = 9 M. L. T. 411 = 13 C. L. J. 434 = 8 A. L. J. 433 = 13 Bom. L. R. 375 = (1911) 2 M. W. N. 295 = 10 I. C. 641 = 21 M. L. J. 387.

EXECUTORS—APPOINTMENT OF—DEED CONTAINING, AND DISPOSING OF PROPERTY.

———*If amounts to a will.*

A Hindu made a will, which contained an appointment of his wife and his daughter to be executrixes, and consisted of two parts, namely, (1) a disposal of the property in a certain way, and (2) an authority to his widow in a certain event to take a son by adoption. He had nominated as his son, *V*, a son of his daughter, but he had not completed the adoption. By his will he directed that, if he should die before completing the adoption, his wife should, after his death, complete the necessary ceremonies and take the said grandson in adoption, and his will contained the following clause: "In case any danger may happen to my grandson *V*, during the lifetime of my wife who is one of my executrixes my wife may according to her wishes take in adoption one of my said daughter's sons, and give my properties to that son."

Held, that the document was a will (23).

The document contained an appointment of executors, and it was executed by a testator who at its date could dispose of the property of which he purported to dispose (23). (*Lord Wrenbury.*) VENKATANARAYANA PILLAI *v.* SUBBAMMAL.

(1915) 43 I. A. 20 = 39 M. 107 (112) = 18 Bom. L. R. 372 = 20 C. W. N. 234 = (1916) 1 M. W. N. 97 = 3 L. W. 177 = 19 M. L. T. 147 = 12 A. L. J. 178 = 32 I. C. 373 = 23 C. L. J. 366 = 29 M.L.J. 851.

MINOR.

———Deed by, in form a will—Will if a. *See* HINDU LAW—WILL—MINOR.

(1925) 52 I.A. 305 (308) = 48 M. 614.

NAME GIVEN TO INSTRUMENT.

———Effect of. *See* HINDU LAW—WILL—NAME GIVEN ETC.

OUDH TALUKDAR.

———Succession to estate—Wishes as to—Inquiries by Government as to—Statement by talukdar in reply to. *See* OUDH ESTATES ACT OF 1869—S. 2—WILL UNDER.

———*Wife—Deed in favour of.*

Sir Man Singh was one of the great landholders of Oudh, whose status and rights were the subject of Act I of 1869. He died on 11—10—1870. Some years before the passing of Act I of 1869, *viz.*, on 22—4—1864, he executed a will, which was in the following terms:—

"Whereas my intention as regards making any boy representative has not yet become fixed, I therefore, for the present, declare my aforesaid Maharani" (his wife) "representative and proprietor, of my estate, and property, moveable and immoveable; until she make some one representative, let her remain representative, like myself, without power to aliene; and as regards my property, moveable and immoveable, no sharer or partner has any claim. Therefore, having written these few words of the nature of a will, I have deposited with the Government, that it may remain a record, and be of use in time of need."

HINDU LAW—(*Contd.*)

Will—Deed amounting to a—(*Contd.*)

OUDH TALUKDAR—(*Contd.*)

Held, that the will was a testamentary instrument. The Maharajah states, as a reason for making it, that his intention as regards making any boy representative had not become fixed. "Therefore, for the present," obviously pointing by this expression to the possibility of his making another disposition before his death, he declared the Maharanee "representative and proprietor of my estate; until she make some one representative, let her remain representative, like myself without power to aliene" (206). (*Sir Montague E. Smith.*) PARTAB NARAIN SINGH *v.* TRILOKIANATH SINGH.

(1884) 11 I. A. 197 = 11 C. 186 (196) = 4 Sar. 567 = Bald. 174 = R. & J's No. 86.

PETITION TO COLLECTOR IF A.

———In this case a petition presented by a deceased Hindu to the Collector was treated as in the nature of a testamentary instrument by both sides in the litigation, by both Courts in India, and by their Lordships (13). (*Sir Robert P. Collier.*) MAHOMED SHUMSOOL *v.* SHEWAKRAM.

(1874) 2 I.A. 7 = 14 B. L. R. 226 = 22 W.R. 409 = 3 Sar. 405 = 3 Suth. 43.

PRIOR WILL.

———*Devolution of property as per—Declaration of—Deed amounting to, or to a new will—Test.*

N was the last male holder of an Oudh talooka. After his death without issue a summary settlement of the taluka was made with one of his widows, *R*, on 2—12—1858, and on the 15th of March, 1861, a sunnud was granted to her conferring on her an estate of inheritance according to the law of primogeniture, together with full power of alienation. It appeared that in January, 1861, a letter, probably a circular letter was sent to her, and that on the 6th January 1861, she sent a reply thereto which was as follows:—

"Sir,—I have the honour to acknowledge the receipt of your parwana (letter), dated the 7th of December, 1860, inquiring as to whom I wish to bequeath my estate after my death, and what relationship he bears to me.

"Sir, so long as I live I shall continue to be the proprietor and mistress of my estate. After my death my rival widows, *S and K*, shall succeed to my heritage and the estate. But I must note that none of my two rival widows shall have power to alienate the estate by gift, transfer, or grant to any of their relatives, or to any stranger after my death, except Ram Sarup and Balbhadar, talookdars of Khapradih. After my death, and after the death of the two rival widows, Ram Sarup and Balbhadar shall inherit the estate and all our legacy."

That letter of the 6th of January was treated by the appellate Courts as simply a will, revocable by the testatrix.

Held, differing from the Courts below, that it was rather a declaration that, on her death, the estate would devolve according to the directions of her husband's will (50).

If the letter had stood alone it might have been treated as simply a will. But, looking at the document in connection with the will of *N*, the other documents, and the conduct of *R*, their Lordships regard it rather as a declaration that, on her death, the estate would devolve according to the directions of the will (50). (*Sir Robert P. Collier.*) THAKURAIN RAMANUND KOER *v.* THAKURAIN RAGHUNATH KOER.

(1882) 9 I. A. 41 = 8 C. 769 (779-80) = 11 C.L.R. 149 = 4 Sar. 316 = R. & J s Nos. 67 & 68.

———*Forfeiture clause in—Intention to act upon—Declaration of—Deed amounting to, or to a new will—Test.*

C, a Hindu, who had first adopted the plaintiff, and subsequently adopted one *B*, made a will in 1849, giving a nine annas share of his real estate to the plaintiff, and a seven-annas share to *B*, dividing his personal estate equally between them. The will contained a clause to the effect that

HINDU LAW—(*Contd.*)

Will—Deed amounting to a—(*Contd.*)

PRIOR WILL—(*Contd.*)

if either devisee disputed it, he should forfeit all benefit under it. *C*, shortly afterwards published that will by filing it in the Court of the Collector.

Disputes having arisen between the plaintiff and his father, in the course of which the plaintiff disputed his father's competence to make a will, *C*, in 1857, filed in the same Court two petitions, the purport of which was that he disowned the plaintiff as his son, and adopted, and acted upon the clause of the will depriving either devisee who disputed it of any benefit under it.

Held, that the petitions of 1857 were not in the nature of new wills, but were merely declarations of *C's* intention to act upon the clause of forfeiture in his will of 1849 (219). (*Sir Robert P. Collier.*) SOORJOMONEE DAYEE *v.* SUDDANUND MOHAPATTER. **(1873) Sup. I. A. 212 = 12 B. L. R. 304 = 20 W.R. 377 = 3 Sar. 285 = 2 Suth. 899.**

SETTLEMENT DEED OR.

———*See* SETTLEMENT DEED.

WAJIB-UL-ARZ—ENTRY IN.

———*Will or a mere expression of opinion as to devolution of property.*

The material portion of the Wajib-ul-arz of a village was in the following terms:—

If a shareholder has no male issue his property after his death devolves upon his widow, provided the property is partitioned. The widow has the power to make transfer by sale, mortgage, or gift. If the property be undivided, the widow shall remain the proprietress during her lifetime, but shall have no authority to transfer the property.

The Wajib-ul-arz was duly verified by *F*, the last male owner of an 8 annas share in the said village, and by his cosharer.

Held, that the entry in the Wajib-ul-arz could not be held to be a will, or a document of a testamentary character, by *F*.

It may have been an expression of *F's* own opinion; clearly it cannot be treated as sufficient evidence of a devise to the widow of an absolute estate. (*Lord Macnaghten.*) SAHODRA *v.* GANESH PARSHAD. **(1905) 10 C. W. N. 249 = 1 M. L. T. 64.**

———*Will in favour of adopted son if a.*

It would be incorrect to lay down, as a general proposition, that a recital in a *wajib-ul-arz* cannot operate as a will in the case of a Hindu. The weight to be given to such statements must depend, in each case, on the circumstances in which the entries were originally made, and the corroboration they receive from extrinsic evidence.

A wajib-ul-arz, recorded under Act XIX of 1873 and relating to a village called *D*, contained, under the head of "Inheritance, second marriage, and adoption," the following statement:—

"I am the only zemindar in this village. I am a Marwari Brahmin. Seven years ago I adopted my sister's son, *M*. He is my heir and will be the owner. If, after this agreement, a son is born to me, half the property will be received by him and half by the adopted son. If more than one son are born to me, the property will be equally divided among them, including the adopted son as brothers. I have two wives now. They will receive their maintenance from him (*M*) during their lifetime."

Held Quœre whether the statement in the *wajib-ul-arz* could be treated as a will in favour of the adopted son. (*Sir Andrew Scoble.*) MUSSAMMAT LALI *v.* MURLI DHAR. **(1906) 33 I.A. 97 = 28 A. 488 (493-5) = 3 A.L.J. 415 = 10 C.W.N. 730 = 8 Bom. L.R. 402 = 3 C.L.J. 594 = 1 M.L.T. 171.**

HINDU LAW—(*Contd.*)

Will—Deed amounting to a—(*Contd.*)

WISH OR DIRECTION OR.

———*Test.*

The will of a Mahomedan lady, after bequeathing the whole of her estate to *S*, her son, absolutely, proceeded as follows:—

"I desire *S*, under this will, to pay every month Rs. 644-1-7 (being one-third of Rs. 1933-5-4, my monthly pay allowed by Government for Government promissory notes which are deposited) to my dependants and personal servants as detailed below; and they will give their receipts for the same. It will also be the duty of *S* to defray the expenses of the imambara,.....*S* will treat all the dependants and servants with such kindness and affability as will secure him fame and good name, and give satisfaction to the soul of his deceased father. Be it known that the expenses of imambara, etc., will be continued for ever, and also the pay of *G* and *A* will be defrayed for ever, *i.e.*, generation after generation. The rest of the servants will be paid for life only."

Held that the words, "I desire *S* to pay every month, my dependants and personal servants," coupled with the statement at the end, "Be it known that the expenses of imambara, etc., will be continued for ever," and "the pay of *G* and *A* will be defrayed for ever, *i.e.* generation after generation; the rest of the servants will be paid for life only," constituted a bequest, and not merely the expression of a wish or direction (121). (*Sir Robert P. Collier.*) PRINCE SULEMAN KADR *v.* DARAB ALI KHAN. **(1881) 8 I.A. 117 = 8 C. 1 (6) = 4 Sar. 267 = R. and J's No. 64 (Oudh).**

Will—Dharam.

———Bequest for. *See* CHARITY—CY PRES SCHEME—DHARAM. **(1899) 26 I.A. 71 (80-1) = 23 B. 725 (735)**

Will—Dispositions of.

EFFECT OF—GUIDE TO DETERMINE.

———*Intention of testator if.*

In determining the construction of a will, what we must look to, is the intention of the testator. The Hindoo law, no less than the English law, points to the intention as the element by which we are to be guided in determining the effect of a testamentary disposition (550). (*Lord Justice Turner.*) SREEMUTTY SOORJEEMONEY DOSSEE *v.* DENOBUNDOO MULLICK. **(1857) 6 M. I.A. 526 = 4 W.R. 114 = 1 Suth. 291 = 1 I.J.N.S. 37 = 1 Bour Rep. 228 = 1 Sar. 583.**

EFFECT OF—MISCONCEPTION OF TESTATOR AS TO.

———Effect. *See* HINDU LAW—WILL—CONSTRUCTION OF—LANGUAGE OF WILL—ORDINARY LEGAL MEANING, ETC. **(1897) 24 I.A. 76 (89) = 24 C. 834 (850).**

INCONSISTENCY BETWEEN.

———Effect. *See* HINDU LAW—WILL—CONSTRUCTION OF—CLAUSES IN WILL—CONFLICT BETWEEN.

REASONABLENESS OR OTHERWISE OF—COURT'S CONCERN WITH.

———(*See also* HINDU LAW—WILL—EXECUTION OF—PRESUMPTION AS TO—PROVISIONS OF WILL).

———Where one of the considerations urged against the probability of the deceased having executed the will set up by the defendants was that, though there was no hint of any disagreement between the deceased and the plaintiff, his childless widow, the will still purported to cut her off with the absurdly small allowance of Rs. 25 per month, their Lordships observed that the testator's imputed neglect of the pecuniary interests of his widow, was no greater than that which belonged to any follower of the Mithak

HINDU LAW—(*Contd.*)
Will—Dispositions of—(*Contd.*)
REASONABLENESS OR OTHERWISE OF— COURT'S CONCERN WITH—(*Contd.*)

shara school, who, having the power to separate from an united family, and so to qualify his widow as an heiress, preferred to let the law of his class take its course (101-2). (*Sir James Colvile.*) SOORENDRONATH ROY *v.* MUSSUMAT HEERAMONEE BURMONEAH.
(1868) 12 M.I.A. 81 = 10 W. R. 35 = 1 B.L.R. P.C. 26 = 2 Suth. 147 = 2 Sar. 372.

———When a will has once been made and is apparently in perfect form, and the evidence of the attesting witnesses is to be trusted, few things can be more dangerous than to attempt to recreate the kind of will that the man ought, in the opinion of the Court, to have made. Once the man's mind is free and clear and is capable of disposing of his property, the way in which it is to be disposed of rests with him, and it is not for any Court to try and discover whether a will could not have been made more consonant either with reason or with justice. (*Viscount Haldane, L. C.*) ARUNACHALAM CHETTY *v.* RAMASAMI CHETTY.
(1916) 20 C.W.N. 673 = 3 L.W. 508 = 18 Bom.L.R. 408 = (1916) 1 M.W.N. 399 = 23 C.L.J. 632 = 20 M.L.T. 50 = 35 I.C. 1 = 30 M.L.J 555 (558).

———Stress was laid upon the improbability of a Khoja making such a disposition of his estate (by will) as would give his daughters equal shares with his sons, and that free from the control of their husbands. The topic is one which can legitimately be introduced, but the argument from it only goes a certain way. The value of such an argument is solely as an aid to arriving at a right construction of the will, and to ascertain the meaning of its language when used by that particular testator in that document. So soon as the construction is settled, the duty of the Court is to carry out the intentions as expressed. and none other (661). (*Lord Phillimore*). KULSAMBAI *v.* KHENSABAI.
(1919) 13 L.W. 657.

———A man may act foolishly and even heartlessly; if he acts with full comprehension of what he is doing, the Court will not interfere with the exercise of his volition (444). (*Mr. Ameer Ali*). MOTIBAI HORMUSJEE KANGA *v.* JAMSETJEE HORMUSJEE KANGA. **(1923) 19 L.W. 437 = 22 A.L.J. 98 = A.I.R. 1924 P.C 28 = (1924) M.W.N. 173 = 34 M.L.T. 4 = 26 Bom. L.R. 579 = 29 C.W.N. 45 = 80 I.C. 77.**

———The real complaint against the will propounded is not that the execution of the will was in any way extraordinary, but that the character of the will was such as seemed to both the Courts below to have been somewhat of an injustice on the part of the testator towards his wife and children. With this their Lordships have nothing to do. (*Lord Sumner*) BAI MONGHIBAI *v.* PRAGJI DAYAL HARIANI. **(1925) 89 I. C. 88 = A. I. R. 1925 P.C. 198.**

VALIDITY OF WILL WITH REFERENCE TO—TEST.

———*Power, statutory or otherwise, of testator over property devised at time of his death.*

The will of a testator without any intimation there to be found of any contrary intention, must in relation to the property comprised in it be regarded as speaking from his death, and its validity with reference to the devise of any particular property thereby made must depend upon the testator's statutory or other lawful disposing power over that property at that time (160). (*Lord Blanesburgh.*) KRISHNA KUMARI DEVI *v.* BHAIYA RAJENDRA SINHA.
(1929) 56 I.A. 156 = 4 Luck 122 = 27 A.L.J. 686 = 116 I.C. 397 = 30 L.W. 301 = 57 M.L.J. 496 = A. I. R. 1929 P. C. 121.

HINDU LAW—(*Contd.*)
Will—Draft of.

———*See* HINDU LAW—WILL—EXECUTION OF—EVIDENCE OF—DRAFT OF WILL.

Will—Effects—Bequest of.

———*Immovable property if included.*

No doubt the word "effects," like many other words of general and indefinite meaning, may be sufficient in a certain context to pass immovable as well as movable property. Further, if this would be so in Great Britain, it would be so *a fortiori* in India, where there is little distinction between movable and immovable property when matters of succession have to be considered. Primarily, no doubt, the word refers to personal estate or movables.

The material part of the will of an Armenian Christian resident in Rangoon, by which he appointed his wife executrix, was as follows: "I give and devise and bequeath my three houses numbered respectively....in Halpin Road, in the said town of Rangoon, together with land thereto belonging and all the out-offices and buildings standing thereon, and all my household furnitures, carriages, horses, chattels and effects, and all moneys and debts due and owing to me which I shall be possessed of at the time of my death unto my said executrix absolutely."

At the time of his death, the testator was possessed of other immovable property besides that mentioned in his will—namely, certain land at Kokine in a subarb of Rangoon.

Held that, on the true construction of the will, the word "effects" did not include immovable property, and that there was, therefore, an intestacy as to the land at Kokine (286).

After the specific devise of the three houses in Halpin Road, the will proceeds, "and all my household furnitures, carriages, horses, chattels and effects..which I shall be possessed of at the time of my death." It does not say "all other." The words "which I shall be possessed of at the time of my death" refer solely to "the household furnitures, carriages, horses, chattels and effects." And after the specific reference to the Halpin Road property, it is not lightly to be inferred that the testator intended that his other lands, whether then owned by him or to be acquired thereafter, should pass by general words, as such general words. There is no indication of the testator's intention to devise any land which he had or might thereafter have beside the Halpin Road property. (*Lord Phillimore.*) VERTANNES *v.* ROBINSON. **(1927) 54 I. A. 276 (284-6) = 5 R. 427 = 102 I. C. 639 (2) = 29 Bom. L.R. 1017 = 46 C.L.J. 126 = 25 A. L. J. 713 = 31 C. W. N. 1078 = 39 M. L. T. 134 = 26 L.W. 417 = A. I. R. 1927 P. C. 151 = 53 M. L. J. 71.**

Will—English—Will drawn up in.

———*Construction of—Usages of nationality of testator—Consideration of—Propriety.*

Where the will of a Chinese testator was in English, and it employed English terms of legal art, *held* that the will was deliberately couched in English form so as to exclude any consideration of Chinese usages not supported by its express terms (214). (*Lord Sumner.*) CHIA KHWEE ENG *v.* CHIA PO-CHOON. **(1922) 33 M. L. T. 212 P. C.**

———Heirs in—Meaning of. *See* HINDU LAW—WILL—WORDS IN—HEIRS—ENGLISH.
(1922) 49 I. A. 323 (328) = 49 C. 1005 (1011).

Will—Estate conveyed under.

———*Widow—Life estate to, without power of alienation—Gift of life estate to daughter-in-law subject to, also without power of alienation—Gift over to heirs-at-law of testator living at daughter-in-law's death.*

HINDU LAW—(*Contd.*)

Will—Estate conveyed under—(*Contd.*)

A talukdar, whose name was entered in Lists 1 & 2 prepared under S. 8 of the Oudh Estates Act of 1869, executed a will bequeathing the whole of his property to his widow for her life, and subject thereto to his daughter-in-law for her life, subject in both cases alike to the condition that neither should have power "under any circumstances by sale, alienation, mortgage or otherwise, to dispose of or incumber the whole or any part of my movable or immovable property for any period extending beyond the term of her natural life." There was a clause providing for a gift over which ran as follows:—"And upon her" (daughter-in-law's) "death in default of an adopted son if authorised by her husband to adopt a son I direct that my said property and estate shall descend to the person or persons then living who under the provisions of the said" (Oudh Estate) "Act I of 1869 would be entitled to succeed thereto on the failure or determination of the limitations hereinbefore contained."

Held that, on the true construction of the will, the interest taken by the daughter-in law was, in the strictest sense, an interest for her life only; that under the gift neither the widow nor the daughter-in-law became a fresh stock of descent of any of the property bequeathed; and that the destination under the gift over, on the death of the daughter-in-law, was not, putting it broadly, to the heir-at-law of the testator at his own death; that, in other words, the only other testamentary gift, in the events which had happened, was in favour of persons unascertainable up to the moment of the daughter-in-law's death (163).

There can under the will be no vested interest in remainder or otherwise so long as the daughter in-law lives (163). (*Lord Blanesburgh.*) KRISHNA KUMARI DEVI *v.* BHAIYA RAJENDRA SINHA. **(1929) 56 I.A. 156 = 4 Luck. 122 = 27 A.L.J. 686 = 116 I.C. 397 = 30 L.W. 301 = 57 M.L.J 496 = A. I. R. 1929 P. C. 121.**

Will—Estate for life.

———*Alienation by holder of—Declaration of invalidity of—Suit for, by more remote remainderman entitled under will—Maintainability—Discretion of Court—Specific Relief Act—S.* 42*—Nearer remainderman—Concurrent suit by.*

On the death of an Oudh talookdar, a summary settlement of his estate was made with *R*, one of his widows, and a sunnud was granted to her. The deceased had left a will by which he provided for successive life estates to his widows, and, after the death of all of them, for one *S* succeeding to, and becoming proprietor of, his estate. Notwithstanding the settlement with her, and the grant of a sunnud to her *R* had constituted herself a trustee of the estate for the purposes of carrying into effect the provisions of her husband's will. She, however, purported to make a gift of the estate to one *B*. Thereupon two suits were brought, one by another widow of the deceased talookdar, and the other by the son of *S*, who had died in the interval, each for a declaration that *R* held the estate for her life only and in trust for carrying into effect the provisions of her husband's will, and that the gift of the estate to *B* was not operative beyond the lifetime of *R*.

Held that the two concurrent declaratory suits were unnecessary, and that the first court might, as a matter of discretion, have declined to grant declaratory relief to the more remote remainderman, the son of *S* (57). (*Sir Robet P. Collier.*) ANANT BAHADUR SINGH *v.* THAKURAIN RAGHUNATH KOER. **(1882) 9 I. A. 41 = 8 C. 769 (787-8) = 4 Sar. 316 = 11 C. L. R. 149 = R. & J's. Nos. 67 & 68.**

———*Alienation by holder of—Declaration of invalidity of—Suit for, by person entitled in remainder after number of life estates—Maintainability—Specific Relief Act—S.* 42 *—Other life estate holders alive.*

HINDU LAW—(*Contd.*)

Will—Estate for life—(*Contd.*)

An Oudh talookdar left a will by which he provided for successive life estates to his widows, and, after the death of all of them, for one *S* succeeding to, and becoming proprietor of, his estate. On the death af the talookdar, a summary settlement of his estate was made with *R*, one of his widows, and a sunnud was granted to her. By her conduct *R* constituted herself a trustee of the estate for the purposes of carrying into effect the provisions of her husband's will. She, however, purported to make a gift of the estate to *B*. Another widow of the deceased talookdar was alive.

In a suit brought by the son of *S*, who had died in the interval, for a declaration that the deed of gift in favour of *B* was invalid against the plaintiff, who was a reversioner, because the donor (*R*) held only a life interest, and was a trustee, anything contained in Act I of 1869 notwithstanding, *held* that the plaintiff having, in terms of the English law, a vested remainder immediately after the life estates, was entitled, under the Specific Relief Act, to maintain the suit (53). (*Sir Robert P. Collier.*) ANANT BAHADUR SINGH *v.* THAKURAIN RAGHUNATH KOER. **(1882) 9 I.A. 41 = 8 C. 769 (783-4) = 11 C. L. R. 149 = 4 Sar. 316 = R. & J's. Nos. 67 & 68.**

———*Creation of, through medium of trust—Validity.*

It was contended that the first life interest given to *J* by the will in question was void because of the contingency and uncertainty of the period at which it was to commence, because of the preference given to the legacies and annuities, and to their being payable first out of the interest of the personalty, and then out of the rents of the realty, except the allowance of Rs. 2,500 per month, so that it was said that life estate might never come into existence, because the legacies and annuities, and interest on arrears, might never be completely satisfied (74).

That objection exhausts itself upon the enjoyment of the usufruct more or less. The life interest was to begin at once. It was subject to the devise to trustees who were to receive the rents, allow the life-holder Rs 2,500 per month out of the net proceeds, apply the remainder in aid of the interest of the personalty, to pay off the legacies and annuities, and, when they were discharged, to allow the life holder, if he survived so long, or, if not, the succeeding donees in succession to enjoy the whole. If the trust is not to be read to make estates valid which otherwise would be void, so neither is it to be read to defeat interests which without the trust would be valid. Their Lordships read this will alike according to its words and substance, as giving a life interest, subject to a charge for payment of legacies and annuities, whereby the rents over and above Rs 2,500 per month, and the expense of maintenance, are to be applied in aid of another fund until the legacies and annuities are paid. The law of perpetuity has no application to such a state of things. There is not a single estate or interest in question which would not be valid within the English law of perpetuity (75-6). (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE.

(1872) Sup. I. A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.

———Determination of, on non-performance of conditions imposed by will—Provision for—Condition declared void—Effect of non-performance in case of. *See* HINDU LAW—WILL—CONDITION IMPOSED BY—NON-PERFORMANCE OF. **(1874) 1 I. A. 387 (395).**

———*Estate in remainder—Failure of life estate—Acceleration of gift in remainder*—Lainson *v.* Lainson—*Rule in.*

An Oudh talookdar, whose name was entered in List 3 prepared under Act I of 1869, left a will by which he made Rukman Kuwar (his fourth wife) owner and proprietress of the talooka and his other properties. The will continued:

HINDU LAW—(*Contd.*)

Will—Estate for life—(*Contd.*)

"After my death, Rani Rukman Kuwar having held and possessed all my property, her descendants shall, generation after generation, carry out the provisions of this will, and after paying up the expenses mentioned herein, apply the remainder of the profits to their own use. And Rajah Gajadhar Baksh, son of Rani Rukman Kuwar, being of under age, shall, when he attains the age of majority, carry on the work of management, with the advice of the aforesaid Rani; and after the said Rani he shall be the heir to and representative of the estate, etc., each and everything".

The appellant sued to recover possession of the taluqdari estate from Rani Rukman Kuwar and Gajadhar, on the ground that he was the eldest son and heir-at-law under the Mithakshara of the deceased talookdar, and was entitled to succeed under the provisions of Act I of 1869. With regard to the will, which was set up by the defendants, his contention was that, being unregistered, it was invalid, under S. 13 of Act I of 1869, with regard to the fourth wife, and that, if the gift to her failed, that to her son failed also.

Held that, upon the principle laid down by Lord Justice Turner in the case of *Lainson* v. *Lainson*, even if the gift to the fourth wife failed, intestacy did not result either in whole or in part, but the gift to her son in remainder was accelerated, and that the appellant had no valid claim to any interest in the estate. (*Sir Barnes Peacock.*) AJUDHIA BUKSH *v.* MUSST. RUKMAN KUAR. **(1883) 11 I. A. 1 = 10 C. 482 = 4 Sar. 497 = R & J's No. 75 (Oudh).**

———*Estate in remainder or reversion—Validity.*

As to the first life interest in *J* provided for by the will, it was said that Hindu law recognises only one entire estate in the land, and does not allow of that estate being cut up into smaller distinct interests in the way of life estate, reversion, remainder, and so forth. The objection amounts to this: that because there is, as was contended, only one estate technically known to Hindu law, and that an entirety, there can be no contract by which an owner of land may bind himself to allow to another the enjoyment of the usufruct of the land, to the exclusion of the owner, for a given time, whether for years or for life (because in the law we are dealing with the distinction of chattel and freehold has no existence), and te give exclusive right of possession for the enjoyment of that usufruct. It was admitted that annuities given and charged upon land are valid; but if the annuity equalled or exceeded the profits, there would be an effectual gift of all the profits and practically of the land, and yet it was contended that the possession and enjoyment of the land could not be directly given. Whether this interest and right of possession for years or life is called an estate or not, it as effectually excludes the general owner as an estate would. In the absence of any authority for so extaordinary a limitation of the right of property as would forbid a present parting with the exclusive possession and enjoyment for a time, their Lordships entertain no doubt that possession and enioyment may be so dealt with, and that there is no objection to a similar interest being given by will (74-5). (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE. **(1872) Sup. I. A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.**

———*Persons entitled to succeed after—Succession by, as heirs of life estate holder or of testator—Test.*

The will of a Hindu, after stating that *D*, the widow of his pre-deceased son, had no other heirs except her two daughters, and after giving a life interest in his properties to *D*, proceeded as follows: "Further more to the said *D*, too, these very two daughters named above, together with their children, are and shall be heir and malik."

Quaere: whether, on the true construction of the will, the two daughters of *D*. who were entitled to succeed her in the estate bequeathed, would succeed her as heirs of herself (*D*) or as heirs of the original testator (15). (*Sir Robert P. Collier.*) MAHOMED SHUMSOOL *v.* SHEVAKRAM. **(1874) 2 I. A. 7 = 14 B. L. R. 226 = 22 W. R. 409 = 3 Sar. 405 = 3 Suth. 43.**

———*Terminable life interest—Gift over on happening of event which does not happen—When will be read as limitation in remainder on life interest which has determined by death.*

In Seaton's case *Parker J.* stated as follows:—"Where there is a terminable life interest and there is a gift over on the happening of an event which does not take place, the Court will read this as a limitation in remainder on life interest which has determined by death."

The principle thus stated by *Parker, J.* is an old one; it is not confined to dispositions in favour of wives, or to the determinatien by remarriage of the interest given by the will, but it does depend on the possibility of ascertaining from other parts of the will that the original intention of the testator in making the gift was to give a limited interest only. (*Lord Sumner.*) CHIA KHWEE ENG *v.* CHIA PO-CHOON. **(1922) 33 M. L. T. 212.**

Will—Estate in remainder.

———Bequest of—Failure of life estate—Acceleration of estate in remainder—*Lainson* v. *Lainson*—Rule in. *See* HINDU LAW—WILL—ESTATE FOR LIFE—ESTATE IN REMAINDER. **(1883) 11 I. A. 1 = 10 C. 482.**

———Bequest of—Validity. *See* HINDU LAW—WILL—ESTATE FOR LIFE—ESTATE IN REMAINDER OR REVERSION. **(1872) Sup. I. A. 47 (74-5).**

———Persons entitled to—Alienation by life-estate holder—Declaration of invalidity of—Suit for—Nearest remainderman—Suit by—Maintainability, when other life-estate holders alive—Remote remainderman — Suit by—Maintainability in case of concurrent suit by nearer remainderman. *See* HINDU LAW—WILL—ESTATE FOR LIFE—ALIENATION BY HOLDER OF.

———Persons entitled to succeed to—Succession by, as heirs of life-estate holder or of testator—Test. *See* HINDU LAW—WILL—ESTATE FOR LIFE—PERSONS ENTITLED TO SUCCEED AFTER. **(1874) 2 I. A. 7 (15).**

Will—Estate in tail (including Estate in tail male).

———*Bequest of—Validity.*

An English estate tail is not an estate of inheritance known to the Hindu law, and the law will not therefore allow an attempt to introduce such an estate into Hindu property (39, 41-2). (*Lord Hobhouse.*) SREEMUTTY KRISTOROMONEY DOSSEE *v.* MAHARAJAH NORENDRO KRISHNA BAHADOOR. **(1888) 16 I. A. 29 = 16 C. 383 (392) = 5 Sar. 285.**

———*Estate in tail male—Bequest invalid of—Devisee under—Estate taken by—Life estate—Absolute estate—Intention of testator—Mode of ascertaining.*

In this case the Privy Council found that the intention of the testator was to confer on his half-brothers an estate of inheritance resembling an English estate in tail male, and held that that could not take effect. The question then arose as to what estate the brothers must be held to have taken. Their Lordships found that the testator intended to benefit his brothers personally; and that his gift to them and their heirs male would if valid have carried with it the

HINDU LAW—(*Contd.*)

Will—Estate in tail (including Estate in tail male)—(*Contd.*)

enjoyment by each of his share during life. They therefore thought that that intention, though it was mixed up with the intention to give an estate tail, might lawfully take effect, and held that each of the brothers took an estate for his life (41-2, 43).

It was, however, suggested that a Court of construction might hold, in favour of the intention, that a fee simple or absolute interest was conferred by inapt words or dispositions, just as in English law an estate tail was often held to be conferred by inapt words or dispositions, because it came nearest to effecting the actual intentions of the testator. With reference to that contention their Lordships observed as follows :—" But if this testator intended not to give an absolute interest, which their Lordships hold to be clear from his introduction of heirs male, it is impossible to say that his intention is more defeated by the law which cuts down his gift in tail to a life interest, than it would be by straining the will to give an absolute interest, in which case the property might pass away from the family to a mortgagee, or a general creditor, or a stranger donee. Their Lordships would not be justified in taking any such liberty with the will (42)." (*Lord Hobhouse.*) SREEMUTTY KRISTOROMONEY DOSSEE *v.* MAHARAJAH NORENDRO KRISHNA BAHADOOR. **(1888) 16 I. A. 29 = 16 C. 383 (395) = 5 Sar. 285.**

———*Estate in tail male—Bequest of—Restraint on alienation annexed to—Validity of.*

An estate in tail male such as that which the testator has attempted to create could not exist with the terms of non-alienation attempted to be annexed to it, even in England These would be rejected here as repugnant to a valid estate in tail male created by sufficient words (76). (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDRO-MOHUN TAGORE. **(1872) Sup. I. A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.**

———*Estate in tail male—Bequest of—Validity of.*

Limitations in a will describing an inheritance in tail male which is a novel mode of inheritance inconsistent with the Hindu Law are void (74). (*Mr. Justice Willes.*) JUT-TENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE (1872) **Sup. I.A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.**

———An estate in tail male, such as that which the testator has attempted to create in each series of limitations, is not authorized by Hindu law (76). (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE. **(1872) Sup. I. A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.**

———*Estate in tail male invalid—Bequest of—Estate of inheritance to first taker—Inference of—Propriety.*

The will in the case before their Lordships directed that trustees, after the legacies and annuities had been satisfied, were to convey to the persons entitled to the beneficial interest, subject to the subsequent limitations ' so far as the terms and condition of circumstances will permit, but so far only, as such limitations ' did not infringe any law then in force against perpetuities, "if any such law there shall be". The limitations were :

(1) To *J. T.* for life ;

(2) To his eldest son born during the testator's lifetime for life ;

(3) In strict settlement upon the first and other sons of such eldest son successively in tail male ;

(4) Similar limitations for life and in tail male upon other sons of *J. T.* born in the testator's lifetime ;

(5) Limitations in tail male upon the sons of *J. T.* born after the testator's death ;

HINDU LAW—(*Contd.*)

Will—Estate in tail (including Estate in tail male)—(*Contd.*)

(6) "After the failure or determination of the uses and estates hereinbefore limited" to *S. T.* for life ;

(7) Like limitations for the sons of *S. T.* as for the sons of *J. T.*

The will expressly and exclusively adopted primogeniture in the male line through males, preferring the eldest son, and excluding women and all right of provision or maintenance of either man or woman.

The question was whether *J. T.* took not merely an interest for life, but by construction of law an estate of inheritance, or whether such an estate of inheritance could be implied in favour of any of his successors.

Held, that no estate of inheritance other than the void estate in tail male could be read or deduced from the will (78).

A construction of the will giving such an estate of inheritance as the law would uphold and sanction upon *J. T.* would contradict the will in every particular. It would give the father a right of inheritance and a power of disposition when the will says that he shall only hold for life. It would give the succession from him to all his sons equally, where the will says that the eldest shall be preferred and have a separate estate of inheritance, and that until that estate fails, the second and so forth shall not succeed. It would give succession to women, whom the will excludes. It would let in rights of maintenance which the will negatives. It would let in the power of alienation, which the will forbids. It would defeat the limitation in case of non-residence. It would disregard the provisions as to leasing and improvement, which shew, in common with the rest of the will, that the intention of the testator was to give and to give only such an inheritance as would keep together the property inalienable so long as a male descended in a male line from any of the indicated sources of inheritance should be in existence, and should keep up state in the family mansion. There is no trace to be found in the will of an intention to create any other sort of estate ; and the will, as clearly as language can speak without express words, declar es that it was not the intention of the testator that any person to take thereunder should have the estate of inheritance defined by the ordinary law, To create such an estate by judicial construction of this will would be something worse than guesswork as to what the testator might have said if he could be asked his meaning; for it would be to contradict in every article what he has intelligibly expressed (77-8). (*Mr. Justice Willes*). JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE. **(1872) Sup. I. A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.**

Will—Estate of inheritance.

——*Bequest of—Bequest to a person, his children and grandchildren if amounts to.*

Words giving lands to the donee, "his children and grand-children." confer upon him an absolute estate (147). (*Sir Robert Collier.*) BHOOBUN MOHINI DEBYA *v.* HURRISH CHUNDER CHOWDHRY. **(1878) 5 I. A. 138 = 4 C. 23 (27) = 2 C. L. R. 339 = 3 Sar. 815 = 3 Suth. 537.**

———*Bequest of—Words—"Become owner (malik)"—Use of—"Putra Poutradi krame"—Absence of—Effect.*

The words "become owner (malik) of all my estates and properties" would, unless the context indicated a different meaning, be sufficient to confer on the devisee an absolute and heritable estate, even without the words "enjoy with son, grandson, and so on in succession," which latter words are frequently used in Hindu wills, and have acquired the force of technical words conveying a heritable and alien-

HINDU LAW—(*Contd.*)

Will—Estate of inheritance—(*Contd.*)

able estate. (*Lord Davey.*) LALIT MOHUN SINGH ROY *v.* CHUKKUN LAL ROY. **(1897) 24 I. A. 76 (88) = 24 C. 834 (849) = 1 C. W. N. 387 = 7 Sar. 155.**

———*Condition repugnant to—Rejection of.*

The general intention to create a known estate of inheritance would be given effect to. The particular intention to deprive it of its legal incidents would be disregarded as an attempt to legislate (76). (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE. **(1872) Sup. I.A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.**

———*Inference of—Propriety—Conditions.*

In order to give effect to the general intention of the testator estates of inheritance will be inferred against the particular expression, in order to benefit as nearly as may be in a lawful way all whom the testator intended to benefit. Such a general estate of inheritance ought not to be inferred in a case in which to do so would at the same time defeat the testator's general intention, and benefit persons other than those he intended to benefit (78). (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE. **(1872) Sup. I. A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.**

———*Intention clear to create — Language employed imperfect or obscure—Intention will be given effect to notwithstanding.*

If the testator had used language to describe, however imperfectly or obscurely, an estate of inheritance defined by the ordinary law as within his intention, effect ought to be given to that intention, when once arrived at by a fair and liberal interpretation of his language (77). (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE. **(1872) Sup. I. A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.**

———*Male descendants of donee—Estate of inheritance confined to—Validity of—Estate taken by donee in case of.*

The material portion of the will of a Hindu was as follows: "My brother's sons *J*, *T*, and *S*, shall receive, for defrayment of the expenses of their pious acts, the following out of the properties left by me, to wit,....The said three nephews shall hold possession of the same in equal shares, and shall pay the Government revenue of the same into the Collectorate. They shall have no right to alienate the same by gift or sale; but they, their sons, grandsons, and other descendants in the male line, shall enjoy the same, and shall perform acts of piety as they respectively shall see fit for the spiritual welfare of our ancestors."

The High Court held, on the authority of "the Tagore case," that the testator, having attempted to create an estate of inheritance unknown to and opposed to Hindu Law, that estate of inheritance was void, and that the will operated only to confer on the planitiff an estate for life.

It was contended before their Lordships that the case was distinguishable from the Tagore case, on the ground that, in that case, the first estate given was in terms an estate for life; that in the present case (the appeal before their Lordships) if the words relating to succession, *viz.*, "that their sons, grandsons, and other descendants in the male line shall enjoy the same, and shall perform acts of piety, as they respectively shall think fit, for the spiritual welfare of our ancestors," were struck out, and that the gift would be of an estate of inheritance; and that the intention of the testator to confer an estate of inheritance might be effectuated by striking out so much of the clause above quoted as excluded females from the succession.

Held that the contention was unsustainable (58).

Considering that the gift to the nephews is expressed as to be received for the defrayment of their pious acts, and that

HINDU LAW—(*Contd.*)

Will—Estate of inheritance—(*Contd.*)

alienation is forbidden, their Lordships do not construe the gift, independently of the words prescribing the course of succession, as conferring an absolute estate. They are further of opinion that to alter the words prescribing the course of succession, so as to admit females, would be in effect to make a new will for the testator, and one which, so far from carrying his intentions into effect, would be in direct opposition to his intention, and indeed to his main object, expressed, in other parts of his will, as well as in this clause, *viz.*, to exclude females (58-9). (*Sir Robert P. Collier.*) KUMAR TARAKESWAR ROY *v.* KUMAR SHOSHI SHIKHARESWAR. **(1883) 10 I.A. 51 = 9 C. 952 (958-9) = 13 C. L. R. 62 = 4 Sar. 439.**

———Nephew—Bequest to *See* HINDU LAW—WILL—NEPHEW—ESTATE OF INHERITANCE TO.

(1897) 24 I.A. 76 (90-2) = 24 C. 833 (849-51).

Will—Estate unknown to law.

———(*See also* HINDU LAW—INHERITANCE—LEGAL COURSE OF—BEQUEST ALTERING AND HINDU LAW—WILL—INHERITANCE.)

———*Bequest of—Validity of.*

An individual member of society is incompetent to make a law whereby a particular estate created by him shall descend in a novel line of inheritance, different from that prescribed by the law of the land (76). (*Mr. Justice Willes.*) JUTTENDROMOHON TAGORE *v.* GANENDROMOHUN TAGORE. **(1872) Sup. I.A. 47 = 9 B.L.R. 377 = 18 W.R. 359 = 3 Sar. 82 = 2 Suth. 692.**

———The rule is that if a Hindu donor wishes to confer an estate of inheritance, it must be such a one as is known to the Hindu law (39). (*Lord Hobhouse.*) SRIMUTTY KRISTOROMONEY DOSSEE *v.* MAHARAJAH NORENDRO KRISHNA BAHADOOR **(1888) 16 I.A. 29 = 16 C. 383 (392) = 5 Sar. 285.**

———*Legal course of inheritance—Bequest altering—Validity of.*

The attempt to confine the succession to males, to the entire exclusion of females, is a distinct departure from the Hindu Law, "excluding" in the terms of the judgment in the Tagore case, "the legal course of inheritance" (58). (*Sir Robert P. Collier.*) KUMAR TARAKESWAR ROY *v.* KUMAR SHOSHI SHIKHARESWAR. **(1883) 10 I.A. 51 = 9 C. 952 (957-8) = 13 C.L.R. 62 = 4 Sar. 439.**

Will—Events which have not happened—Rights of parties on.

———Declaration as to—Practice. *See* HINDU LAW—WILL—FUTURE RIGHTS UNDER.

WILL—EXECUTION OF.
ATTESTATION OF.
ATTESTORS TO.
CAPACITY (SOUND DISPOSING STATE OF MIND.)
DECISION OF ISSUE AS TO.
EVIDENCE OF
IMPROBABILITY OF—THEORY OF.
ISSUE AS TO—DECISION OF.
ISSUE AS TO—FINDING PROPER ON.
MEANING OF.
ONUS OF PROOF AS TO.
PRESUMPTION AS TO.
PROOF OF.
PROOF OF—CONCURRENT FINDINGS AS TO.
SIGNATURE OF TESTATOR.
TRIAL JUDGE'S DECISION AS TO—REVERSAL IN APPEAL OF.
UNDUE INFLUENCE—EXECUTION UNDER.

Will—Execution of—Attestation of.

———*See* HINDU LAW—WILL—ATTESTATION OF.

HINDU LAW—(*Contd.*)

Will—Execution of—Attestors to.

———*See* HINDU LAW—WILL—ATTESTORS TO.

Will—Execution of—Capacity (Sound disposing state of mind.)

COMPLICATED AND LENGTHY DOCUMENT—SIMPLE AND SHORT WILL.

DECISION ON, BASED ON MEDICAL BOOKS AND JUDICIAL DICTA, AND NOT ON EVIDENCE IN THE CASE.

DOCTOR'S OPINION AS TO—BASES OF.

DYING MAN—CAPACITY OF.

EVIDENCE AS TO—DRAFT OF WILL—PERSON PREPARING—EVIDENCE OF.

FINDING AS TO—FACT OR LAW—CONCURRENT FINDINGS.

FINDING IN FAVOUR OF—POSITIVE FINDING.

INSANE DELUSION.

ONUS OF PROOF OF.

PARALYSIS—PERSON AFFECTED WITH — CAPACITY OF.

PRESUMPTION AGAINST.

PRESUMPTION IN FAVOUR OF.

PROOF ADEQUATE OF—EVIDENCE TO DISPLACE.

PROOF OF.

SICK MAN—CAPACITY OF.

SIMPLE AND SHORT WILL—LENGTHY AND COMPLICATED WILL.

TRIAL JUDGE'S DECISION ON, BASED ON CREDIBILITY OF WITNESSES.

COMPLICATED AND LENGTHY DOCUMENT—SIMPLE AND SHORT WILL.

———Proof of capacity in two cases—Distinction. *See* HINDU LAW—WILL — EXECUTION OF — CAPACITY—SICK MAN—CAPACITY OF—SIMPLE AND SHORT WILL.

DECISION ON, BASED ON MEDICAL BOOKS AND JUDICIAL DICTA, AND NOT ON EVIDENCE IN THE CASE.

———The question was whether the deceased, who had been suffering from paralysis for a few years, was, at the time when he executed his third will on 10—7—1883, of sound and disposing mind.

The Judicial Commissioner, who held against the will on appeal, after an examination of the evidence, cited passages from the treatise of Dr. Ross on Diseases of the Nervous System, and Dr. Qain's Dictionary of Medicine, and then proceeded to quote various *dicta* of English Judges in cases of incapacity and insanity, which had little or no bearing upon the facts of the case before him. Under the influence apparently of those medical and legal authorities, and relying on the fact spoken to by a medical witness, that there had been extravasation of blood in the brain, he held that the deceased must, at the time when he made his third will, have had "a fresh access of his terrible malady."

Held that that speculative theory, for it was nothing else, illustrated the danger of deriving inferences of fact from

edical books and judical *dicta*, instead of depending upon the facts established by the evidence in the case (181-2). (*Lord Watson.*) SAJID ALI AND WAJID ALI *v.* IBAD ALI.
(1895) 22 I.A. 171 = 23 C. 1 (14) = 6 Sar. 627.

———In a case in which the question was as to the capacity of a deceased person to execute a will, their Lordships commented on the fact that a great deal of time was taken up in the courts below by speculative theories built on medical books without any facts "established by the evidence in the case," a course reprehended by Lord Watson in L. R. 22 I. A. 171 = 23 C. 1. Their Lordships referred to that circumstance in order to help the Indian Courts to economise time in the trial c imilar cases. (*Mr. Ameer Ali.*) SHEO

HINDU LAW—(*Contd.*)

Will—Execution of—Capacity—(Sound disposing state of mind.)—(*Contd.*)

DECISION ON, BASED ON MEDICAL BOOKS AND JUDICIAL DICTA, AND NOT ON EVIDENCE IN THE CASE—(*Contd.*)

BAHADUR SINGH *v.* BENI BAHADUR SINGH.
(1926) A.I.R. 1926 P. C. 97 (100) = 3 O. W. N. 761 = 29 O. C. 305 = 98 I. C. 567.

DOCTOR'S OPINION AS TO—BASES OF.

———*Eyes and expression of testator—Character and appearance of, if an important basis.*

There are many signs by which a doctor can determine whether a man's mind is sound or no, and certainly not the least important is the character and appearence of the man's eyes and expression. (*Viscount Haldane, L. C.*) ARUNACHELLAM CHETTY *v.* RAMASAMI CHETLY.
(1916) 20 C.W.N. 673 = 18 Bom. L.R. 408 = (1916) 1 M. W. N. 399 = 23 C.L.J. 632 = 35 I. C. 1 = 3 L.W. 508 = 20 M. L. T. 50 = 30 M.L. J. 555 (556-7).

DYING MAN—CAPACITY OF.

———Proof of. *See* HINDU LAW—ADOPTION — CAPACITY TO TAKE IN—DYING MAN.
(1865) 10 M. I. A. 429 (436-7) & (434-5).

———The question was as to the authenticity and genuineness of a will. The evidence was conflicting as to the mental capacity of the testator and as to the genuineness of his signature.

The leading facts as proved were as follows :—Iswar (the testator) appeared to have become ill at about eleven o'clock on the night of the 12th February, 1882, and died about three O'clock on the morning of the 15th February. The evidence assigned some time between nine and eleven O'clock on the evening of the 14th February as the time when he executed the will. The illness from which he suffered was a kind of fever known under the name *sajor* fever, which is attended with delirium and unconsciousness, but with intervals of consciousness. Eleven witnesses were examined against the will and about the same number in support of the will.

The District Judge decided in favour of the will. He had the opportunity of observing the demeanour and manner of the witnesses ; and, after reviewing the circumstances of the case, he came to apparently a clear conclusion in favour of the veracity of the witnesses who supported the will.

The High Court on appeal reversed the judgment of the District Judge, and held that the will was not a genuine will. The learned judges were influenced in their decision primarily by the evidence of two medical witnesses, and also by their own observation of the alleged signature of Ishwar to the will. No evidence was, however, given at the trial on the latter point, nor so far as appeared in the very careful judgment of the District Judge, was there any argument suggesting it.

On a consideration of the evidence and of the circumstances of the case, their Lordships reversed the judgment of the High Court and restored that of the District Judge. (*Lord Morris.*) ROMESH CHUNDER MUKERJEE *v.* RAJANI KANT MUKERII. (1893) 21 C. 1 = 6 Sar. 340.

EVIDENCE AS TO—DRAFT OF WILL—PERSON PREPARING—EVIDENCE OF.

———Value of. *See* HINDU LAW—WILL—EXECUTION OF—EVIDENCE—DRAFT OF WILL — PERSON PREPARING.
(1922) 44 M. L. J. 699 (704).

FINDING AS TO—FACT OR LAW—CONCURRENT FINDINGS.

———*P. C.'s interference with.*

HINDU LAW—(*Contd.*)

Will—Execution of—Capacity (Sound disposing State of mind)—(*Contd.*)

FINDING AS TO—FACT OR LAW—CONCURRENT FINDINGS—(*Contd.*)

———(*Lord Salvesen.*) KONDAPALLI VIJAYARATNAM *v.* MANDAPAKA SUDARSANA RAO.
(1925) 52 I.A. 305 (307) = 48 M. 614 = 23 A. L. J. 799 = 42 C L.J. 38 = (1925) M.W.N. 522 = 27 Bom.L.R, 1082 = 22 L. W. 435 = 6 L. R. P. C. 157 = 30 C. W. N. 193 = A. I. R. 1925 P. C. 196 = 89 I. C. 733 = 49 M. L. J. 247.

———Evidence—Case entirely one of, and of conclusion to be drawn from—Findings accepted. (*Lord Sumner.*) BAI MONGHIBAI *v.* PRAGJI DAYAL HARIANI.
(1925) 89 I.C. 88 = A. I. R. 1925 P. C. 198.

———Whether a man at the time of making his will had testamentary capacity is a pure question of fact. (*Viscount Dunedin.*) WILLIAM ROBINS *v.* NATIONAL TRUST CO., LTD. **(1927) 101 I. C. 903 (904) = 4 O. W. N. 463 = A. I. R. 1927 P. C. 66.**

FINDING IN FAVOUR OF—POSITIVE FINDING.

———*What amounts to.*

Where, on an issue as to the testamentary capacity of the testator at the date of the execution of the will set up, the trial judge recorded a finding in the following terms: — "The evidence does not make one think that there was anything which would show the incapacity of the testator," *held* that the finding was a positive finding of capacity (906).

To say that the above sentence was not a positive finding of capacity seems to their Lordships as out of the question as to say that if one said of a man that he was not dead on a certain date there was no finding that he was alive (906). (*Viscount Dunedin.*) WILLIAM ROBINS *v.* NATIONAL TRUST CO., LTD. **(1927) 101 I. C. 903 = 4 O. W. N. 463 = A. I. R. 1927 P. C. 66.**

INSANE DELUSION.

———*Proof of—Quantum.*

In order to constitute an insane delusion, it must be shown not only that belief in it was unfounded, but that it was so destitute of foundation that no one except an insane person would have entertained it (180). (*Lord Watson.*) SAJID ALI AND WAJID ALI *v.* IBAD ALI.
(1895) 22 I. A. 171 = 23 C. 1 (12-3) = 6 Sar. 627.

ONUS OF PROOF OF.

———Beneficiary under will—Onus on. *See* HINDU LAW—WILL—BENEFIT UNDER—PERSON TAKING.

———*English law as to — Ontario Courts—Law in — Difference between—Which correct.*

The English Courts have gone what some might think pretty far on the question of what duty lies on those who propound a will. Those who propound a will must show that the will of which Probate is sought is the will of the testator, and that the testator was a person of testamentary capacity. In ordinary cases, if there is no suggestion to the contrary any man who is shown to have executed a will in ordinary form will be presumed to have testamentary capacity, but the moment the capacity is called in question then at once the onus lies on those propounding the will to affirm positively the testamentary capacity. Moreover, if a will is only proved in common and not in solemn form, the same rule applies even though the action is to attack a Probate which has been granted long ago. The Appellate Division of the Court of Ontario has, however, taken the view that once Probate is granted though only in common form, the onus is on him who seeks to set it aside.

HINDU LAW—(*Contd.*)

Will—Execution of—Capacity (Sound disposing State of mind)—(*Contd.*)

ONUS OF—PROOF OF—(*Contd.*)

Quaere as to which of the two views is right (905). (*Viscount Dunedin.*) WILLIAM ROBINS *v.* NATIONAL TRUST CO., LTD. **(1927) 101 I.C. 903 = 4 O.W.N. 463 = A. I. R. 1927 P. C. 66.**

———*Hindu Law—Reversioner — Suit by — Defendant setting up will of last male owner in — Capacity of last male owner—Proof of—Onus as to.*

The onus of proving the testamentary capacity of Shib Singh (the validity of whose will was in question) of course lies on those by whom the will is propounded (22).

So held in a suit by the respondents for a declaration of their reversionary right to succeed to the estate of Shib Singh on the death of his widow, the defendants in the suit being the widow of Shib Singh and others who relied on a will alleged to have been executed by Shib Singh. (*Lord Robson.*) BEER SINGH *v.* UTTAM SINGH.
(1910) 38 I. A. 13 = 38 C. 355 (366-7) = 8 A. L. J. 123 = 13 Bom. L. R. 59 = 21 P. L. R. 1911 = 9 M L T. 115 = 15 C. W. N. 177 = 1 P. W. R. 1911 = 9 I.C. 33 = 21 P. R. 1911 = 13 C. L. J. 72 = (1911) 1 M. W. N 86 = 4 Bur. L. T. 35 = 21 M. L. J. 100.

———Probate—Application for—Onus in. *See* PROBATE—APPLICATION OF—CAPACITY OF TESTATOR—PROOF OF—ONUS AS TO.

PARALYSIS—PERSON AFFECTED WITH—CAPACITY OF.

———*Proof of.*

The question was whether the deceased, who had been suffering from paralysis for a few years, was, at the time when he made his third will dated 10—7—1883, of sound and disposing mind.

Held, on the evidence reversing the Judicial Commissioner and restoring the trial judge, that the testator was of sound disposing mind when he made the will in question. (*Lord Watson.*) SAJID ALI AND WAJID ALI *v.* IBAD ALI. **(1895) 22 I. A. 171 = 23 C. 1 = 6 Sar. 627.**

———*Proof of—Simple will—Complicated settlement—Distinction.*

A permanent paralytic affection, whilst it must to some extent diminish the physical energy of the sufferer, does not necessarily impair his mental powers to such an extent as to render him incapable of transacting business or of executing a will. Even in cases where the mental faculties of the person affected have been greatly enfeebled by physical weakness, he may still be capable of devising and intelligently executing a will of a simple character, although unfit to originate or to comprehend all the details of a complicated settlement (177-8). (*Lord Watson.*) SAJID ALI AND WAJID ALI *v.* IBAD ALI. **(1895) 22 I. A. 171 = 23 C. 1 (10-1) = 6 Sar. 627.**

PRESUMPTION AGAINST.

———*Grounds—Attestor and medical attendant of testator's family—Non-examination of.*

Where the learned Judges of the High Court considered that the fact that an attesting witness of the will set up, who was also the medical attendant of the family of the testator, was not called threw the gravest doubt on the case of the party who set up the will, their Lordships observed that it might be safely assumed that if the witness had been called he would not have said that the testator was unconscious when he executed the will (633). (*Sir John Edge.*) BANKIM BEHARI MAITI *v.* SRIMATI MATANGINI DASI.
(1919) 24 C. W. N. 626.

HINDU LAW—(*Contd.*)

Will—Execution of—Capacity (Sound disposing state of mind)—(*Contd.*)

PRESUMPTION IN FAVOUR OF.

———Grounds — Widow's acquiescence in will. *See* HINDU LAW—ADOPTION—PRESUMPTION IN FAVOUR OF—CIRCUMSTANCES JUSTIFYING—DYING MAN.

(1865) 10 M. I. A. 429 (433).

PROOF ADEQUATE OF—EVIDENCE TO DISPLACE.

———*Evidence of serious illness and general intemperance not sufficient.*

Where the party on whom the onus of proving the testamentary capacity of an alleged testator lies has discharged that obligation by adducing satisfactory evidence, such evidence is not displaced by mere proof of serious illness and of general intemperance (22). (*Lord Robson.*) BEER SINGH *v.* UTTAM SINGH. **(1910) 38 I. A. 13 = 38 C. 355 (366-7) = 8 A. L. J. 123 = 13 Bom. L. R. 59 = 21 P. L. R. 1911 = 9 M. L. T. 115 = 15 C. W. N. 177 = 1 P. W. R. 1911 = 9 I. C. 33 = 21 P. R. 1911 = 13 C. L. J. 72 = (1911) M. W. N. 86 = 4 Bur. L. T. 35 = 21 P. L. R. 1911 = 21 M. L. J. 100.**

PROOF OF.

———*Quantum.*

The question was as to the genuineness and validity of a will and codicil alleged to have been executed by a sonless Hindu bequeathing his ancestral as well as other real and personal estate, in the main, to certain charities, provision being made in it for the maintenance of his widow, daughter, and female relations. The appellant, the deceased's widow, contended that both the instruments were forged; and that at the time when they were respectively alleged to have been executed, the deceased was insensible.

Held, on the evidence affirming the court below, that the deeds in question were duly executed by the deceased and that he was in a sound disposing state of mind when he did so (343-4). (*Mr. Pemberton Leigh.*) NAGALUTCHMEE UMMAL *v.* GOPOO NADARAJA CHETTY.

(1856) 6 M. I. A. 309 = 1 Sar. 543.

———On an application for probate of a will alleged to have been executed by a deceased person, the question was whether the will was genuine or a forgery.

The District Judge, who tried the case, pronounced in favour of the will, but on appeal his decision was reversed by the High Court, who rejected the application for probate of the will.

Held, reversing the High Court, and restoring the District Judge, that the petitioner adduced sufficient evidence to establish the genuineness of the will and the capacity of the testator to make it, and that the evidence for the defence was not sufficient to destroy the petitioner's case on either of those points (143). (*Mr. Shand.*). BAMA SOONDARI DEBI *v.* TARA SOONDARI DEBI.

(1891) 18 I. A. 132 = 19 C. 65 (78) = 6 Sar. 66.

———Where a codicil was disputed by the testator's son on the ground that, if signed at all by the testator, it must have been signed when he was unconscious, and the evidence of the attestor to the codicil amounted to this: that the testator was in a state of high fever and of extreme and increasing weakness; that he was strong enough to dictate a clause; that he was then exhausted, fell back, and never spoke again till after the signature; that his wife dictated the rest, he making no objection; that sometime (an hour or so) afterwards a fair copy was brought to him to sign; whether it was read over to him or not the witness could not say; that he held out his hand, for a pen as the witness thought; that he was not able to write; that he was made to sit up and his hand was guided; that his holding out a hand for a pen when invited to sign made the witness think that he understood what he was doing at the time when he executed the document; that the witness had no communication with the testator all day except to ask him off and on how he felt, and to receive for answer a nod, or the expression "So so"; and that the testator said nothing else the whole day except to dictate the codicil; *held*, that the account was that of a man who had all day been declining in power and had become at length wholly incapable, too exhausted to speak, to sit up, or to write, and that the evidence, to put it at the highest, still left open the inference that, after the testator sank back exhausted, he was not capable of a testamentary act (161-2). (*Lord Hobhouse.*) SALA MAHOMED JAFFER BHOY *v.* DAME JANBAI.

(1897) 24 I. A. 148 = 22 B. 17 (36-7) = 1 C. W. N. 481 = 7 Sar. 173.

———The appellant propounded a document as the will of her late husband, *M.* The District Judge admitted the document to probate. The High Court on appeal reversed his decision, and dismissed the appellant's petition with costs. The sole question in issue was the testamentary capacity of the alleged testator.

Held, affirming the High Court, that there was no satisfactory evidence to shew that the alleged testator understood the business of the making of the alleged will (117). (*Lord Macnaghten.*) RASH MOHINI DASI *v* UMESH CHUNDER BISWAS. **(1898) 25 I.A. 109 = 25 C. 824 (833) = 2 C. W. N. 321 = 7 Sar. 298.**

———On an application by the appellant for probate of a will of one *S*, the question was whether the will was in fact executed by *S*, and whether he was at the time of executing it mentally capable of understanding the dispositions of the will, and whether he knew what those dispositions were.

Held, reversing the High Court, and restoring the trial Judge, that the will was duly proved to be the genuine will of *S*. (*Sir John Edge.*) BANKIM BEHARI MAITI *v.* SRIMATI MATANGINI DASI. **(1919) 24 C. W N. 626.**

———The appeal arose out of an application by a Parsee lady for the probate of a will which she alleged had been executed by her husband shortly before his death.

The District Judge of Bangalore granted the probate. His order was, however, reversed by the Resident of Mysore. The appeal to His Majesty in Council was against the order of the Resident.

The caveator was the eldest son of the deceased. His case was, in the first place, that his father was not competent or in such a condition, mentally or physically, as to make a valid disposition; in the second place, that if it was competently made, it was made under the undue influence of his second wife, the petitioner.

Held, on the evidence, that the order of the Resident ought to be set aside and that of the District Judge restored. (*Mr Ameer Ali.*) MOTIBAI HORMUSJEE KANGA *v.* JAMESTJEE HORMUSJEE KANGA.

(1923) 29 C. W. N. 45 = 80 I. C. 777 = 22 A.L.J. 98 = A.I.R. 1924 (P.C.) 28 = 26 Bom. L. R. 579 = (1924) M.W.N. 173 = 19 L.W. 437 = L.R. 5 A. P.C. 165.

———*Quantum—Authority to adopt—Will giving.*

The question was whether a deceased Hindu had given his widow permission to adopt a son. The alleged authority was contained in a will alleged to have been executed by the deceased. The case of rhe reversioner, who challenged the authority, was that the deceased had a paralytic stroke some months before the date of the alleged will and that he was totally incapacited for writing the will (the case for the

HINDU LAW—(*Contd.*)

Will—Execution of—Capacity (Sound disposing state of mind)—(*Contd.*)

PROOF OF—(*Contd.*)

adopted son being that the deceased had himself written out the will) or for doing the acts alleged in the written statement of the adopted son, and that the will was fabricated after the death of the deceased.

Held that the affirmative evidence regarding the capacity of the deceased to write the will and its due execution and attestation was overwhelming. (*Mr. Ameer Ali.*) SHEO BAHADUR SINGH *v.* BENI BAHADUR SINGH.

(1926) A. I. R. 1926 P. C. 97 (99)=3 O. W. N. 761=29 O. C 305=98 I. C. 567.

———*Rules for—Succession Act of* 1865—*Ss.* 46 and 48.

The rules for the establishment of the capacity of the testator and the circumstances which would lead to the invalidation of a will are embodied in Ss. 46 and 48 of the Indian Succession Act which practically embody the principles of the English law on the subject (443). (*Mr. Ameer Ali.*) MOTIBAI HORMUSJEE KANGA *v.* JAMSETJEE HORMUSJEE KANGA. **(1923) 19 L. W. 437=22 A. L. J. 98=A. I. R. 1924 P. C. 28=(1924) M. W.N. 173=34 M.L.T. 4=26 Bom.L.R. 579=29 C. W. N. 45=80 I. C. 77.**

SICK MAN—CAPACITY OF.

———*No intention of making will prior to illness—No instructions previously given nor preparations made for the purpose.*

In a case in which the question was as to the testamentary capacity of an alleged testator, their Lordships observed that it must be borne in mind that the alleged testator did not seem to have had any intention of making a will before his illness, and that the case before them was not like a case in which a testator executed a disposition of his property for which instructions had been given or preparations made while the mind was in vigour (116). (*Lord Macnaghton.*) KASH MOHINI DASI *v.* UMESH CHUNDER BISWAS. **(1898) 25 I. A. 109=25 C. 824 (832)=2 C. W. N. 321=7 Sar. 298.**

———*See* HINDU LAW—WILL — EXECUTION OF—CAPACITY—PARALYSIS—PERSON AFFECTED WITH.

(1895) 22 I. A. 171 (177-8)=23 C. 1 (10-1)

———*Simple and short will—Complicated will—Distinction between cases of.*

In a case in which the question was whether a deceased person was in a sound and disposing state of mind when he executed a will and a deed-poll, it was suggested that the testator was too ill to stand the mental and physical fatigue of mastering the contents of the documents, or forming a judgment on them. With reference to this contention, their Lordships observed :—The testator was, no doubt, very ill and suffering from fever, and in fact in a more critical condition than he himself and those about him probably thought. And it is possible that he could not have stood the fatigue of mastering the whole contents and effect of a lengthy document like the will if it had been necessary for him to do so. But, in the opinion of their Lordships, he was quite capable of understanding and appreciating the effect of a short and comparatively simple document like the deed-poll, or a clause in the will such as the 26th clause (158). (*Lord Davey.*) BAI GUNGABAI *v.* BHUGWANDAS VALJI. **(1905) 32 I.A. 142=29 B. 530 (558)=9 C. W. N. 769=7 Bom. L. R. 854=3 A. L. J. 68=8 Sar. 813=15 M. L. J. 271.**

———Where the question was whether a will of substantial length propounded by the respondent as the last will and testament of her deceased husband was really executed by him or was a fabrication and a forgery, and admittedly

HINDU LAW—(*Contd.*)

Will—Execution of—Capacity (Sound disposing state of Mind—(*Contd.*)

SICK MAN—CAPACITY OF—(*Contd.*)

no draft was ever made of the will, *held* that the fact that there was no erasure or alteration of any kind from beginning to end of the whole document was in itself a remarkable fact.

That a man stricken with illness, as the deceased was, should have been able to dictate in clear, logical, and even legal form, a complete and consecutive account of all his wishes, divided into separate paragraphs, including a specific enumeration of his whole estate, without one single error from beginning to end, is a matter which arrests attention and provokes comment. (*Lord Buckmaster.*) RAM GOPAL LAL *v.* AIPNA KUNWAR. **(1922) 49 I. A. 413 (415-6)=44 A. 495 (498)=31 M. L. T. 277=21 A. L. J. 402=A. I. R. (1922) P. C. 366=27 C. W. N. 485=1 Pat. L. R. 273=69 I. C. 31.**

———Signature of—Suspicion from. *See* HINDU LAW—WILL—SIGNATURE OF TESTATOR IN.

SIMPLE AND SHORT WILL—LENGTHY AND COMPLICATED WILL.

———Proof of capacity in cases of—Distinction. *See* HINDU LAW—WILL—EXECUTION OF—CAPACITY—SICK MAN—CAPACITY OF—SIMPLE AND SHORT WILL.

TRIAL JUDGE'S DECISION ON, BASED ON CREDIBILITY OF WITNESSES.

———*Interference in appeal with.*

On an application for probate of a will, the question was whether the testator was in a sound and disposing state of mind when he executed the will. The District Judge, who saw the witnesses and observed their demeanour, found in favour of the will and granted probate. The High Court, on appeal, reversed his decision. The question was simply which set of witnesses should be believed.

Held, that the High Court, who had not the advantage of seeing the witnesses and observing their demeanour, ought not to have reversed the decision of the District Judge. (*Sir Richard Couch.*) SHAMA CHURN KUNDU *v.* KHETRIOMONI DASI. **(1899) 27 I. A. 10=27 C. 521 (528)=4 C. W. N. 501=2 Bom. L. R. 568=7 Sar. 638.**

———On an application for probate of a will, an issue was raised as to whether the testator was of sound disposing mind when he executed the will. The trial Judge, who heard and saw the witnesses, held that the applicant had failed to prove that the testator was of sound disposing mind. The learned Judge correctly laid down for his own guidance the essentials of a "sound disposing mind." The Court of Appeal, who suffered under the disadvantage of neither seeing nor hearing the witnesses, nevertheless held that the onus on the plaintiff had been discharged, and admitted the will to probate.

Held, reversing the Court below, that the trial Judge was right in holding that the plaintiff had failed to discharge the burden of proof.

Their Lordships also observed on the impropriety of the Court of appeal reversing the conclusion of the trial Judge in such a case. (*Lord Collins.*) SHUNMUGAROYA MUDALIAR *v.* MANIKKA MUDALIAR.

(1909) 36 I A. 185 (190-1)=32 M. 400 (408-9)=6 M. L. T. 304=10 C. L. J. 276=11 Bom. L R 1206=3 I. C. 799=19 M. L. J. 640.

Will—Execution of—Decision of issue as to.

———*See* HINDU LAW—WILL—EXECUTION OF—ISSUE AS TO.

HINDU LAW—(*Contd.*)

Will—Execution of—Evidence of.

———(*See also* Hindu Law—Will—Execution of—Proof of.)

ADOPTION RECITED IN WILL—FACTUM OF—CONSIDERATION OF—NECESSITY.
ATTESTORS.
BENEFICIARY UNDER WILL.
BEST EVIDENCE PROCURABLE.
CLEAR AND SATISFACTORY EVIDENCE OF EXECUTION—IMPROBABILITY OF WILL—THEORY OF.
CONSIDERATION OF—IMPROPER WAY OF.
DRAFT OF WILL.
EVIDENCE GIVEN IN OTHER PROCEEDINGS BY WITNESSES WHOM PARTY HAD NO OPPORTUNITY TO CROSS-EXAMINE.
MEDICAL OFFICER WHO ATTENDED ON TESTATOR.
QUANTITY AND QUALITY OF, TO BE EXPECTED—LAPSE OF TIME.
REGISTRAR WHO REGISTERED WILL AT RESIDENCE OF TESTATOR.
SICK MAN.
SIMPLE AND SHORT WILL—LENGTHY AND COMPLICATED DOCUMENT.
SUSPICION.
TESTATOR'S SUBSEQUENT STATEMENTS CONSISTENT OR INCONSISTENT WITH EXECUTION.
WITNESSES CALLED TO PROVE EXECUTION—LOW POSITION OF.

ADOPTION RECITED IN WILL—FACTUM OF—CONSIDERATION OF—NECESSITY.

———Decision as to factum of adoption—Propriety. *See* PROBATE—APPLICATION FOR—ADOPTION RECITED IN WILL. **(1916) 30 M.L.J. 624 (631).**

ATTESTORS.

———Evidence of. *See* HINDU LAW—WILL—ATTESTORS TO.

BENEFICIARY UNDER WILL.

———Evidence to be adduced by. *See* HINDU LAW—WILL—BENEFT UNDER—PERSON TAKING.

BEST EVIDENCE PROCURABLE.

———*Necessity.*

A will is one of the most solemn documents known to the law. By it a dead man entrusts to the living the carrying out of his wishes, and as it is impossible that he can be called either to deny his signature or to explain the circumstances in which it was attached, it is essential that trustworthy and effective evidence should be given to establish compliance with the necessary forms of law. In the present instance, no formalities are essential. Proof of the testator's signature is all that is needed; but, in case of doubt or dispute, justice requires that the best evidence procurable of that signature should be furnished, and an attempt to support the signature by anything that falls short of this standard is a matter which, though it may not be fatal, is a serious defect. (*Lord Buckmaster.*) RAM GOPAL LAL *v.* AIPNA KUNWAR. **(1922) 49 I.A. 413 (417-8)= 44 A. 495 (500)=31 M.L.T. 277==21 A.L.J. 402= A.I.R. (1922) P.C. 366=27 C.W.N. 485= 1 Pat. L.R. 273=69 I.C. 31.**

CLEAR AND SATISFACTORY EVIDENCE OF EXECUTION—IMPROBABILITY OF WILL—THEORY OF.

———Degree of improbability required to prevail against such evidence. *See* HINDU LAW—WILL—EXECUTION OF—IMPROBABILITY OF. **(1894) 22 I.A. 12 (23)=22 C 519 (531).**

HINDU LAW—(*Contd.*)

Will—Execution of—Evidence of—(*Contd.*)

CONSIDERATION OF—IMPROPER WAY OF.

———*Contents of will—Opinion formed from—Consideration of evidence in light of.*

In a case in which the question was whether a will was or was not the last will of the testator, or was a forgery, the trial judge found that it was a forgery, doing so primarily from a consideration of the contents of the will, which he considered so extraordinary as to overbalance altogether the evidence of the witnesses who spoke to having been present and seen the testator sign the will, and to having themselves signed the will as witnesses.

Held, agreeing with the High Court, that the trial judge's method of procedure in discussing the question before him was an erroneous one, namely, first to make up his mind about the contents of the will, and then to look at the positive evidence in favour of its execution from that standpoint. (*Lord Davey.*) BULLI KUNWAR *v.* BHAGIRATHI. **(1905) 9 C.W.N. 649=15 M.L.J. 265.**

———*Prepossession that testator could not have made particular will—Consideration of evidence influenced by.*

In a case in which the question was whether a will set up by the widow and nephew of a deceased Hindu was really executed by the deceased or was a forgery, the case for the parties disputing the genuineness of the will was that the deceased had every intention of making a will but that he had intended to make a will in favour of a school, and that therefore the will set up was not the sort of will that he would have made. This notion that the deceased meant to make a will in favour of a school got so much into the mind of the trial judge that his judgment was swayed by that predominating opinion to begin with, and that he then looked at each witness with a sort of idea of trying to find out why the witnesses could not be reliable, instead of beginning with the witnesses and then seeing if there was any special reason why they should not be speaking the truth.

Their Lordships disapproved of the way in which the trial Judge approached the appreciation of the evidence of the witnesses. (*Lord Dunedin*). PALCHUR SANKARAREDDI *v.* PALCHUR MAHALAKSHMAMA. **(1922) 17 L.W. 1 (5)= A.I.R. (1922) P.C. 315=31 M.L.T. 307 (P.C.)= 27 C.W N. 414=70 I.C. 949.**

DRAFT OF WILL.

———*Admissibility in evidence of—Testator not signing or adopting same.*

Quære whether any valid argument can be formed upon a draft will not signed or adopted by the person for whom it was prepared. (*Viscount Cave*). VARATHA PILLAI *v.* JEEVARATHNAMMAL. **(1919) 46 I.A. 285 (292)= 43 M. 244 (251)=24 C.W.N. 346=27 M.L.T. 6= 18 A L.J. 274=22 Bom. L.R 444=(1919) M.W.N. 724= 10 L.W. 679=53 I.C. 901=38 M.L.J. 313.**

———*Person preparing—Evidence of—Value of—Understanding by or mental capacity of testator—Issue as to—Distinction.*

On an issue as to whether a paper writing alleged to to have been the last will of a lady was in fact executed by or on her behalf, *held* that the evidence of a person who was not a witness to the execution of the will, but merely deposed to having prepared the draft of the will had little or no bearing on the question whether or not the alleged will was in fact executed (704).

The Courts in India have attached more importance and significance to this document (the draft) than it deserves. There can be no doubt that the alleged will was based on it, and with such modifications as were necessary for the purpose in hand was in effect a reproduction of it. It might

HINDU LAW—(*Contd.*)

Will—Execution of—Evidence of—(*Contd.*)

DRAFT OF WILL—(*Contd.*)

have been of distinct value if the issue had been whether the lady had understood an instrument admitted or proved to have been executed by her, or if her mental capacity had been questioned. But that is not the issue here; the only matter in contest is the fact of execution by or on behalf of the lady. (*Sir Lawrence Jenkins*). BAIKUNTHA NATH CHATTORAJ *v.* PRASANNAMOYI DEBYA.

(1922) 27 C.W N. 797=9 O. & A.L.R. 501=72 I.C. 286=(1922) P.C. 409=44 M.L.J. 699 (704).

———*Preparation of—Discrepancy as to—Effect of.*

In support of the case that the will set up was not genuine, much stress was laid upon a discrepancy in the evidence adduced in proof of the will, *viz.*, that the witnesses at the earlier judicial investigation described the will as having been immediately dictated by the testator to *D*, the writer; whereas at the trial of the cause (out of which the appeal before their Lordships arose), they deposed that *T* made the draft from the dictation of the testator, and that *D* made a fair copy from it. With reference to this point their Lordships observed as follows :—

This discrepancy certainly exists, but it is one which might be found in many a case free from suspicion. It may have proceeded from mere inaccuracy of recollection; and sometimes in native statements an intermediate agency is passed over, and an action ascribed to an immediate source, which in truth proceeded from a derivative one (99-100). (*Sir James W. Colvile*). SOORENDRONATH ROY *v.* MUSSUMAT HEERAMONEE BURMONEAH.

(1868) 12 M.I.A. 81=10 W.R. 35=1 B.L.R. P.C. 26=2 Suth. 147=2 Sar. 372.

———*Preparation of—Suspicion as to—Evidence of execution when not destroyed by.*

In a case in which the High Court held against the genuineness of the will set up on the ground *inter alia*, that the evidence as to the draft of the will was suspicious and that it appeared that the draft produced so far from having been prepared beforehand had been made from the will itself, their Lordships, while recognising there were grave suspicions as to the preparation of the draft, *held* that, as there was a tendency amongst litigants in India, as elsewhere, to back up a good case by false evidence, the suspicious character of the story as to the draft did not destroy the evidence as to the execution of the will (632-3). (*Sir John Edge*). BANKIM BIHARI MAITI *v.* SRIMATI MATANGINI DASI. **(1919) 24 C.W.N. 626.**

———*Production of—Examination of pleader who corrected draft—Necessity.*

In a case in which the question was as to the testamentary capacity of an alleged testator, their Lordships observed that it was a very important fact that the principal, if not the sole, actor in the drama did not produce the draft of the will which he said was sent to a pleader for correction and returned by him, and that the pleader himself had not been called, though he might have thrown some light upon the case (116). (*Lord Macnaghten*). RASH MOHINI DASI *v.* UMESH CHUNDER BISWAS.

(1898) 25 I.A. 109=25 C. 824 (833)=2 C.W.N. 321=7 Sar. 298.

EVIDENCE GIVEN IN OTHER PROCEEDINGS BY WITNESSES WHOM PARTY HAD NO OPPORTUNITY TO CROSS-EXAMINE.

———*Admissibility of, against him.*

In a suit between the widow and the male heirs of *R*, the question was as to the genuineness of a will set up by *R's* widow in her own favour alleged to have been executed by *R*.

HINDU LAW—(*Contd.*)

Will—Execution of—Evidence of—(*Contd.*)

EVIDENCE GIVEN IN OTHER PROCEEDINGS BY WITNESSES WHOM PARTY HAD NO OPPORTUNITY TO CROSS-EXAMINE—(*Contd.*)

On the death of *R* certain depositions were taken, not, however, in the suit out of which the appeal arose, but long before the institution of the suit; and it appeared that they were taken for an entirely distinct purpose, namely, in one case, for the purpose of the proceedings going on in the Civil Court, and, in the other case, for the purpose of the proceeding before the Collector. The object of the proceeding in the Civil Court was to substitute the name of the appellant for the name of *R* in all proceedings with respect to the property of the deceased in the Civil Court.

The object of the proceeding before the Collector was to have the name of the appellant registered instead of the name of *R*, as proprietor of his estate. It seemed that the Collector acted upon the will, and that then the Civil Court acted upon the decision of the Collector. It did not appear that the respondents had an opportunity of cross-examining the witnesses examined for the appellant in the said proceedings.

Held that neither the said proceedings nor the evidence given for the appellant therein were evidence in the suit upon the fact of the will being genuine or not genuine (284-5).

The decision of the Collector, of course, was not a proceeding in any Court of Justice at all; it was a not a judicial proceeding, and, by the Regulation VIII of 1800, it is expressly provided that the entry of the Collector shall not in any degree "affect the rights of any party whose name may be registered therein as the ostensible proprietor of the land, or whose name may not have been registered as the proprietor, but who may establish a right of property in the Dewanny Adawlut, or otherwise" (285). (*Mr. Pemberton Leigh.*) RANY PADMAVATI *v.* BABOO DOOLAR SING. **(1847) 4 M I.A. 259=7 W.R. 41 P. C.=1 Suth. 178=1 Sar. 348.**

MEDICAL OFFICER WHO ATTENDED ON TESTATOR.

———*Reading over of will to—Evidence of witnesses as to—Medical Officer himself not recollecting occurrence—Effect.*

In a case in which the genuineness of a will was in question, it was alleged by the witnesses for the will that during the night in which the will was executed, the night before the testator's death, Dr. D, who was said to be a gentleman of good position was called in to attend the testator, and was present, when the will was read over. But the Doctor when called could recollect no such occurrence.

The District Judge, who held against the genuineness of the will, attached great importance to that discrepancy. The High Court, who reversed him, thoug t it not unnatural that that gentleman might have forgotten a single visit to a patient after the lapse of many years (the will was executed in 1878 and the question of its genuineness arose in 1896).

Their Lordships concurred in the view of the High Court (920 1). (*Sir Arthur Wilson*). KALI DAS CHUCKERBUTTY *v.* ISHAN CHUNDER CHUCKERBUTTY.

(1904) 31 C. 914=9 C.W.N. 49.

QUANTITY AND QUALITY OF, TO BE EXPECTED—LAPSE OF TIME.

———*Question raised after long—Probate in common form obtained several years before.*

As against the genuineness of a will it was urged that the evidence in support of it was scanty in amount and open to exception in quality. The High Court met that contention by laying stress upon 'the difficulty of proving, in 1896, a

HINDU LAW—(*Contd.*)

Will—Execution of—Evidence of—(*Contd.*)

QUANTITY AND QUALITY OF, TO BE EXPECTED—LAPSE OF TIME—(*Contd.*)

will, which purports to have been executed in 1878, and of which probate was obtained in common form in 1884."

Held, that the learned Judges of the High Court were right in laying stress upon that circumstance (920). (*Sir Arthur Wilson.*) KALI DAS CHUCKERBUTTY *v.* ISHAN CHUNDER CHUCKERBUTTY.

(1904) 31 C. 914=9 C.W.N. 49.

REGISTRAR WHO REGISTERED WILL AT RESIDENCE OF TESTATOR.

———*Evidence of—Will held not proved notwithstanding.*

In this case their Lordships reversed the decision of the High Court and restored that of the trial Court which held that the will (the genuineness of which was in question) had not been proved.

Their Lordships did so notwithstanding the evidence of the Sub-Registrar, who registered the will at the residence of the deceased. (*Mr. Ameer Ali.*) BINDESHRI PRASAD *v.* BAISAKHA BIBI.

(1919) 24 C. W. N. 674=61 I. C. 431.

SICK MAN.

——— Will by. *See* HINDU LAW—WILL—EXECUTION OF—CAPACITY—(1) SICK MAN AND (2) PARALYSIS.

SIMPLE AND SHORT WILL—LENGTHY AND COMPLICATED DOCUMENT.

———Cases of—Distinction. *See* HINDU LAW—WILL—EXECUTION OF—CAPACITY—SICK MAN—CAPACITY OF—SIMPLE AND SHORT WILL.

SUSPICION.

———Basis proper of decision. *See* HINDU LAW—WILL—EXECUTION—DECISION AS TO—BASIS PROPER OF.

(1923) 19 L.W. 437 (443-4).

TESTATOR'S SUBSEQUENT STATEMENTS CONSISTENT OR INCONSISTENT WITH EXECUTION.

———*Value of.*

In a case in which the question was whether a deceased Rajah had executed the will set up by the respondent, his grandfather, both parties were agreed that the deceased intended, to make a will before he died, ousting the succession of his heirs and settling his whole estates upon the respondent and her mother in terms of the will set up. But, while the appellants, the heirs *ab intestato*, contended that the deceased had put off the formal execution of the intended will till after his installation as Rajah and that he did not formally execute it on the date of the will set up, the respondent, on the other hand, insisted that he had on the date in question executed the document and delivered it as a completed and effectual instrument to the respondent.

Held that, while, on the one hand, statements made by the deceased after the date of the will set up showing his belief that he had not yet barred the succession of his legal heirs, and did not mean to do so before his installation, would militate strongly against the inference that it had already been formally executed, it was, on the other hand, equally clear that statements made by the deceased during the same period, amounting to an acknowledgment that he had executed the document and delivered it as a completed and effectual instrument to the respondent, would afford a strong corroboration of her oral testimony, which, according to the appellants, was perjured (18-9). (*Lord Watson.*) CHOTEYNARAIN SINGH *v.* MUSSAMAT RATAN KOER.

(1894) 22 I.A. 12=22 C. 519 (526-7)=6 Sar. 564.

HINDU LAW—(*Contd.*)

Will—Execution of—Evidence of—(*Contd.*)

WITNESSES CALLED TO PROVE EXECUTION—LOW POSITION OF.

———*Adverse comment based on—Weight of.*

The Comment that the witnesses called to prove the due execution of a will might be of a better class has no force except upon something of a much higher level than mere suspicion, namely, proof which would thoroughly satisfy the mind of a court that those persons had committed both forgery and perjury. (*Lord Shaw.*) JAGRANI KOER *v.* KUAR DURGA PRASAD. **(1913) 41 I. A. 76=36 A. 93 (98)=(1914) M.W.N. 137=16 O. C. 386=22 I. C. 103=12 A.L.J. 125=19 C.L.J. 165=18 C. W. N. 521=16 Bom. L. R. 141=15 M. L. T. 125=26 M. L. J. 153.**

Will—Execution of—Improbability of—Theory of.

———*Evidence of execution clear and satisfactory—Degree of improbability required to prevail against.*

The case of the respondents (that the deceased Rajah executed the will in question) is clearly and satisfactorily proved. The settled intention of the deceased to make a will in the precise terms of the instrument propounded is beyond dispute; there is a large and consistent body of testimony evidencing the preparation of the draft will, the making of a clean copy, the signing and sealing of that copy by the testator, and its attestation by the subscribing witnesses. There is consistent and uncontradicted testimony that the testator, as soon as these acts were completed, delivered the instrument, as a valid and legally executed instrument, to his legatee; and there is also evidence to the effect that he subsequently acknowledged that all these acts had been performed. The theory of improbability remains to be considered. In order to prevail against such evidence as the above, an improbability must be clear and cogent. It must approach very nearly to, if it does not altogether constitute, an impossibility (23). (*Lord Watson.*) CHOTEY NARAIN SINGH *v.* RATAN KOER.

(1894) 22 I. A. 12=22 C. 519 (531)=6 Sar. 564.

———*Will not sort of will likely to have been made by testator—Argument against genuineness based on—Force of—Testamentary intention of testator admitted.*

The question was as to the genuineness of a will executed in favour, chiefly. of the wife's sister's son of the alleged testator. The genuineness of the will was contested by the reversionary heirs of the deceased. Their case was not that the deceased had no intention of making a will at all; that he meant to die intestate. On the contrary, they rather put in the forefront that the deceased had every intention of making a will, and there was a great deal of evidence that there was a certain amount of hearsay that he had some intention of devoting a very large portion of his fortune to a charity in connection with a school for boys. That being a rather difficult position for the reversioners to put themselves into, because the moment that they asserted that there was another will they put themselves out of Court, because their only right to prevail was upon intestacy, they, therefore, rather hinted that it was most likely that the deceased would make a will, and then went on to say it was pretty apparent from the evidence that if the testator did make a will, the one in question was not the sort of will that he would have made.

Their Lordships observed that the reversioners were in rather a curious position, which was really the old position of wishing to wound and being afraid to strike (4-5). (*Lord Dunedin.*) PALCHUR SANKARAREDDI *v.* PALCHUR MAHALAKSHMAMA. **(1922) 17 L. W. 1=A.I.R. 1922 P.C. 315=31 M. L. T. 307=27 C. W. N. 414=70 I.C 949.**

HINDU LAW—(*Contd.*)

Will—Execution of—Issue as to—Decision of.

———*Basis proper of—Evidence—Suspicion.*

As against the evidence establishing the genuineness of a will reliance was placed on what was called the suspicious circumstances in the case, and the dictum in *Tyrrell* v. *Painton*, (1894) P. 151, was relied upon.

Held that, that case was distinguishable from the case before their Lordships (443-4).

In this connection, it may be useful to refer to the observations of Lord Westbury in the case of Sreemanchunder Dey *v.* Gopaulchunder Chuckerbutty, 11 M.I.A. 22, 44.

"In matters of this description" (he was dealing with a charge of fraud in connection with a sale in satisfaction of a decree) "it is essential to take care that the decision of the Court rests not upon suspicion, but upon legal grounds, established by legal testimony" (443-4). (*Mr. Ameer Ali.*) MOTIBAI HORMUSJEE KANGA *v.* JAMSETJEE HORMUSJEE KANGA. **(1923) 19 L. W. 437 = 22 A.L.J. 98 = A. I. R. 1924 P. C. 28 = (1924) M. W. N. 173 = 34 M.L.T. 4 = 26 Bom. L. R. 579 = 29 C.W.N. 45 = 80 I. C. 77.**

———Method proper of approaching—Contents of will—Opinions formed from—Consideration of evidence in light of—Propriety. *See* HINDU LAW—WILL—EXECUTION OF—EVIDENCE OF—CONSIDERATION OF — IMPROPER WAY OF—CONTENTS OF WILL. **(1905) 15 M. L. J. 265.**

———*Method proper of approaching — Investigation of actual facts of case—Pious Hindu gentleman—Point of view of—Consideration of issue from—Propriety.*

It is little wonder that the District Judge and the learned Judges of the High Court have come to opposite conclusions on the question of the genuineness of the will, for they approach the matter from very different points of view. Patiently and with every appearance of impartiality the District Judge sets himself to investigate the actual facts. He tries to place himself in the position of the alleged testator with all his actual surroundings. On the other hand, Ameer Ali, J. who claims to be intimately acquainted with the usages and habits of thought of his Hindu fellow-countrymen, approaches the question from the point of view apparently of a pious Hindu gentleman, scrupulous and exact in the discharge of every moral and religious duty—so scrupulous in deed and so exact that, in the opinion of the learned Judge, it becomes a matter of grave importance that no provision is to be found in the will for the worship of a family idol whose worship, as it appears, was maintained during the testator's lifetime by the annual expenditure of the sum of one rupee. Tried by so high a standard, the will is found wanting in many things. But for all that it is not an unlikely disposition for such a man as the testator to have made under the circumstances (31). (*Lord Macnaghten.*) DOWLAT KOER *v.* RAMPHUL DAS. **(1897) 25 I. A. 21 = 25 C. 459 (470-1) = 2 C. W. N. 177 = 7 Sar. 231.**

———Method proper of approaching—Prepossession that testator could not have made particular will—Consideration of evidence influenced by. *See* HINDU LAW—WILL—EXECUTION OF—EVIDENCE OF—CONSIDERATION OF—IMPROPER WAY OF—PREPOSSESSION, ETC. **(1922) 17 L. W. 1 (5).**

———Provisions of will—Reasonableness or otherwise of—Consideration of—Propriety. *See* HINDU LAW—WILL (1) DISPOSITIONS OF—REASONABLENESS OR OTHERWISE OF AND (2) EXECUTION OF—PRESUMPTION AS TO—PROVISIONS OF WILL.

———*Reversal in appeal of, on ground to which evidence and argument in court below had not been directed—Propriety.*

In a case in which the question was as to the genuineness of a will alleged to have been executed by a person the day

HINDU LAW—(*Contd.*)

Will—Execution of—Issue as to—Decision of—(*Contd.*)

before his death, the District Judge, who had the opportunity of observing the demeanour and manner of the witnesses, after reviewing the circumstances of the case came to a clear conclusion in favour of the veracity of the witnesses who supported the will. On appeal his judgment was reversed on the ground, *inter alia*, that, from the appellate Judges' own observation of the signature of the deceased to the will, it (the signature) did not seem to be the signature of a dying man and its character supported the evidence of the witnesses who said that the signature was attached by one *H* after the testator's death. On further appeal *held* by their Lordships that they could not attach much importance to that ground of reversal of the District Judge's judgment because no evidence had been given at the trial on that point and there was no argument suggesting it. (*Lord Morris.*) MONI BHUSAN *v.* RAJANI KANT MOOKERJI. **(13th May 1893) H. C. File for 1893.**

———Trial Judge—Decision of — Interference on appeal with. *See* HINDU LAW—WILL—EXECUTION OF—TRIAL JUDGE'S DECISION ON.

Will—Execution of—Issue as to—Finding proper on.

———Forgery—Finding of, neither necessary nor proper. *See* DEED—EXECUTION OF—ISSUE AS TO — FINDING PROPER ON.

Will—Execution of—Meaning of.

———*Deed—Meaning in case of—Distinction.*

It is said that the word "execution" in reference to a will applies to the testator's part alone; for it is said that the testator executes, the witnesses attest. But this is utterly untrue. The testator does not execute; he makes and publishes. In truth, the word execute applies to a deed, rather than to a will. The word "execution" in reference to a will designates the whole operation, including both the signature or acknowledgment of a testator, and the attestation of the subscribing witnesses. It is not used at all to designate the testator's part alone (406-7). (*Lord Brougham.*) CASEMENT *v.* FOULTON. **(1845) 3 M. I. A. 395 = 5 Moo. P.C. 130 = 1 Sar. 293.**

Will—Execution of—Onus of Proof as to.

———The burden of proving that a document does contain the last will and testament of a deceased person lies upon the person propounding the same (185). (*Lord Macnaghten.*) SRI AMMAI DEVI *v.* SRI VIKRAMA DEVI.

(1888) 15 I. A. 176 = 11 M. 486 (497-8) = 5 Sar. 190.

———The burden of proving a will is on the person who sets it up. (*Sir Lawrence Jenkins.*) BAIKUNTHA NATH CHATTORAJ *v.* PRASANNAMOYI DEBYA.

(1922) 27 C. W. N. 797 = 72 I. C. 286 = 9 O. & A.L.R. 501 = A.I.R. 1922 P. C. 409 = 44 M. L. J. 699 (706).

———Benefit under will—Person taking—Onus on. *See* HINDU LAW—WILL—BENEFIT UNDER—PERSON TAKING.

———Probate—Application for—Onus in. *See* PROBATE—APPLICATION FOR.

———*Reversioner's suit against widow—Will of last male owner in her favour set up by her in.*

Where, in a suit brought by the heirs at law of a deceased Hindu, alleging that he died intestate, the widow of the deceased set up a will by him in her favour, *held* that it was incumbent upon her to produce clear and conclusive evidence in favour of that instrument (285). (*Mr. Pemberton Leigh.*) RANY PUDMAVATI *v.* BABOO DOOLAR SINGH. **(1847) 4 M.I.A. 259 = 7 W. R 41 P. C. = 1 Suth. 178 = 1 Sar. 348.**

HINDU LAW—(*Contd.*)

Will—Execution of—Onus of proof as to—(*Contd.*)

———*See* HINDU LAW—REVERSIONER—PRESUMPTIVE REVERSIONER—STATUS OF—DECLARATION OF — SUIT AGAINST WIDOW FOR—WILL BY DECEASED ETC.

(1901) 28 I. A. 186 (188-9)=23 A. 405 (413).

———*Reversioner's suit for declaration of invalidity of alleged will of last male owner—Defendants' persons claiming under will.*

In a suit by the nephews (brother's sons) of a deceased Hindu for a declaration that a will alleged to have been executed by the deceased in favour of his sister's daughter and her sons was a forgery, that the deceased died intestate without making any disposition of his property, and that, consequently, the plaintiffs, as his nearest male reversioners were entitled to the succession to his estate, *held* that, as the right of the plaintiffs, as the legal heirs of the deceased, was indisputable, the onus of establishing, without reasonable doubt, that the will propounded was the will of the deceased lay upon the defendants (675, 684.) (*Mr, Ameer Ali.*) BINDESHRI PRASAD *v.* BAISAKHA BIBI.

(1919) 24 C. W. N. 674=61 I.C. 431.

———*Widow's suit against third parties — Will of last male owner in their favour set up by them.*

The plaintiff-appellant was the widow of a deceased Hindu, and was admittedly the sole heir to his property, moveable and immoveable. The respondents, however, insisted that the appellant's title, as heir-at-law, was displaced by a will and codicil, executed by her husband before his death. The appellant denied the genuineness and validity of both the instruments.

Held, that the *onus* of proving the will and the codicil was, of course, upon the respondents, who relied upon them (338). (*Mr. Pemberton Leigh.*) NAGALUTCHMEE UMMAL *v.* GOPOO NADARAJA CHETTY.

(1856) 6 M. I. A. 309=1 Sar. 543.

Will—Execution of—Presumption as to.

ATTESTORS.
BENEFIT UNDER WILL—PERSON TAKING—PREPARATION OR WRITING OF WILL BY.
DRAFT OF WILL.
EVIDENCE OF WITNESSES TO EXECUTION GIVEN IN SUCCESSION CERTIFICATE PROCEEDINGS AND IN SUIT—DISCREPANCY BETWEEN—ABSENCE OF.
HISTORY OF DOCUMENT—NECESSITY—ABSENCE OF.
LAPSE OF TIME—GENUINENESS ATTACKED AFTER LONG.
LAWYER OF POSITION—PREPARATION OF WILL NOT BY.
LEGATEE'S DEATH—ATTACK ON WILL MADE AFTER.
MALE RELATIONS NEAREST—PERFORMANCE OF TESTATOR'S OBSEQUIES OR TOUCHING OF HIS CORPSE BY—PROVISION IN WILL AGAINST.
PARTY CONTESTING WILL ALLEGED TO HAVE BEEN PRESENT AT EXECUTION—OMISSION OF, TO EXAMINE HIMSELF.
PROVISIONS OF WILL—REASONABLE AND NATURAL CHARACTER OF.
PUBLICATION OF WILL.
REGISTRATION OF WILL.
SICK MAN.
SIGNATURE OF TESTATOR.
WITNESS NOT AN ATTESTOR.

ATTESTORS.

———*Examination of—Failure — Presumption adverse from—Propriety—Failure not due to fault of propounder.*

HINDU LAW—(*Contd.*)

Will—Execution of—Presumption as to—(*Contd.*)

ATTESTORS—(*Contd.*)

The absence from the witness-box of the other attesting witnesses has been satisfactorily explained. The hearing of the case was not continuous. There was other pressing work to be attended to by the court, which necessitated several adjournments in the taking of the evidence. The recording of the evidence began before one Subordinate Judge and was concluded by another. Most of the attesting witnesses who were not examined appear to have been present to give their evidence on one or more of the dates fixed for the recording of evidence, but owing to the pressure of work in the court they were not examined. It does not appear that any of them lived near the court, and there is nothing to suggest to their Lordships that any of them were intentionally kept out of the witness-box by the appellant (the propounder of the will the genuineness of which was in question) (630). (*Sir John Edge.*) BANKIM BIHARI MAITI *v.* SRIMATI MATANGINI DASI. **(1919) 24 C. W. N. 626.**

———Position low of—Presumption adverse from — Propriety. *See* HINDU LAW—WILL — ATTESTORS TO — POSITION OF.

BENEFIT UNDER WILL—PERSON TAKING — PREPARATION OR WRITING OF WILL BY.

———Presumption adverse from. *See* HINDU LAW—WILL—BENEFIT UNDER—PERSON TAKING.

DRAFT OF WILL.

———For cases relating to. *See* HINDU LAW—WILL—EXECUTION OF—EVIDENCE OF—DRAFT OF WILL.

EVIDENCE OF WITNESSES TO EXECUTION GIVEN IN SUCCESSION CERTIFICATE PROCEEDINGS AND IN SUIT—DISCREPANCY BETWEEN—ABSENCE OF.

———*Presumption favourable from.*

In a case in which the *factum* of a will was in question, their Lordships observed :—"If, then, no discrepancy of any material character be found between the proof which was given on the application for a certificate in 1853, and that given on the trial of the cause in 1859, the witnesses being native witnesses, and speaking again to the same facts after so long an interval, the absence of such discrepancy, and the precision of the statements as to the execution and signature, are some arguments in themselves in support of the truth of that to which those of the witnesses who were examined on both trials depose" (99). (*Sir James W. Colvile.*) SOORENDRONATH ROY *v.* MUSSUMAT HEERAMONEE BURMONEAH. **(1868) 12 M. I. A. 81= 10 W. R. P. C. 35=1 B. L. R. P. C. 26=2 Suth. 147= 2 Sar. 372.**

HISTORY OF DOCUMENT—NECESSITY—ABSENCE OF.

———*Presumption unfavourable from.*

In deciding against the genuineness of a will set up by the respondent as the last will and testament of her deceased husband, their Lordships observed that they were greatly impressed with this fact—that no evidence whatever was forthcoming to show when the document in question was found, where it was found, by whom it was found, or why it was that it was kept back until after the claim by the male agnatic relations was made, and the widow's evidence had never been taken nor any explanation offered of her absence.

The history of a document such as this is of the most material importance for the purpose of determining its validity, and in the present case this history is a complete blank. (*Lord Buckmaster.*) RAM GOPAL LAL *v.* AIPNA KUNWAR. **(1922) 49 I. A. 413 (421)=44 A. 495 (503)= 31 M. L.T. 277=A. I. R. (1922) P. C. 366= 27 C.W. N. 485=1 Pat. L. R. 273=69 I. C. 31= 21 A. L. J. 402.**

HINDU LAW—(*Contd.*)

Will—Execution of—Presumption as to—(*Contd.*)

LAPSE OF TIME—GENUINENESS ATTACKED AFTER LONG.

———*Recognition and acting upon of will with knowledge of parties interested in disputing it—Presumption favourable from.*

A Hindu testator by his will gave authority to his widow, with the consent of his mother, to adopt a son ; in pursuance of which a son was adopted, and the other provisions of the will were acquiesced in by the family for twenty-seven years, when a suit was brought by one of the testator's heirs claiming the estate then in possession of the adopted son on the ground that the adoption was invalid. *Held* that there arose from all the circumstances of the case a very strong presumption, which their Lordships did not feel themselves at liberty to disregard, in favour of the will.

No doubt these circumstances, as the law stands, are not conclusive against the plaintiff. He has the right to call upon the defendant to prove his title ; but their Lordships cannot but feel that while he has that extreme right, every allowance that can be fairly made for the loss of evidence during this long period, by death or otherwise—every allowance which can account for any imperfection in the evidence —ought to be made; and, on the other hand, that in testing the credibility of the evidence which is actually given, great weight should be given to all those inferences and persumptions which arise from the conduct of the family with respect to the will and to the acts done by them under the will. The case seems to be analogous to one in which the legitimacy of a person in possession is questioned, a very considerable time after his possession has been acquired, by a party who has a strict legal right to question his legitimacy. In such a case the defendant, in order to defend his *status*, should be allowed to invoke against the claimant every presumption which, reasonably arises from the long recognition of his legitimacy by members of the family or other persons. The case of a Hindu claiming by adoption is perhaps as strong as any case of the kind that can be put ; because when under a document which is supposed and admitted by the whole family to be genuine, he is adopted, he loses the rights—he may lose them altogether—which he would have in his own family; and it would be most unjust after long lapse of time to deprive him of the status which he has acquired in the family into which he has been introduced, except upon the strongest proof of the alleged defect in his title. (*Sir James W. Colvile.*) RAJENDRA NATH HOLDAR *v.* JOGENDRO NATH BANERJEE.

(1871) 14 M.I. A. 67. (76-7) = 15 W. R. P. C. 41 = 7 B. L. R. 216 = 2 Suth. 422 = 2 Sar. 666.

LAWYER OF POSITION—PREPARATION OF WILL NOT BY.

———*Presumption unfavourable from.*

With reference to the contention that a will put forward as the will of *K* should not be accepted as his genuine will as it had not been prepared by a lawyer of position their Lordships observed: whether there were any pleaders of position whose services were then available their Lordships do not know, but men who believe that they are suffering from cholera and are anxious to make their wills are more likely to send for a pleader whom they do know than to send in quest of other pleaders whose services may or may not be available. (*Sir John Edge.*) DULHIN GENDA KUNWAR *v.* HARNANDAN PRASHAD SINGH.

(1916) 20 C. W. N. 617 = (1916) 1 M. W. N. 358 = 4 L. W. 214 = 33 I. C. 790 = 30 M. L. J. 624 (630-1).

LEGATEE'S DEATH—ATTACK ON WILL MADE AFTER.

———*Title of legatee asserted and proved by him during his lifetime—Presumption favourable from.*

HINDU LAW—(*Contd.*)

Will—Execution of—Presumption as to—(*Contd.*)

LEGATEE'S DEATH—ATTACK ON WILL MADE AFTER—(*Contd.*)

It must be remembered that *P* is dead, and that imputations are cast on him after his death, which he might have been able, and which his representatives in the suit may be unable, to reject, at least with equal success. Therefore, a court of justice should be careful to see that no inference be raised against the title which he asserted and proved, and under which he obtained and retained possession during his life unopposed, unless it be such as the evidence in the cause clearly warrants (98). (*Sir James W. Colvile.*) SOORENDRONATH ROY *v.* MUSSUMAT HEERAMONEE BURMONEAH. **(1868) 12 M. I. A. 81 = 10 W.R.P.C. 35 = 1 B.L.R.P.C. 26 = 2 Suth. 147 = 2 Sar. 372.**

MALE RELATIONS NEAREST—PERFORMANCE OF TESTATOR'S OBSEQUIES OR TOUCHING OF HIS CORPSE BY—PROVISION IN WILL AGAINST.

———*Presumption unfavourable from.*

A clause in the will of a Hindu debarred his nephews (brother's sons) from performing his obsequies or even touching his corpse.

Their Lordships observed that only a person animated by hatred or smarting under a wrong could have pronounced such a sentence against his nearest male relations even though he might give his property to some one else (682). (*Mr. Ameer Ali.*) BINDESHRI PRASAD *v.* BAISAKHA BIBI. **(1919) 24 C.W.N. 674 = 61 I.C. 431.**

PARTY CONTESTING WILL ALLEGED TO HAVE BEEN PRESENT AT EXECUTION—OMISSION OF, TO EXAMINE HIMSELF.

———*Presumption in favour of execution from.*

———*See* EVIDENCE ACT, S. 114, ILL. (G)—PARTY—OMISSION TO EXAMINE HIMSELF—INFERENCE FROM—FACTS WITHIN HIS KNOWLEDGE. **(1867) 12 M. I. A. 1 (27).**

PROVISIONS OF WILL—REASONABLE AND NATURAL CHARACTER OF.

———*Presumption in favour of execution from.*

Where a will challenged as not being genuine is in every respect a natural will and in accord with the feelings and tenor of life of the testator and its execution is proved by anything like reasonable evidence, the presumptions of law are in favour of its being maintained. In the case of such a will, it is not in accordance with sound rules of construction to apply to it those canons which demand a rigorous scrutiny of documents of which the opposite can be said, namely, that they are unnatural, unreasonable, or tinged with impropriety. (*Lord Shaw.*) JAGRANI KOER *v.* KUAR DURGA PRASAD. **(1913) 41 I. A. 76 = 36 A. 93 (98) = (1914) M.W. N. 137 = 16 O. C. 386 = 22 I. C. 103 = 12 A. L. J. 125 = 19 C L J 165 = 18 C.W.N. 521 = 16 Bom. L. R. 141 = 15 M.L.T. 125 = 26 M. L. J. 153.**

———In a question as to whether a will alleged to have been executed by a deceased person is genuine or a forgery, the fact that nothing can be said against the reasonable nature of the provisions of the will is always a material element from its bearing on the probabilities of the case (139). (*Mr. Shand.*) BAMA SOONDARI DEBI *v.* TARA SOONDARI DEBI. **(1891) 18 I. A. 132 = 19 C. 65 (74) = 6 Sar. 66.**

———*See also* HINDU LAW—WILL—EXECUTION OF—PROOF OF—FATHER. **(1862) 9 M.I.A. 96 (122).**

———AND HINDU LAW—WILL—EXECUTION—PROOF OF—QUANTUM. **(1905) 33 I.A. 60 = 33 C. 537.**

PUBLICATION OF WILL.

———*Delay in—Presumption adverse from. See* HINDU LAW—WILL—EXECUTION OF—PRESUMPTION AS TO—REGISTRATION OF WILL. **(1916) 30 M.L.J. 624 (633).**

HINDU LAW—(*Contd.*)

Will—Execution of—Presumption as to—(*Contd.*)

PUBLICATION OF WILL—(*Contd.*)

———*Delay in—Presumption adverse from—Propriety—Estate of trifling value—Nobody interested in publication.*

As against the genuineness of a will it was pointed out that it was not proved for 6 years after the testator's death, during which interval it was practically ignored, and that the explanation given of that delay was unsatisfactory.

It appeared, however, that the estate was of very trifling value, that, until the testator's son died and another was adopted in his place by the testator's widow, there was uo very urgent necessity, in anybody's interest, for relying upon the will, and that it was publicly relied upon very soon afterwards.

Held that, under the circumstances, the delay was not a fact against the genuineness of the will (1920). (*Sir Arthur Wilson.*) KALI DAS CHUCKERBUTTY *v.* ISHAN CHUNDER CHUCKERBUTTY. **(1904) 31 C. 914 = 9 C. W. N. 49.**

———*Promptness in—Proof of will, though* ex parte, *after due notification of claim under it—Presumption favourable from.*

In a case in which the factum of a will was in question, their Lordships observed: "It must be remembered, that this will was very soon after its execution publicly exhibited in Court, and submitted to some investigation and proof, and was proved; and that, though proved *ex parte*, yet such proof followed on the notifications which ordinarily must be taken to give due notice of a claim under a will." (99) (*Sir James W. Colvile.*) SOORENDRONATH ROY *v.* MUSUMAT HEERAMONEE BURMONEAH. **(1868) 12 M. I. A. 81 = 10 W. R. P. C. 35 = 1 B. L. R. P. C. 26 = 2 Suth. 147 = 2 Sar. 372.**

REGISTRATION OF WILL.

———*Absence of — Publication — Delay in—Suspicion against genuineness based on—Propriety.*

Where one of the grounds on which the genuineness of a will dated 15th November, 1905 was questioned was that it had not been registered, and had not been publicly put forward until the 22nd December, 1905, *held*, having regard to the circumstances that the testator died at a village other than his own whither he had gone to attend the bathing fair and to the grief of his widows caused by his death, that no importance ought to be attached to the fact that the will was not registered, or to the fact that the will was not presented to the Court until the 22nd December.

If there was any reasonable cause for doubting the evidence as to the execution of the will the delay in presenting the will to the court might possibly raise some suspicion as to the genuineness of the will, but their Lordships are satisfied on the evidence that the will which has been propounded is the genuine will of the testator. (*Sir John Edge.*) DULHIN GENDA KUNWAR *v.* HARNANDAN PRASHAD SINGH. **(1916) 20 C. W. N. 617 = 4 L. W. 214 = (1916) 1 M. W. N. 358 = 33 I. C. 790 = 30 M. L. J. 624 (633).**

———Execution held not proved notwithstanding. *See* HINDU LAW—WILL — EXECUTION—PROOF — QUANTUM—REGISTRATION OF WILL.
(1919) 24 C. W. N. 674 (683).

———Absence of—Presumption adverse from. (*Lord Sinha.*) MT. RAMANANDI KUER *v.* MT. KALAWATI KUER. **(1928) 55 I. A. 18 = 7 Pat. 221 = 107 I.C. 14 = 5 O. W. N. 96 = 1 L. T. 40 Pat. 19 = 47 C. L. J. 171 = 9 Pat. L. T. 97 = 32 C. W. N. 402 = 30 Bom. L. R. 227 = (1928) M. W. N. 282 = 26 A. L. J. 385 = 27 L. W. 782 = A. I. R. 1928 P. C. 2 = 54 M. L. J. 291.**

HINDU LAW—(*Contd.*)

Will—Execution of—Presumption as to—(*Contd.*)

REGISTRATION OF WILL—(*Contd.*)

———*Presumption favourable from.*

Under the Registration Act, registration is a solemn act, to be performed in the presence of a competent official appointed to act as registrar, whose duty it is to attend the parties during the registration and see that the proper persons are present and are competent to act, and are indentified to his satisfaction; and all things done before him in his official capacity and verified by his signature will be presumed to be done duly and in order, Of course it may be shown that a deliberate fraud upon him has been successfully committed; but this can only be very strong evidence. (*Sir Ford North.*) GANGAMORJI DEBI *v.* TROILUCKHYA NATH CHOWDHRY. **(1905) 33 I. A. 60 = 33 C. 537 (544-5) = 3 C. L. J. 349 = 10 C. W. N, 522 = 8 Bom. L. R. 375 = 1 M. L. T. 131 = 9 Sar. 46 = 16 M. L. J. 161.**

SICK MAN.

———Will of. *See* HINDU LAW—WILL—EXECUTIO OF—CAPACITY—SICK MAN.

SIGNATURE OF TESTATOR.

———Presumption from. *See* HINDU LAW—WILL—SIGNATURE OF TESTATOR IN.

WITNESS NOT AN ATTESTOR.

———*Presumption against execution from—Propriety.*

It was remarked upon as singular, that the writer of the will was an attesting witness to the will; but, if the will was not genuine, the person who had written it would most probably have been made a witness in order to make it more difficult for him to betray his employer (103). (*Lord Kingsdown.*) NANA NURAIN RAO *v.* HUREE PUNTH BHAO. **(1862) 9 M. I. A. 96 = 1 Sar. 843 = Marsh 436.**

Will—Execution of—Proof of.

———(*See also* HINDU LAW—WILL—EXECUTION OF—EVIDENCE OF.)

———*Difficulty in, when document true.*

The proof of a Hindu will, when a true document, is always an uncertain thing (74-5). (*Sir James W. Colvile.*) RAJENDRO NATH HOLDAR *v.* JOGENDRO NATH BANERJEE. **(1871) 14 M. I A. 67 = 15 W. R. P. C. 41 = 7 B. L. R. 216 = 2 Suth. 422 = 2 Sar. 666.**

———*Evidence of due execution overwhelming—Suspicious circumstances—Arguments based on—Weight of.*

On an application for the probate of a will, the evidence that the deceased signed it with full comprehension of its meaning and contents was overwhelming and explicit. As against the validity of the will, the caveator relied upon what he called the suspicious circumstances in the case. Their Lordships observed that in such cases it was essential to take care that the decision of the court rested not upon suspicion but upon legal grounds, established by legal testimony. (*Mr. Ameer Ali.*) MOTIBAI HORMUSJEE KANGA *v.* JAMSETJEE HORMUSJEE KANGA. **(1923) 29 C.W.N. 45 = 80 I. C. 777 = (1924) A.I.R. (P. C.) 28 (32-3) = 26 Bom. L. R. 579 = 5 L. R. P. C. 165.**

———*Execution and signature—Evidence precise as to—Discrepancies signal—Absence of—Effect.*

The evidence as to the factum (of the will set up) itself in the judgment of both the courts below appeared satisfactory. It is declared by the High Court to have been "precise enough on the main points of execution and signature, and to exhibit no signal discrepancies." In an ordinary case, even on proof of a Hindu will, such evidence would be deem-

HINDU LAW—(*Contd.*)

Will—Execution of—Proof of—(*Contd.*)

ed adequate. (*Sir James W. Colvile.*) SOORENDRONATH ROY *v.* MUSSUMAT HEERAMONEE BURMONEAH.
(1868) 12 M I. A. 81 (98-9) = 10 W. R. P. C. 35 = 1 B. L. R. P. C. 26 = 2 Suth. 147 = 2 Sar. 372.

———*Father—Will bequeathing self-acquired properties in favour of eldest son.*

The circumstances of the case are strongly in favour of the will. It contains such a disposition of the testator's property as it was extremely probable that he should make, and extremely unlikely that the appellant should introduce into a forged instrument. The testator was of great age. He had placed his eldest son in his place with respect to the management of all his affairs in his lifetime. He might, very naturally, desire to keep together in his family the wealth which he had acquired by his own exertions, and to prevent its dispersion by division amongst his sons. His eldest son had issue, his other sons had none. The witnesses in favour of the will are in general less open to exception than is usual in Indian cases, and some of them entirely unexceptionable. The Zillah Judge who has seen them has come to an opinion in favour of the will.

Their Lordships accordingly reversed the Sudder Court, and restored the Zillah Judge (122). (*Lord Kingsdown.*) NANA NARAIN RAO *v.* HUREE PUNTH BHAO,
(1862) 9 M. I. A. 96 = 1 Sar. 843 = Marsh 436.

———*Forgery—Opposing case of—Failure of—Effect.*

In this case, their Lordships reversed the decision of the High Court which held that the will set up was not proved, and restored that of the trial Judge. The grounds of their Lordships decision are contained in the following extract from their Judgment :—

The will had been provod, though *ex parte* ; it had been acted on very recently after the testator's death, and possession held for a considerable time under it. There appears to have been no desire on the part of *P* (the beneficiary under the will and the brother of the testator) to escape from the publicity and responsibility attending the proof of such a document. In fact, it was not drawn into question so long as *P* himself lived. That apparent acquiescence is attempted to be ascribed to a general and enduring ignorance, which is in itself eminently improbable. The will is met by district allegations of fraud and forgery, the witnesses to which are discredited by both Courts Besides this, the case of the plaintiff does, in the several parts of it commented upon, bear the appearance not simply of exaggeration, but of conscious untruth. Whatever might have been the result of this case, had these presumptions in support of the case for the will been wanting, the ordinary support which the failure of an opposing case lends to the case which it impeaches, with the presumptions arising against the opposing case from the introduction into it of matters too grossly improbable for belief, and not the subject of innocent mistake, must be applied on a review of the whole evidence in the cause, to support the factum of this will (105-6). (*Sir James W. Colvile.*) SOORENDRONATH ROY *v.* MUSSUMAT HURAMONEE BURMONEAH.
(1868) 12 M. I. A. 81 = 10 W. R. 35 = 1 B. L. R. P. C. 26 = 2 Suth. 147 = 2 Sar. 372.

———In articulo mortis—*Will made in—Cogency in proof of.*

Where the will which is set up is one made *in articulo mortis*, Courts of Justice in India ought to require cogent proof of it (208-9). (*Sir James W. Colvile.*) MUSSUMAT JARUIT-OOL-BUTOOL *v.* MUSSUMAT HOSEINEE BEGUM.
(1867) 11 M. I. A. 194 = 10 W. R. P. C. 10 = 2 Suth. 56 = 2 Sar. 243

HINDU LAW—(*Contd.*)

Will—Execution of—Proof of—(*Contd.*)

———*Quantum.*

Held, on the evidence in the case affirming the High Court, that the execution of the will set up by tne respondent had been duly proved (27). (*Sir James W. Colvile.*) BABOO BEER PERTAB SAHEE *v.* MAHARAJAH RAJENDAR PERTAB SAHEE. **(1867) 12 M. I. A. 1 = 9 W. R. P. C. 15 = 2 Suth. 114 = 2 Sar. 348.**

———In this case in which in which the question was whether *B*, a large landed proprietor, who died on 7-1-1875 duly executed a will bearing that date, *held*, on the evidence, affirming the Court bslow, that he did execute it in the manner stated (88-9). (*Sir Richard Couch.*) RAJAH NILMONI SINGH DEO BAHADUR *v.* UMANATH MOOKERJEE. **(1883) 10 I. A. 80 = 10 C. 19 (28-9) = 13 C. L. R. 314 = 4 Sar. 449.**

———The plaintiff-respondent was the grand-daughter of a deceased Rajah. The appellants were his heirs *ab intestato*. The respondent presented an application to the District Judge setting forth that the deceased had shortly before his death executed a will in her favour in respect of all his moveable and immoveable properties, and praying for letters of administration with the will annexed. The appellants opposed the application contending that the will set up was a false and fabricated document.

The District Judge held that the will set up was not duly executed by the deceased Rajah, and was not genuine. On appeal the High Court reversed his judgment.

Held, on the evidence affirming the High Court that the due execution of the will had been established. (*Lord Watson.*) CHOTEYNARAIN SINGH *v.* MUSSAMAT RATAN KOER. **(1894) 22 I. A. 12 = 22 C. 519 = 6 Sar. 564.**

———The question was whether a certain paper writing, purporting to be dated 18-5-1893, and to bear the signature of *N*, who died on the following June 3, was his will or a forgery.

The District Judge found for the will. His decision was reversed by the High Court on appeal.

Their Lordships reversed the High Court, and restored the District Judge. (*Lord Macnaghten.*) DOWLAT KOER *v.* RAMPHUL DAS. **(1897) 25 I. A. 21 = 25 C. 459 = 2 C. W. N. 177 = 7 Sar. 231.**

———Probate of a will alleged to have been executed in 1878 was obtained in common form, and without issue of citations in 1884 from the then District Judge. In 1896 the appellants presented a petition in the Court of the successor of the Judge, by whom the probate had been granted, praying for revocation of that probate on the ground, amongst others, that the alleged will was not the genuine will of the testator, but a fictitious document. The District Judge made an order for revocation of probate. The High Court on appeal set aside his order.

Their Lordships affirmed the High Court and held that the evidence given of the execution of the will was quite sufficient to establish it. (*Sir Arthur Wilson.*) KALI DAS CHUCKERBUTTY *v.* ISHAN CHUNDER CHUCKERBUTTY. **(1904) 31 C. 914 = 9 C. W. N. 49.**

———Where the question was whether the appellant's husband died intestate as the appellant alleged, or left a will set up by the respondents. *held*, affirming the judgment of the High Court and reversing that of the Subordinate Judge, that the will set up by the respondents was duly executed by the deceased.

Among other circumstances their Lordships relied upon the fact that the will was not unreasonable for a gentleman in the position of the deceased, and had a genuine look about it. (*Sir Ford North.*) GANGAMORJI SEBI *v.* TROILUCKHYA NATH CHOWDHRY. **(1905) 33 I.A. 60 =**

HINDU LAW—(*Contd.*)

Will—Execution of—Proof of—(*Contd.*)

33 C. 537=3 C. L. J. 349=10 C. W. N. 522=8 Bom. L.R. 375=1 M. L. T. 131=9 Sar. 46=16 M. L. J. 161.

———*See* ASSIGNMENT—GENUINENESS OF DEED OF.

(1910) 37 I. A. 60=32 A. 241.

———In a case in which the main question was whether a will set up as the will of the last male owner was valid as having been duly executed their Lordships reversed the decision of the chief Court holding against the validity of the will and restored that of the trial Court which found in favour of the will. (*Lord Robson.*) BEER SINGH *v.* UTTAM SINGH. **(1910) 38 I. A. 13=38 C. 355=8 A. L. J. 123=13 Bom. L. R. 59=21 P. L. R. 1911=9 M. L. T. 115=15 C. W. N. 177=1 P. W. R. 1911=21 P. R. 1911=13 C. L. J. 72=(1911) M. W. N. 86=4 Bur. L. T. 35=9 I. C. 33=21 M. L. J. 100.**

———In a suit by the plaintiffs, claiming as the reversionary heirs of one *J*, for a declaration that a will purporting to have been executed by *J* and giving his widow authority to adopt a son to him was not genuine, that a deed of adoption executed by the widow of *J* was null and void as against the plaintiffs, because the widow had no authority from her husband to make an adoption, and that the adoption of the defendant by her might be declared to be void and be set aside, the High Court, reversing the judgment of the Court below, held the will to be genuine and dismissed the suit. Their Lordships on appeal affirmed the judgment of the High Court. (*Lord Shaw.*) BHAGAWATI PRASAD SINGH *v.* NAND PRASAD SINGH.

(1915) 33 I. C. 596.

———Where the question was whether a will, which was executed on 10-11-1904, by one *S*, was or was not a good and valid testamentary document, their Lordships held, on the evidence, affirming the Court below which had reversed the trial Judge, that it was. (*Lord Chancellor.*) ARUNACHELLAM CHETTY *v.* RAMASWAMI CHETTY.

(1916) 20 C. W. N. 673=3 L. W. 508=(1916) M. W. N. 399=18 Bom. L. R. 408=23 C. L. J. 632=20 M. L. T. 50=35 I. C. 1=30 M. L. J. 555.

———Where the question was as to whether the will, of which the appellant sought to obtain probate, was executed by *K*, or was a forgery, *held*, on the evidence, reversing the High Court and restoring the trial judge, that the execution of the will by *K* had been satisfactorily proved. (*Sir John Edge.*) DULHIN GENDA KUNWAR *v.* HARNANDAN PRASHAD SINGH. **(1916) 20 C. W. N. 617=(1916) 1 M. W. N. 358=4 L. W. 214=33 I. C. 790=30 M. L. J. 624.**

———In a case in which the question was as to the genuineness of a will set up by the respondent as the last will and testament of her deceased husband, *held*, reversing the High Court, and restoring the trial Judge's decision, that the document was not genuine. (*Lord Buckmaster.*) RAM GOPAL LAL *v.* AIPNA KUNWAR. **(1922) 49 I. A. 413=44 A. 495 (503)=31 M. L. T. 277=A. I. R. 1922 P. C. 366=21 A. L. J. 402=27 C. W. N. 485=1 Pat. L. R. 273=69 I. C. 31.**

———In a case in which the question was whether a will set up as the will of a deceased Hindu was really executed by him or was a forgery, their Lordships affirmed the decision of the High Court, which had held that the will had been duly executed by the deceased. (*Lord Dunedin.*) PALCHUR SANKARAREDDI *v* PALCHUR MAHALAKSHMAMA. **(1922) 17 L. W. 1=A. I. R. 1922 P. C. 315=31 M. L. T. 307 (P. C.)=27 C. W. N. 414=70 I. C. 949.**

HINDU LAW—(*Contd.*)

Will—Execution of—Proof of—(*Contd.*)

———On an application for probate of a will the question was whether the will was duly executed by the alleged testator or was a forgery.

Held, on the evidence reversing the appellate court and and restoring the trial Judge, that the will had been duly executed by the testator. (*Mr. Ameer Ali.*) MOTIBAI HORMUSJEE KANGA *v.* JAMSETJEE HORMUSJEE KANGA.

(1923) 19 L. W. 437=22 A. L. J. 98=A. I. R. 1924 P. C. 28=(1924) M. W. N. 173=34 M. L. T. 4=26 Bom. L. R. 579=29 C. W. N. 45=80 I. C. 77.

———On an application for letters of administration with will annexed, the question arose as to its genuineness. The suggestion of the person who opposed the application for administration was that the will had been forged after the death of the alleged testator on a blank paper which bore his signature.

The trial Judge passed an order granting the applicant's letters of administration, with the will annexed. The appellate court reversed that order and dismissed the application.

Their Lordships, on a consideration of the evidence, reversed the court below and restored the trial Judge. (*Lord Carson.*) WAMAN GANESH *v.* SARUBAI.

(1924) 19 L. W. 699=A. I. R. 1924 P. C. 106=7 N. L. R. 126=(1924) M. W. N. 445=80 I. C. 641.

———The question was whether a certain will was really executed or not. The question was raised for the first time twenty-five years after the will was executed. The will was witnessed by several persons. All of them died except two, who, however, were quite clear that the will really was executed; that it represented what the testator wished, and that he, although he might not have understood some of the flowery expressions, was yet perfectly competent to comprehend what, after all, were very simple provisions. The will was produced at once; it was not kept quiet. The eventual taker under the will was only a son-in-law.

Held, on the evidence, affirming the court below, that the will was genuine. (*Lord Dunedin.*) CHANDIKA BAKHSH SINGH *v.* MADHO SINGH.

(1924) 20 L. W. 699=10 O. & A. L. R. 931=40 C. L. J. 466=A. I. R. 1924 P. C. 231=(1924) M. W. N. 913=27 O. C. 304=29 C. W. N. 582=87 I. C. 95.

———*Quantum*—Adoption by *testator*—*Will declaring, and bequeathing property to him.*

Held, affirming the High Court, which had reversed the court below, that a will alleged to have been executed by a childless Hindu, the effect of which was to declare that he had adopted a son of his elder brother, and to devise and bequeath all his real and personal property to that adopted son, had been sufficiently proved (256).

The will is one which it is highly probable that a man under the circumstances of the deceased would make. There is a great body of evidence in support of it which appears to preponderate over the evidence against it; among the evidence in support of it is that, among others, of the family medical man, and of a relation who appeared to have the confidence of both the factions into which the family of the deceased appears to have been divided, and to have been required to arbitrate between them The will was published and made known almost immediately after the death of the testator; and the adoption of the child which he declares in the will he has made was also made public and insisted upon. Other members of the family, even those who now oppose the will, recognised the adopted child in various judicial proceedings. They brought actions in which they associated his name with theirs, and one of them, who now

HINDU LAW—(*Contd.*)

Will—Execution of—Proof of—(*Contd.*)

opposes the will, endeavoured to defeat an action on the ground that the adopted son ought, as the adopted son of the testator, to have been joined with him as a defendant (256). (*Sir Robert P. Collier.*) NIDHOOMONI DEBYA *v.* SARODA PERSHAD MOOKERJEE. **(1876) 3 I. A. 253 = 26 W. R. P. C. 91 = 3 Sar. 652 = 3 Suth. 338 = Bald. 78.**

———*Quantum—Authority to adopt inconsistent with will—Proof of, not strong enough to displace evidence of execution.*

The plaintiff appellant was the widow and sole heir-at-law of a deceased Hindu, and claimed to recover all the property, moveable and immoveable, of the deceased in that rights. The respondents were trustees under a will and codicil alleged by them to have been executed by the deceased bequeathing his properties, in the main, to certain charities. The appellant denied the genuineness and validity of both instruments. The appellant had also alleged that her husband had enjoined her, in the event of the child with which she was pregnant, at his death, not proving to be a male, to adopt a son to be chosen by herself, and it was thought that the alleged power to adopt and the testamentary dispositions were so inconsistent with each other that they could not stand together. No adoption had, in fact, ever been made in pursuance of the power. The question was whether the evidence as to the power of adoption was so strong as to induce their Lordships, upon that ground, to disbelieve the testimony in favour of the will and codicil, which certainly were not very consistent with it.

Held, that the evidence as to the power to adopt was not so strong as to induce their Lordships, upon that ground, to disbelieve the testimony in favour of the will and codicil (343-4). (*Mr. Pemberton Leigh.*) NAGALUTCHMEE UMMAL *v.* GOPOO NADARAJA CHETTY.

(1856) 6 M. I. A. 309 = 1 Sar. 543.

Will—Proof of—Concurrent findings as to—Privy Council's interference with.

———Capacity of executant—Genuineness depending upon. *See* PRIVY COUNCIL—PRACTICE—QUESTION OF FACT—CONCURRENT FINDINGS — INTERFERENCE WITH — CASES UNDER HEAD OF—HINDU LAW—ADOPTION—WILL. **(1865) 10 M. I. A. 429 (437).**

———*See* PRIVY COUNCIL—PRACTICE—QUESTION OF FACT—CONCURRENT FINDINGS—INTERFERENCE WITH —CASES UNDEK HEAD OF—MARRIAGE—WILL. **(1867) 11 M. I. A. 194 (208).**

———(*Sir Lawrence Jenkins.*) KAMULAMMAL *v.* VISVANATHASWAMI NAICKER. **(1922) 50 I. A. 32 (36) = 46 M. 167 (171) = 32 M. L. T. 48 = 37 C. L. J. 363 = 25 Bom. L. R. 577 = 27 C. W. N. 1021 = 17 L. W. 298 = A. I. R. 1923 P. C. 8 = 71 I. C. 643 = 44 M. L. J. 465.**

Will—Execution of—Signature of testator.

———*See* HINDU LAW—WILL—SIGNATURE OF TESTATOR.

Will—Execution of—Trial Judge's decision as to—Reversal in appeal of.

———*Evidence—Decision in favour of execution based on—Reversal of, on comparison of signature of testator by appellate court—No point made about signature at trial.*

The defence to an application for probate of a will alleged to have been executed by a deceased person was, *inter alia*, that the deceased was in such a state of mental and physical incapacity as to be unfit to make a will on the date when he was alleged to have done so. An *anumati patra* was also alleged to have been executed by the deceased at the same time as the will.

HINDU LAW—(*Contd.*)

Will—Execution of—Trial Judge's decision as to—Reversal in appeal of—(*Contd.*)

The District Judge held on the evidence that probate ought not to be refused either on account of the incapacity of the testator at the time of the alleged execution of the will, or on any other ground.

On appeal the High Court reversed the decision of the District Judge, substantially on the ground that, on the day when the will was alleged to have been executed, the deceased was incapable mentally and physically of performing such an act. The learned Judges observed that the question upon which the truth of the will turned was really whether the testator had become so weakened by the fever that he was incapable of signing the will in the way it was signed. They observed in their judgment that there was a fact of which the District Judge had taken no notice whatever, and that was the character of the signatures. They went on to observe that the will was signed in six or seven places, and the *anumati patra* was also signed in several places, and having examined those signatures they expressed the opinion that they were to all appearances those of a vigorous man, being perfectly clear and even and all alike, and that circumstance, it was explained, had greatly influenced the judgment of the High Court. The District Judge's omission to take notice of the characters of the signatures was fully accounted for by the fact that the point was not made the subject of examination in the evidence, or of observation in the argument, so far as appeared.

Held, that the fact that there was an entire absence of any question or answer in the evidence bearing on the nature of the handwriting of the signatures was a circumstance of very much importance (141, 143). (*Mr. Shand.*) BAMA SOONDARI DEBI *v.* TARA SOONDARI DEBI.

(1891) 18 I. A. 132 = 19 C. 65 (77-8) = 6 Sar. 66.

———The question was to the authenticity and genuineness of a will. The alleged testator died about three o'clock on the morning of the 15th February. The evidence assigned some time between nine and eleven o'clock on the evening of the 14th February as the time when he executed the will.

The District Judge in a full, clear, and exhaustive judgment decided in favour of the will. He had the opportunity of observing the demeanour and manner of the witnesses. After reviewing the circumstances of the case he came to apparently a clear conclusion in favour of the veracity of the witnesses who supported the will.

On appeal before the Chief Justice and another learned Judge, they reversed the judgment of the District Judge, and held that the will was not a genuine will. The Chief Justice, who gave the judgment of the Court, appeared to have been influenced in his decision by his own observation of the alleged signature of the testator to the will. He said: "The signature does not seem to be the signature of a dying man, and the character of the signature supports the evidence of the witnesses who said that the signature was attached by *H* after the testator's death."

No evidence was, however, given at the trial on that point, nor was there any argument suggesting it.

Held, under the circumstances, that much importance could not be attached to that ground of the reversal of the District Judge's judgment (5-6). (*Lord Morris.*) ROMESH CHUNDER MUKERJI *v.* RAJANI KANT MUKERJI.

(1893) 21 C. 1 = 6 Sar. 340.

———*Evidence and Probabilities—Decision in favour of execution based on—Reversal of, on suspicion formed on mere inspection of document by appellate Court—Trial Judge not attaching any weight to the objection.*

In a case in which the genuineness of a will was in question, the trial Judge, who was himself a native, decided in favour of its genuineness after considering the evidence in and the probabilities of the case. His decision was reversed

HINDU LAW—(*Contd.*)

Will—Execution of—Trial Judge's decision as to—Reversal in appeal of—(*Contd.*)

on appeal, the *ratio decidendi*, or at least the turning point in the minds of the appellate Judges being the impression which they derived from the inspection of a particular letter in the Bengalee language. That point was taken before the trial Judge also, but he thought there was nothing in it. The evidence as to the absolute prostration and insensibility of the testator at the time of the alleged execution of the will had been discredited. But the appellant's—he being the party who set up the will—own witnesses stated that the testator put the letter in question, feeling too weak to write his name in full.

Held, reversing the High Court and restoring the trial Judge, that the impression formed by the appellate Judges from the inspection of the letter jn question was a very unsafe ground of decision (84).

It is impossible, from the mere inspection of the letter, as it appears to their Lordships, to be able to predicate with any degree of certainty or accuracy, that he was too weak to make the impression with his pen which he is said to have made. It is impossible to say what momentary rally of strength might take place to do an act of such brevity as that, and, therefore, their Lordships are unable to give to that, which is after all merely the impression of these two Judges derived from actual inspection, the weight which has been given to it (84). (*Sir James W. Colvile.*) RAJENDRO NATH HOLDAR *v.* JOGENDRA NATH BANERJEE. **(1871) 14 M. I. A. 67 = 15 W. R. P. C. 41 = 7 B. L. R. 216 = 2 Suth. 422 = 2 Sar. 666.**

———In a case in which the genuineness of a will was in question, the trial Judge, who was himself a native, decided in favour of its genuineness after considering the evidence in and the probabilities of the case, His decision was reversed upon appeal, the *ratio decidendi*, or at least the turning point in the minds of the appellate Judges being the impression which they derived from the inspection of a particular letter in the Bengalee language. That point (about ths letter *M*) was taken before the trial Judge also, but he thought there was nothing in it.

Their Lordships reversed the High Court and restored the trial Judge, observing :—"With great respect for the knowledge which the learned Judges of the High Court possessed of the Bengalee language, their Lordships cannot but think that upon such a point as that, the native Judge examining a letter in his own alphabet, is more likely to be a competent Judge than the two European Judges" (83-4), (*Sir James W. Colvile.*) RAJENDRO NATH HOLDAR *v.* JOGENDRO NATH BANERJEE. **(1871) 14 M. I. A. 67 = 15 W. R. P. C. 41 = 7 B. L. R. 216 = 2 Suth. 422 = 2 Sar. 666.**

———Witnesses—Credibility of—Decision based on—Reversal of—Conditions. *See* **(1922) 44 M. 699 (704).**

Will—Execution of—Undue influence—Execution under.

———*Finding as to—Fact or law.*

Whether a will was the result of a man's own wish and act or was procured from him by means of fraud or circumvention or undue influence is a pure question of fact. (*Viscount Dunedin.*) WILLIAM ROBINS *v.* NATIONAL TRUST CO., LTD. **(1927) 101 I. C. 903 (904) = A. I. R. 1927 P. C. 66 = 4 O. W. N. 463.**

———*Motive and opportunity for exercise of such influence—Benefit to some persons to exclusion of others relations of equal or nearer degree—Evidence of—Effect.*

So far as the charge of undue influence is concerned, all that is shown on the part of those attaching the will is that there was motive and opportunity for the exercise of such

HINDU LAW—(*Contd.*)

Will—Execution of—Undue influence—Execution under—(*Contd.*)

influence by the defendants, and that some of them in fact benefited by the will to the exclusion of other relatives of equal or nearer degree. Circumstances of that character may sometimes suggest suspicion, and would certainly lead the Court in the present case to scrutinise with special care the evidence of those who propound the will ; but in order to set it aside there must be clear evidence that the undue influence was in fact exercised, or that the illness of the testator so affected his mental faculties as to make them unequal to the task of disposing of his property (22). (*Lord Robson.*) BEER SINGH *v.* UTTAM SINGH.

(1910) 38 I. A. 13 = 38 C. 355 (367) = 8 A. L. J. 123 = 13 Bom. L. R. 59 = 21 P. L. R. 1911 = 9 M. L. T. 115 = 15 C. W. N. 177 = 1 P. W. R. 1911 = 9 I. C. 33 = 21 P. R. 1911 = 13 C. L. J. 72 = (1911) M. W. N. 86 = 4 Bur. L. T. 35 = 21 P. L. R. 1911 = 21 M. L. J. 100.

———*Onus of—Proof of.*

The onus of proving that the execution of a will has been procured by fraud or undue influence is always on the person who attacks the will (906). (*Viscount Dunedin.*) WILLIAM ROBINS *v.* NATIONAL TRUST CO., LTD.

(1927) 101 I. C. 903 = 4 O. W. N. 463 = A. I. R. 1927 P. C. 66.

———Probate—Application for—Plea by caveator in—Onus of proof of. *See* PROBATE—APPLICATION FOR—EXECUTION OF WILL—UNDUE INFLUENCE AS TO.

(1923) 19 L. W. 437 (444).

———*Wife—Undue influence by—Proof of.*

When the question was whether certain codicils were obtained from the testator by the undue influence or coercion of his wife, *held* that evidence to show coercion in the special matter of the codicils was necessary and that general assertions of the wife's commanding character and the husband's weakness, and of wrangling about expenses, were not enough (152). (*Lord Hobhouse.*) SALA MAHOMMED JAFFER BHOY *v.* DAME JANBAI. **(1897) 24 I. A. 148 = 22 B. 17 (27-8) = 1 C. W. N. 481 = 7 Sar. 173.**

Will—Executor.

———*See* EXECUTOR.

Will—Factum and validity of.

———Acquiescence in—Husband deceased—Will by—Acquiescence by widow in factum and validity of—What amounts to. *See* ACQUIESCENCE—HINDU FEMALE—ADOPTION AND WILL OF DECEASED HUSBAND.

(1865) 10 M. I. A. 429 (433-4).

———Question as to—Fact or Law—Capacity of testator—Question depending upon. *See* HINDU LAW—ADOPTION—FACTUM AND VALIDITY OF—QUESTION AS TO.

(1865) 10 M. I. A. 429 (436).

Will—Family Arrangement or.

———*See* HINDU LAW—JOINT FAMILY—FATHER.

The quarrel between a Hindu and one of his sons was for the time composed by the intervention of two friends of the family. At their instance the following document was drawn up and signed by the father in their presence :—This sanad is executed by me (the father), taluqdar of Ramkote. For *P*, who is my son, I fix Rs. 300 annually, so that he may maintain himself. Besides this, whatever I may give I will give equally to the three sons, except provisions, which they make take from my godown. He may take 6 annas in kharif and 10 annas in ralb out of my treasury. The marriage and gauna expenses of the sons and daughters shall be borne by me. After me, the three sons are to divide the property, moveable and immoveable. This has been settled through the mediation of *J* and *R*.

HINDU LAW—(*Contd.*)

Will—Family Arrangement or—(*Contd.*)

Held that the document was a non-testamentary instrument. It was a family arrangement arrived at by the mediation or arbitration of two gentlemen, who were old friends of the family, and interested in maintaining its honor. It was plainly intended to be operative immediately, and to be final and irrevocable. It fails of effect simply because it was not registered, as required by S. 17 of the Registration Act. It is therefore void as regards immoveable property (111). (*Lord Macnaghten.*) UMRAO SINGH *v.* LACHHMAN SINGH. **(1911) 38 I. A. 104 = 33 A. 344 (355-6) = 8 A. L. J. 465 = 15 C. W. N. 497 = 13 C. L. J. 519 = 9 M. L. T. 507 = 13 Bom. L. R. 404 = (1911) 2 M. W. N. 242 = 14 O. C. 133 = 10 I. C. 285 = 21 M. L. J. 637.**

Will—Forgery of.

BLANK SHEET SIGNED BY TESTATOR—FORGERY ON.

———*Evidence—Blank sheets signed by strangers--Admissibility.*

Where the question was whether a will was executed by the testator or not and the suggestion was made that there might have been a blank sheet of paper signed by the testator which might have been made use of for the purpose of getting up a will and in proof of the suggestion various forms were produced and admitted in evidence by the Court below, forms signed by people other than the testator and with none of which the testator had anything to do, *held* that such evidence was not relevant and should not have been admitted. (*Lord Shaw.*) JAGRANI KOER *v.* KUAR DURGA PRASAD. **(1913) 41 I. A. 76 = 36 A. 93 (90) = (1914) M. W. N. 137 = 16 O. C. 386 = 22 I. C. 103 = 12 A. L. J. 165 = 18 C. W. N. 521 = 16 Bom. L. R. 141 = 15 M. L. T. 125 = 26 M. L. J. 153.**

———*Finding of—Propriety—Evidence of attestors in favour of execution clear and trustworthy.*

Where the District Judge built up the theory that the will (the genuineness and validity of which were in question) had been written on blank pages over signatures of the testator previously obtained, relying mainly upon the circumstance that when the will was examined it appeared that the last page had the writing inconveniently crowded above the signature of the testator, and the last page but one had also at the foot of the page writing so placed as to lend colour to the suggestion that the page had been filled up after the signature had been attached, *held*, on the evidence in and the probabilities of the case, that whatever might be the true cause of the inconvenient way in which some of the writing in the will appeared the explanation was not and could not be the one that the learned Judge assigned ; and that it would indeed be most unsafe and most undesirable in the circumstances of the case to try to spell out from the peculiar form in which a document written in the vernacular appeared a hypothetical answer to the clear, distinct, and trustworthy evidence in support of the will. (*Viscount Haldane, L.C.*) ARUNACHELLAM CHETTY *v.* RAMASAMI CHETTY.

(1916) 20 C. W. N. 673 = 3 L.W. 508 = (1916) 1 M. W. N. 399 = 18 Bom. L. R. 408 = 23 C. L. J. 632 = 20 M. L. T. 50 = 35 I. C. 1 = 30 M. L. J. 555 (557-8).

———*Landholders in India—Practice of keeping sheets of cartridge paper signed by them—Signature if will be at top or bottom.*

It is not unusual for landholders in India having many agricultural tenants to keep sheets of cartridge paper signed by them in the upper margin ready to be filled up as plaints in rent suits, but such sheets would not be signed at the foot until the plaint had been filled up, as until the plaint had been filled up it would practically be impossible to know

HINDU LAW—(*Contd.*)

Will—Forgery of—(*Contd.*)

BLANK SHEET SIGNED BY TESTATOR—FORGERY ON —(*Contd.*)

where the final signature at the foot of the plaint should appear (629). (*Sir John Edge.*) BANKIM BIHARI MAITI *v.* SRIMATI MATANGINI DASI. **(1919) 24 C. W. N. 626.**

EVIDENCE OF.

———*Admission to him of forgery of the instrument—Request to him to participate in its forgery—Person speaking to—Evidence of—Value of.*

The other evidence is hardly deserving of notice. It consists of that sort of testimony with which, in these Indian cases, we are unfortunately too familiar—of witnesses who swear positively to matters of which they can have no knowledge ; of witnesses who swear that they have heard the alleged testator, after the date of his will, declare that he had never made one; that they had heard the persons who had been parties to them gratuitously declare to them that it was a forgery ; of witnesses who declare that they had been solicited by the party in the cause, or his agents, to attest instruments, which they were told at the same time were fabricated. Witnesses of this description may be had, unhappily for India, in any number in that country (120). (*Lord Kingsdown.*) NANA NURAIN RAO *v.* HUREE PUNTH BHAO. **(1862) 9 M.I.A. 96 = 1 Suth. 843 = Marsh. 436.**

———Attestor who says he attested without knowledge of actual execution on persuasion that will was for his benefit or believing document to be a forgery—Credibility of.

In a case in which the genuineness of a will was in question a subscribing witness, when examined as a witness, said that though his name did appear upon the document, it had been added some twenty days after the death of the testator at the instigation of the mother of the testator, who told him that the arrangement was for the benefit of his future son, and that her consent was necessary to any adoption. He did not venture to express a conviction one way or the other as to the truth or falsehood of the will.

Held, that his evidence was not that upon which any reliance could be placed (78-9).

It is obvious that the statement of the witness, taking it in the most favourable sense, that he merely put his signature at that time to a document of which he had not witnessed the execution. on that persuasion, does not entitle him to very much credit. If, on the other hand, he did it believing the document to be a forgery, he would, of course, be entitled to much less credit (79.) (*Sir James W. Colvile.*) RAJENDRO NATH HOLDAR *v.* JOGENDRO NATH BANERJEE. **(1871) 14 M. I. A. 67 = 15 W. R. P. C. 41 = 7 B. L. R. 216 = 2 Suth. 422 = 2 Sar. 666.**

———*Knowledge of preparation and completion of forgery—Person saying that he had, but admitting that he did not remonstrate against it or communicate it—Evidence of—Value of.*

On an issue as to the authenticity and genuineness of a will, *held*, that the evidence of a person, who admitted that he knew that a forged will was being prepared and made no remonstrance, and that shortly after the death of the alleged testator he knew the forgery had been completed, yet made no communication to any one on the subject, was open to grave remark (8). (*Lord Morris.*) ROMESH CHUNDER MUKERJI *v.* RAJANI KANT MUKERJI.

(1893) 21 C. 1 = 6 Sar. 340.

———*Quantum.*

The Court below was right in holding that the alleged will of *B*, was a forgery. The evidence is irresistible that it was contrived by the different members of the family after his death, in order to give effect to an arrangement which they

HINDU LAW—(*Contd.*)

Will—Forgery of—(*Contd.*)

EVIDENCE OF—(*Contd.*)

considered would be for the common benefit (307). (*Lord Kingsdown.*) MUSSUMAT BHOOBUN MOYEE DEBIA *v.* RAM KISHORE ACHARJ CHOWDHRY.

(1865) 10 M. I. A. 279 = 3 W. R. P. C. 15 = 1 Suth. 574 = 2 Sar. 111.

FINDING OF—PROPRIETY OF.

———Not proved—Finding of—Sufficiency of. *See* DEED—EXECUTION OF—ISSUE AS TO—FINDING PROPER ON.

PROBATE—APPLICATION FOR—PLEA OF FORGERY IN.

———Onus of proof of. *See* PROBATE—APPLICATION FOR—FORGERY OF WILL.

(1891) 18 I. A. 132 (139) = 19 C. 65 (74).

SIGNATURE OF TESTATOR—SHAKINESS OF—PLEA OF FORGERY FOUNDED ON.

———Weight due to. *See* HINDU LAW—WILL—SIGNATURE OF TESTATOR IN—SHAKINESS OF.

(1922) 17 L.W. 1 (4).

YOUNG BOYS—ATTESTATION BY.

———*Presumption against forgery from.*

It is in the highest degree improbable that persons concocting a forgery would call into their councils two boys, sixteen or seventeen years old, who would be manifestly, from their youth, not likely persons to be entrusted with the secret (83). (*Sir James W. Colvile.*) RAJENDRO NATH HOLDAR *v.* JOGENDRO NATH BANERJEE.

(1871) 14 M I. A. 67 = 15 W. R. P. C. 41 = 7 B. L. R. 216 = 2 Suth. 422 = 2 Sar. 666.

Will—Future rights under.

———*Declaration as to—Practice.*

The case, however, between these parties does not require that any decision should now be given as to the rights of parties who may become entitled after the decease of *S.K.*; and feeling, for the reasons which have been already assigned, that these rights (if any) will be better investigated in India, their Lordships are not disposed to go farther than the necessity of the case requires. SOONDUR KOOMAREE DEBEA *v.* GUDADHUR PERSHAD TEWAREE.

(1858) 7 M. I. A. 54 (70) = 4 W.R. 116 = 1 Sar. 604 = 1 Suth. 294.

———Generally speaking, a court called upon to construe a will, will not declare future rights.

Where, however, all the existing parties interested were in court, and it was impossible to decide the case without considering the whole scope of the will, and arriving at judicial conclusions as to the rights of each of the parties thereunder, *Held*, that such judicial conclusions, so far as they disposed or might dispose of the rights of those parties, ought to be incorporated in the decree. (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE. **(1872) Sup. I. A. 47 (83-4) = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.**

———In dependently of the construction of S. 15 of C. P. C. of 1859, it appears to have been very reasonably ruled in India that the Court will not by questions of title as to future interests where neither claimant has a right to present possession, especially questions of title which may never arise (190). (*Sir James W. Colvile.*) KATHAMA NATCHIAR *v.* DORASINGA TEVAR. **(1875) 2 I. A. 169 = 15 B. L. R. 83 = 23 W.R. 314 = 3 Sar. 456 = 3 Suth. 106.**

———One possible event undoubtedly is unprovided for, *viz.*, the grand-daughter predeceasing the widow, having borne a son. Their Lordships do not deem it necessary to decide what would happen on the occurrence of this event—

HINDU LAW—(*Contd.*)

Will—Future rights under—(*Contd.*)

indeed, no judgment which they could give would affect the rights, if he should have any, of a son yet unborn, in the case supposed (64). (*Sir Robert P. Collier.*) RAM LAL MOOKERJEE *v.* SECRETARY OF STATE FOR INDIA.

(1881) 8 I. A. 46 = 7 C. 304 (317) = 10 C. L. R. 349 = 4 Sar. 225.

———In declining to declare the rights of the parties under this will in this contingent event their Lordships are acting in conformity with the rule laid down in the case of *Lady Langdale* v. *Briggs*, explained as it was in the Tagore case (64). (*Sir Robert P. Collier.*) RAM LAL MOOKERJEE *v.* SECRETARY OF STATE FOR INDIA.

(1881) 8 I. A. 46 = 7 C. 304 (317) = 10 C. L. R. 349 = 4 Sar. 225.

———Their Lordships do not propose to express any opinion on the construction or validity of the gift over in paragraph 4 of the will before them. They do not find it necessary to do so. The event (whatever it may be) may never occur, and if it does the question will probably arise between parties other than the present litigants (90). (*Lord Davey.*) LALIT MOHUN SINGH ROY *v.* CHUKKUN LAL ROY. **(1897) 24 I. A. 76 = 24 C. 834 (850-1) = 1 C. W. N. 387 = 7 Sar. 155.**

———The principle that a Court called upon to construe a will will not usually make declarations as to merely future interests is inapplicable to a case in which questions which do not arise have yet to be decided to determine the rights of the parties before the Court. The interests in such a case are not merely future interests. (*Viscount Haldane.*) PUTLIBAI *v.* SORABJI NAOROJI GAMADIA.

(1923) 25 Bom. L. R. 1099 = 33 M. L. T. 401 (P. C.) = A. I. R. (1923) P. C. 122 = (1923) M. W. N. 626 = 28 C. W. N. 737 = 76 I. C. 996 = 45 M. L. J. 780 (789-90).

Will—Genuineness of.

———*See* HINDU LAW—WILL. (1) EXECUTION OF. (2) FORGERY OF.

Will—Gift *inter vivos.*

DISPOSITIONS BY—LAWS OF—ANALOGY BETWEEN.

———It is too late to contend that, because the ancient Hindoo treatises make no mention of wills, a Hindoo cannot maks a testamentary disposition of his property. Decided cases, too numerous to be now questioned, have determined that the testamentary power exists, and may be exercised, at least within the limits which the law prescribes to alienation by gift *inter vivos* (37-8). (*Sir James W.Colvile.*) BABOO BEER PERTAB SAHEE *v.* MAHARAJAH RAJENDER PERTAB SAHEE. **(1867) 12 M. I. A. 1 = 9 W. R. P. C. 15 = 2 Suth. 114 = 2 Sar. 348.**

———The introduction of gifts by will into general use has followed in India, as it has done in other countries, the conveyance of property *inter vivos*. The same may be said of the Roman law in which the testamentary power, apart from public sanction, appears to have been a development of the law of gifts *inter vivos*. Such a disposition of property, to take effect upon the death of the donor, though revocable in his lifetime, is, until revocation, a continuous act of gift upto the moment of death, and does then operate to give the property disposed of to the persons designated as beneficiaries. They take upon the death of the testator as they would if he had given the property to them in his lifetime (68). (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE.

(1872) Sup. I. A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.

HINDU LAW—(*Contd.*)

Will—Gift inter vivos—(*Contd.*)

DISPOSITIONS BY—LAW OF—ANALOGY BETWEEN —(*Contd.*)

———*Extent and limits of.*

There is no law expressly and in terms applicable to persons who can take under a gift by will. The analogous law in this case is to be found in that applicable to gifts and even if wills were not universally to be regarded in all respects as gifts to take effect upon death, they are generally so to be regarded as to the property which they can transfer, and the persons to whom it can be transferred (68-9). (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE.

(1872) Sup. I. A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.

———Even if wills were not universally to be regarded in all respects as gifts to take effect upon death, they are generally so to be regarded as to the property which they can transfer and the persons to whom it can be transferred. These appear to their Lordships to be the limits of the analogy between wills and gifts *inter vivos* which have been recognised. (*Sir Richard Couch.*) BAI MOTEVAHOO *v.* BAI MAMUBAI. **(1897) 24 I. A. 93 (105) = 21 B. 709 (721) = 1 C.W.N. 366 = 7 Sar. 140.**

DISPOSITIONS BY—POWERS OF.

———*If co-extensive.*

It was argued that in all cases where a man is able to dispose of his property by act, *inter vivos*, he may do so by will; that he cannot do so when he has a son, because the son, immediately on his birth, becomes co-parcener with the father; that the objection to bequeathing ancestral property is founded on the Hindu notion of an undivided family; but that when there are no males in the family the liberty of bequeathing is unlimited. It is not necessary for their Lordships to lay down so broad a proposition (345). (*Mr. Pemberton Leigh.*) NAGALUTCHMEE UMMAL *v.* GOPOO NADARAJA CHETTY. **(1856) 6 M. I. A. 309 = 1 Sar. 543.**

———The authorities which engrafted the testamentary power upon the Hindu law have treated a devise as a gift to take effect on the testator's death, some of them affirming the broad proposition that what a man can give by act *inter vivos* he may give by will (194).

On the above principle it was argued that the decisions having recognised the validity of an alienation by a co-parcener of his undivided share by gift or other voluntary conveyance *inter vivos* it followed as a necessary consequence that a will by him disposing of such share was also valid.

Their Lordships refused to extend the power of alienation of the co-parcener on the basis of the principle relied upon (194). (*Sir James Colvile.*) LAKSHMAN DADA NAIK *v.* RAMACHANDRA DADA NAIK. **(1880) 7 I. A. 181 = 5 B. 48 (61) = 7 C.L.R. 320 = 4 Sar. 173 = 3 Suth. 778.**

LAW OF—APPLICABILITY OF, TO DECISION OF CASE OF TESTAMENTARY DISPOSITION NEW IN THE INSTANCE.

———The law of will has grown up, so to speak, naturally, from a law which furnishes no analogy but that of gifts, and it is the duty of a tribunal dealing with a case new in the instance to be governed by the established principles and the analogies which have heretofore prevailed in like cases (68). (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE.

(1872) Sup. I. A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.

Will—Gift *inter vivos* **or.**

———*Declaration of intended adoption of a boy and a statement of executant's wishes thereafter—Distinction—Deed styled a will.*

HINDU LAW—(*Contd.*)

Will—Gift inter vivos or—(*Contd.*)

V, who was the owner of considerable properties and had no male child, resolved to adopt the plaintiff, and executed a document in connection with his proposed adoption, *inter alia*, in the following terms:—

The will executed by *V* to the boy adopted by me (plaintiff) is as follows:—As I have no male heir though I married two wives, as I have been falling ill very frequently, as my family is a respectable family entitled for several generations to respect, for that purpose and for enjoying the property and in regard to another consideration, *viz.*, that for obtaining the fruit of this birth, according to the Hindu Shastras, it would not do without a male child, I have, out of my free will, executed this will pursuant to the request of my castemen and after consultation with my mother and my wives. And you are to conduct yourself according to it as follows:—

From this day forward you shall be my child and live with me; and out of the properties belonging to me and included in my patta, the properties in Schedules I and II hereto my mother should enjoy as usual; those in Schedule III my sister should enjoy as usual; all the other properties in Schedule 1V and included in my patta you are to live with me and enjoy; if perhaps, I should die, you are to live with my mother and first wife and you are to perform the funeral ceremonies for me, my mother, and my wives, spending money according to our position.

Then followed terms as to how the plaintiff should conduct himself in regard to *V's* mother, and his two wives, and what provisions he should make for the marriage of *V's* daughter, and in certain other events detailed in the document, and also for payment of *V's* creditors.

V did not adopt the plaintiff as he had intended to do.

Held that the document was not of a testamentary character in any respect, and that, if it had any legal effect whatever, it was of the nature of a transaction *inter vivos*, and, not being registered, was invalid and gave no title to the plaintiff. Their Lordships had, however, great doubts whether the document purported to be anything more than a declaration of the intended adoption of the plaintiff and a statement of the wishes of *V* thereafter.

The only words contained in the document which would support its being regarded as a document of a testamentary character are that in some places it styles itself a will. But calling a document a will does not make it so. (*Lord Moulton.*) TIRUGNANAPAL *v.* PONNAMMAI NADATHI.

(1920) 12 L. W. 660 = 28 M. L. T. 190 = (1920) M. W. N. 559 = 25 C. W. N. 511 = 58 I. C. 228.

———*Distinction between—Difficulty in India as regards —Reasons for.*

Owing to the fact that there is in India no uniform or accurate system of conveyancing, and to the fact that deeds and wills are, in India, as a rule most inartificially drawn up, frequently by persons not possessed of legal knowledge, it is often difficult to ascertain with certainty what was precisely intended by the document, and in some cases to ascertain whether the document was intended to operate as a deed of gift or as a will. (*Sir John Edge.*) MOHAMMAD ABDUL GHANI *v.* FAKHIR JAHAN BEGAM.

(1922) 49 I. A. 195 (207-8) = 44 A. 301 (313-4) = 25 O. C. 95 = 31 M. L. T. 21 = 9 O. L. J. 369 = 27 C. W. N. 53 = 24 Bom. L. R. 1268 = 20 A.L.J. 994 = A.I.R. 1922 P.C. 281 = 37 C. L. J. 1 = 68 I. C. 254 = 43 M. L. J. 453.

———*Oudh talukdar—Deed in faoour of adopted son by.*

On June 1,1878, by a registered deed of that date, an Oudh talukdar made over his taluq with the exception of certain villages dedicated to the endowment of a temple to *S* subject to certain conditions.

HINDU LAW—(*Contd.*)

Will—Gift inter vivos or—(*Contd.*)

On May 26,1883, the taluqdar executed a will stating that he had adopted *L* and giving him the entire taluqa, but making provision for the event of his leaving a natural-born son.

On May 29,1883, *S* executed a registered deed stating that he had relinquished the property and all proprietary rights acquired by him under the deed of June 1,1878, in favour of the taluqdar.

On April 28,1886, the taluqdar effected mutation of names in respect of the taluqa (except the villages dedicated to the endowment of the temple) in favour of *L* on an application which stated that if *L's* connection with the estate should be severed during the taluqdar's lifetime then the whole estate would revert to him. Mutation of names in the case of the villages excepted followed on a supplementary application by the taluqdar.

On May 5, 1887, the taluqdar executed the deed in question. In the last paragraph, the taluqdar declared that he had written the deed "by way of a deed of adoption and codicil to a will in order to amend and rectify the deed of May 26, 1883, by adding some necessary provisions to it." The deed in the main was clearly testamentary in its character, but there were two paragraphs which were relied upon as showing that the deed was a deed of gift *inter vivos*. Paragraph 6 began by stating that he (the taluqdar) had had the instrument of June 1, 1878, cancelled and destroyed with the consent of *S*, and *S* had again put him in possession of the estate. The taluqdar then declared that after getting possession he had made over the whole of the said property to his adopted son (*L*) and had absolutely and unconditionally relinquished all rights and proprietorship as well as ceased interference with the property, and he (the taluqdar) concluded the paragraph by saying, "therefore neither *S* himself nor his representatives have any right left to make a claim under the deed of June 1,1878." In clause 8, the taluqdar described *L* as "my adopted son, and donee and legatee under the deed of May 26,1883, as well as under this deed....in respect of all my moveable and immoveable property which has already been acquired, or which may be acquired hereafter during my lifetime or which may come to me by inheritance or to which I may become entitled."

Held that the deed in question was testamentary and could not be construed as a deed of gift *inter vivos*. (*Lord Macnaghten.*) UDAI RAJ SINGH *v.* BHAGWAN BAKHSH SINGH. **(1909) 37 I.A. 46 (59-60) = 32 A. 227 (240 1) = 11 C. L. J. 387 = 7 M.L.T. 410 = (1910) M.W.N. 110 = 7 A. L. J. 274 = 14 C. W. N. 641 = 6 I. C. 279 = 12 Bom. L.R. 409 = 13 O. C. 172 = 20 M. L, J. 458.**

———*Reservation of usufruct for life—Gift—Mahomedan widow—Deed by.*

The material portion of a deed executed by a Sunni Mahomedan's widow, who had the right of an owner under the Mahomedan law, in favour of *L*, her husband's brother, was as follows :—

"Whereas my husband, during his lifetime, bequeathed the entire property of the aforesaid ilaqa to me, and I, in accordance with the said will, am in possession and ownership of the same, now I make a gift of the movable and immovable property, the entire Zamindari and lambardari estate, etc., in favour of *L*, the detail whereof is being given below, with the exception of the villages and sir lands, etc., of the estates, specified below, which shall, during my lifetime, remain in my and my relation's possession, free of rent and without payment of Government revenue ; and I do hereby invest the donee with the power to have the mutation of names effected in his favour. Now I have nothing to do with the gifted property and the estate. I shall keep the

HINDU LAW—(*Contd.*)

Will—Gift inter vivos or—(*Contd.*)

villages and sir lands, which have been exempted hereunder, for my lifetime without the power of alienation by mortgage, sale and gift ; and after me, the donee shall also be the owner of the said exempted property. The donee shall pay the Government revenue of the exempted estate from the ilaqa with the exception of the revenue of Patti village *G*, which I shall pay out of my own pocket. The donee shall pay all the debt with which the estate is encumbered—I, the donor having nothing to do therewith."

The document concluded with three lists—namely, of the gifted immovable property, the gifted movable property, and the "property exempted", the third list contained the following : Mauza Mundia Misir, Patti *G*, Gungipur (standing in the name of Mahomed Ibrahim Khan), and sir land at Jalalpur.

Held, affirming the Court below, that the deed must be construed as a deed of gift and not as a will.

The deed was intended to be and to operate as an immediate and irrevocable disposition of all the widow's movable and immovable property, and all her Zamindari and lambardari estate mentioned in the deed and in the schedules to it, subject to the reservation for her own use during her lifetime of the usufruct of the property in question here (namely, the excepted villages and sir lands). (*Sir John Edge.*) MOHAMMAD ABDUL GHANI *v.* FAKHR JAHAN BEGAM. **(1922) 49 I. A. 195 (202-3, 208) = 44 A. 301 (314) = 25 O. C. 95 = 31 M. L. T. 21 = 9 O. L. J. 369 = 27 C. W. N. 53 = 24 Bom. L. R. 1268 = 20 A. L. J. 994 = A.I. R. 1922 P.C. 281 = 37 C L.J. 1 = 68 I. C. 254 = 43 M. L. J. 453.**

Will—Gift over.

———(*See also* HINDU LAW—GIFT—GIFT OVER).

———*Accretion to devised estate—Devolution of—If follows capital or devolves according to law.*

By his will a Hindu bequeathed his property to his sons with a direction that the share which each son took, and which would have gone to his heirs according to the Hindu law, was, in the case of any one of his sons leaving no son, to go to the other sons. It appeared clearly from the expressions used by the testator that the corpus of the share of any of the sons dying without leaving a son was to go to the surviving sons. The question was, whether the share of profits made during the joint lives of the sons which belonged to the deceased son followed his share of the capital and went over to the other sons, or, whether it devolved upon his heir-at-law, his widow.

Held that, on the true construction of the will, the testator had not attempted to dispose of those profits, which were the property of the son dying without leaving a son, that it was his intention not to touch the question of profits, but to leave them to go as they would go, according to law, and that the share of the surplus profits of the deceased son went to his heirs-at-law (63). (*Lord Romilly.*) BISSONAUTH CHUNDER *v.* SREEMUTTY BAMASOONDERY DOSSEE. **(1867) 12 M.I.A. 41 = 9 W.R. 1 = 2 Suth. 90 = 2 Sar. 344.**

———*Accretion to devised estate belonging absolutely to devisee—Direction that it should follow capital and should also go over—Validity of.*

A testator, by his will, devised property to his sons absolutely with a direction that in the event of the death of any of them wlthout leaving a son his share should go over to the other sons.

Quaere whether in such a case a direction in the will that the share of profits made during the joint lives of the sons which belonged to a son dying without leaving a son should follow his share of the capital and go over to the other sons

HINDU LAW—(*Contd.*)

Will—Gift over—(*Contd.*)

would be valid (63). (*Lord Romilly.*) BISSONAUTH CHUNDER *v.* SREEMUTTY BAMASOONDERY DOSSEE.
(1867) 12 M. I. A. 41 = 9 W. R. 1 = 2 Suth 90 = 2 Sar. 344.

———Accrued as well as original share if passes under—Class—Gift to a, with direction that on death of any of them his share is to go over to the survivor or survivors—Accruing share of deceased if goes over to survivor with original share. *See* HINDU LAW—WILL—CLASS—GIFT TO--GIFT OVER, ON DEATH OF ANY OF THEM, ETC.
(1883) 10 I. A. 51 (61) = 9 C. 952 (960-1.)

———*Condition of—Death without issue and before attaining majority—Death without issue alone—Test.*

The appellant and *M* & *N* were legatees under the will of their father, entitled in equal shares to his residuary estate. *M* and *N* were minors at the date of the will and at the death of the testator. A clause in the will provided :—"If previous to the minor sons attaining their age of discretion, or after having attained their majority, either of them should, without leaving a son or adopted son, die issueless, in such case any sons then in existence should take the share of that son, dividing the same in equal portions."

Quaere : whether the appellate court was right in thinking that the gift over was not to take effect unless the death took place before the son dying without issue should have attained his majority (37). (*Lord Macnaghten.*) GREENDER CHUNDER GHOSE *v.* TROYLUCKHONAUTH GHOSE.
(1892)21 I. A. 35 = 20 C. 373 = 6 Sar. 267.

———*Death of one person—Gift to another on—Gift over in event of his being disqualified—Existence of disqualification—Time for ascertaining.*

After providing for an ordinary widow's estate for his wife, a testator by his will directed as follows :—

" Cl. 7. If no daughter or daughter's son of mine should be living at the time of the death of my wife, then my grand-daughter (daughter's daughter) shall become the proprietress of my property, and shall remain in undisputed possession thereof from generation to generation.

"Cl. 8. If the death of my wife should take place before my grand-daughter (daughter's daughter) arrives at majority and bears a son, then the whole of the estate shall remain in charge of the Court of Wards until she arrives at majority and bears a son.

" Cl. 9. If my grand-daughter (daughter's daughter) should be barren, or a sonless widow, or if she should be otherwise disqualified, she shall not become entitled to my property, but shall receive an allowance of Rs. 300 per mensem for life."

Held, that clause 9 of the will should be read in conjunction with that which preceded it, and that the death of the widow should be treated as the time when it was, if at all, to take effect (62).

The death of the widow is the point of time when it is to be ascertained once for all whether the granddaughter takes or is disqualified from taking (63). (*Sir Robert P. Collier.*) RAM LALL MOOKERJEE *v.* SECRETARY OF STATE FOR INDIA. **(1881) 8 I. A. 46 = 7 C. 304 (316) = 10 C.L.R. 349 = 4 Sar. 225.**

———*Declaration of right under, with injunction—Suit for—Maintainability—Possession of property—No prayer for—Effect—Specific Relief Act—S.* 42.

A Hindu executed a will bequeathing his property to his two sons, subject to the condition that, in the event of the death of either without leaving male issue, the survivor should take the whole. On the death of one of the sons without male issue, but leaving him surviving a widow and a daughter, the survivor sued for a declaration that, in the events that happened, he was entitled to the property

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which had formed the share of his deceased brother, and for an injunction restraining his brother's widow from denying his title, He did not, however, ask for possession of that property.

The Sub-Judge held that the prayer for an injunction was a sufficient compliance with the requirements of S. 42 of the Specific Relief Act, and that objection could not be taken to the form of the suit on the ground that the plaintiff did not ask for possession of the property.

Their Lordships did not feel themselves able to interfere with the judgment of the Sub-judge on that question (415). (*Lord Shaw,*) CHUNILAL PARVATHISHANKUR *v.* BAI SAMARATH. **(1914) 38 B. 399 = 18 C. W. N. 844 = 19 C. L. J. 563 = 16 Bom. L. R. 366 = 12 A. L. J. 742 = 16 M.L.T. 59 = 1 L. W. 762 = (1914) M. W. N. 441 = 23 I C. 645 = 26 M. L. J. 647.**

———*Event which is to take place if at all, immediately on close of life in being at time of execution of will—Gift over on—Validity.*

The will of a Hindu testator, after devising all his real and personal estate among his five sons (a joint undivided family) contained this clause:—"Should any among my said five sons die, not leaving any son from his loins, nor any son's son, in that event neither his widow, nor his daughter, nor his daughter's son, nor any of them, will get any share out of the share that he has obtained of the immoveables and moveables of my said estate. In that event of the said property, such of my sons and my son's son as shall then be alive, they will receive that wealth according to their respective shares. If any one acts repugnant to this, it is inadmissible."

It was found that upon the true construction of the will the property was given over upon the death of any one of his sons without leaving male issue at the time of his death, that is, upon an event which was to take place, if at all, immediately on the close of a life in being at the time when the will was made, and the question was whether the Hindu law prohibited such a provision.

Held, that the testator, in making that provision, did not infringe or exceed the powers given him by the Hindu law, and that the clause effectually gave the corpus of the property to the surviving sons immediately on the death of that son who died without leaving male issue (135-6).

There is nothing against public convenience, nothing generally mischievous, and nothing against the principles of Hindu law in allowing a testator to give property, whether by way of remainder, or by way of executory bequest (to borrow terms from the law of England), upon an event which is to happen, if at all, immediately on the close of a life in being. There would be great general inconvenience and public mischief in denying such a power (135). (*Lord Justice Knight Bruce.*) SREEMUTTY SOORJEEMONEY DOSSEE *v.* DENOBUNDOO MULLICK.
(1862) 9 M.I.A. 123 = 1 Sar. 837 = 1 Suth. 291.

———It was not, and could not be, disputed, that since the case of Soorjemoni Dasi, a gift by will upon an event which is to happen, if at all, immediately on the close of a life in being, to a person in existence, and capable of taking under the will at the testator's death, was good and valid under Hindu law, and consequently that it was competent to the testator, by the use of apt words, to confer an absolute estate on his daughter's daughter on the death of his widow (60-1). (*Sir Robert P. Collier.*) RAM LAL MOOKERJEE *v.* SECRETARY OF STATE FOR INDIA.
(1881) 8 I.A. 46 = 7 C. 304 (314) = 10 C. L. R. 349 = 4 Sar. 225.

———According to the construction of the will which their Lordships adopt, the gift over was to persons alive, and

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Will—Gift over—(*Contd.*)

capable of taking on the death of the testator, to take effect on the death of a person or persons also then alive, and was competent, according to the authority of Soorjeemony Dossee's case, as explained in the Tagore case (60.) (*Sir Robert P. Collier.*) KUMAR TARAKESWAR ROY *v.* KUMAR SHOSHI SHIKHARESWAR. **(1883) 10 I. A. 51 = 9 C. 952 (960) = 13 C. L. R 62 = 4 Sar. 439.**

———In stating the rule relating to the defeasance of a prior absolute interest by a subsequent event, it is important to add ; first, that the event must happen, if at all, immediately on the close of a life in being at the time of the gift ; and secondly, that a defeasance by way of gift over must be in favour of somebody in existence at the time of the gift (39). (*Lord Hobhouse.*) SREEMUTTY KRISTOROMONEY DOSSEE *v.* MAHARAJAH NORENDRO KRISHNA BAHADOOR. **(1888) 16 I. A. 29 = 16 C. 383 (392) = 5 Sar. 285.**

———A Hindu testator may give property by way of executory bequest (to borrow a term from the law of England) upon an event which is to happen, if at all, immediately on the close of a life in being and in favour of a person born in the testator's lifetime (90). (*Lord Davey.*) LALIT MOHUN SINGH ROY *v.* CHUKKUN LAL ROY. **(1897) 24 I.A. 76 = 24 C. 834 (850) = 1 C. W. N. 387 = 7 Sar. 155.**

———*Failure or determination of estate—Gift over after—Failure or determination of estate in law and not in fact—Gift over if takes effect in case of.*

The will the construction of which was in question directed that trustees, after the legacies and annuities had been satisfied, were to convey to the persons entitled to the beneficial interest, subject to the subsequent limitations ' so far as the terms and condition of circumstances will permit, but so far only, as such limitations ' did not infringe any law then in force against perpetuities, ' if any such law there shall be.' The limitations were :

(1) To *J. T.* for life ;

(2) To his eldest son born during the testator's life-time for life ;

(3) In strict settlement upon the first and other sons of such eldest son successively in tail male ;

(4) Similar limitations for life and in tail male upon the other sons of *J. T.* born in the testator's life-time ;

(5) Limitations in tail male upon the sons of *J. T.* born after the testator's death.

(6) " After the failure or determination of the uses and estates hereinbefore limited " to *S. T.* for life ;

(7) Like limitations for the sons of *S. T.* as for the sons o *J. T.*

On the true construction of the will their Lordships held that *J. T.* took a life estate only. The question arose as regards the succession after the determination of *J.T.'s* life-estate.

It may be urged that, as there was at the death of the testator no person to take under the first series of limitations except *J. T.*, and no person who came into existence afterwards could in point of law so take, there was in law a " failure " of the estates at the death of the testator, which no subsequent event could affect, and that the interest for life after the death of *J. T.* then became vested in *S. T.*

The answer is that this argument proceeds upon the assumption that " failure or determination " means failure or determination in law, as if the testator contemplated that his will might be void in law, which, as to the limitations in question, save as to the possible effect of a law against perpetuities, their Lordships see no sufficient ground upon the face of the will for supposing that he suspected (79). Construing the will their Lordships understand " failure or determination " to mean " failure or determination " in fact of an estate or estates which the testator considered sufficient in law, and that the limitations over were in the scheme of the will to follow the creation of the prior estates of inheritance and must fall therewith. The property therefore next goes to *G. T.* as heir-at-law (80). (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE. **(1872) Sup. I.A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.**

———*Future and contingent interests under—Release of—Deed effecting.*

The appellant, *M* & *N* were three legatees under a will, entitled in equal shares to the residuary estate of the testator. *N* died without issue, having bequeathed all his estates to *M*. The appellant instituted the suit out of which the appeal arose to establish his right to a moiety of the estate taken by *N* under the said will. His case was that the will made a gift over of *N's* share under it to himself & *M* in the event of *N's* death without issue.

It appeared that, prior to *N's* death, all three of them effected a separation of their interests derived from the will, and that they executed certain deeds of conveyance or release, the operative part of the leading instrument being as follows :—

" They, the said *G* " (the appellant) "and *M* do and each of them doth by these presents grant, bargain, sell, aliene, and release, and by way of conveyance only and not by way of warranty of title, do and each of them doth also grant and confirm unto the said *N*, his heirs, representatives, and assigns, the parcels of land therein particularly described, and all the estate, right, title, interest, use, trust, property, possession, possibility, claim, and demand whatsoever, both at law and in equity of them etc." The property dealt with by that deed was the one-third share of *N* under the will.

Held that the above-mentioned instruments operated to pass every interest of every kind which the appellant had or could claim to have in the shares allotted to *M* & *N*, and that, so long as those instruments stood, it was impossible for the appellant to contend with success that any interest, future or contingent, was reserved to him (37).

The object of the parties, as evidenced by the deeds, was once for all to dispose finally of the testator's estate, and of all questions connected with it (37). (*Lord Macnaghten.*) GREENDER CHUNDER GHOSE *v.* TROYLUCKHONAUTH GHOSE. **(1892) 21 I. A. 35 = 20 C. 373 = 6 Sar. 267.**

———*Gift in fee to* A—*Gift over in event of his death without leaving male issue, with provision for his widow and daughters—Validity.*

A gift in fee (to use an English term) to *A*, defeasible in case of his death without leaving male issue, with a provision in that event for his widow and daughters who would be disappointed by the operation of the gift over is perfectly valid (90). (*Lord Davey.*) LALIT MOHUN SINGH ROY *v.* CHUKKUN LAL ROY. **(1897) 24 I. A. 76 = 24 C. 834 (851) = 1 C. W. N. 387 = 7 Sar. 155.**

———Joint Family—Members living as a—Gift to—Death of one without leaving male issue— Gift over to survivors in event of. *See* HINDU LAW—WILL—JOINT FAMILY—MEMBERS LIVING AS A.

———*Life interest terminable—Gift over on happening of an event which does not take place—Effect.*

The principle stated by Parker, J in Seaton's case that " where there is a terminable life interest and there is a gift over on the happening of an event which does not take place, the court will read this as a limitation in remainder on the life interest which has determined by death " is an old one; it is not confined to dispositions in favour of wives, or to

HINDU LAW—(*Contd.*)

Will—Gift over—(*Contd.*)

the determination by re-marriage of the interest given by the will, but it does depend on the possibility of ascertaining from other parts of the will that the original intention of the testator in making the gift was to give a limited interest only. The gift over is to be extended by implication, that is, beyond its actual expression, but implication must be an implication from something else, otherwise this extension would be mere conjecture, and that something else is the testator's intention to be found elsewhere " interwoven into the original gift." (213.) (*Lord Sumner.*) CHIA KHWEE ENG *v.* CHIA PO-CHOON. **(1922) 33 M. L. T. 212 P. C.**

———*Male issue—Failure of—Gift over in event of—Indefinite failure of such issue or failure thereof at time of death of legatee.*

The will of a Hindoo Testator, after devising all his real and personal estate among his five sons (a joint undivided family) contained this clause: " Should any among my said five sons die, not leaving any son from his loins, nor any son's son, in that event neither his widow, nor his daughter, nor his daughter's sons, nor any of them, will get any share out of the share that he has obtained of the immoveables and moveables of my said estate. In that event of the said property, such of my sons and my son's sons as shall then be alive, they will receive that wealth according to their respective shares. If any one acts repugnant to this, it is inadmis sible. However, if my sonless son shall leave a widow, in that event she will only receive Co's Rs. 10,000 for her food and raiment."

The question was whether, according to the true construction of that clause, the testator pointed to an indefinite failure of male issue of any one of his sons whose male issue should fail, or failure of male issue at the time of his death.

Held that it was perfectly plain that that to which the testator pointed in the clause was not an indefinite failure of male issue, but a failure of male issue of any of his sons at the time of the death of that son (134 5). (*Lord Justice Knight Bruce.*) SREEMUTTY SOORJEEMONEY DOSSEE *v.* DENOBUNDOO MULLICK. **(1862) 9 M.I.A. 123 = 1 Suth. 291 = 1 Sar. 837.**

———*Nephews and their male descendants—Gift to—Gift over on death of "any of them" without leaving male issue—Death of any of nephews alone or of his male descendants also contemplated.*

The material portion of the will of a Hindu was as follows: "My brother's sons, *J*, *T* and *S*, shall receive, for defrayment of the expenses of their pious acts, the following out of the properties left by me, to wit....The said three nephews shall hold possession of the same in equal shares. and shall pay the Government revenue of the same into the Collectorate. They shall have no right to alienate the same by gift or sale; but they, their sons, grandsons, and other descendants in the male line, shall enjoy the same, and shall perform acts of piety as they respectively shall see fit for the spiritual welfare of our ancestors. If any of them die without leaving a male child (which God forbid), then his share shall devolve on the surviving nephews and their male descendants, and not on their other heirs."

Held that, on the true construction of the last sentence in the portion of the will set out above, " any of them" meant any of the three nephews, not any of their descendants; on the death of any of the three nephews his share should go to the surviving nephews or nephew, not to the descendants of a dead nephew; but on the estate getting into the hands of the surviving nephew or nephews, it was to descend, as had been before provided, to males only (59-60).

This construction disposes of an ingenious argument of Mr. Mayne—based on the hypothesis that upon the death

HINDU LAW—(*Contd.*)

Will—Gift over—(*Contd.*)

of the second nephew—his share would go to his surviving brother, and to the "male descendants" of his dead brother —that this would be a gift to a class, some of whom, *i.e.*, the male descendants, could not take, and would, therefore, by a well-known rule of law, be altogether invalid (60). (*Sir Robert P. Collier.*) KUMAR TARAKESWAR ROY *v.* KUMAR SHOSHI SHIKHARESWAR. **(1883) 10 I.A. 51 = 9 C. 952 (959-60) = 13 C. L. R. 62 = 4 Sar. 439.**

———*Nephews and their male descendants—Bequest to—Gift over in event of death of any of them without leaving male issue—Estate conveyed by original bequest—Effect of gift over.*

The question in the appeals arose upon the construction of a clause in a Hindu will, which was in these terms:—

"My brother's three sons shall receive, for defrayment of the expenses of their pious acts, the following out of the properties left by me, to wit,....The said three nephews shall hold possession of the same in equal shares, and shall pay the Government revenue of the same into the Collectorate. They shall have no right to alienate the same by gift or sale; but they, their sons, grandsons, and other descendants in the male line, shall enjoy the same, and shall perform acts of piety as they respectively shall see fit for the spiritual welfare of our ancestors. If any of them die without leaving a male child (which God forbid), then his share shall devolve on the surviving nephews and their male descendants, and not on their other heirs."

The three nephews of the testator were living at his death; two of them died subsequently, one unmarried, the other leaving a widow but no issue; and the suit out of which the appeals arose was instituted by the surviving nephew of the testator against the infant son of the testator to obtain a declaration that he (the plaintiff) became on the death of his brothers entitled to the entire property bequeathed by the testator to his nephews.

Held, on the authority of the Tagore case, that a life estate only was created in favour of the three nephews (58-9).

Held further that, on the death of the first nephew, his share went to the other two, and that, on the death of the second, the share which he left behind him made up of his original and his accrued share went to the plaintiff, the surviving nephew (59-60). (*Sir Robert P. Collier.*) KUMAR TARAKESWAR ROY *v.* KUMAR SHOSHI SHIKHARESWAR. **(1883) 10 I.A. 51 = 9 C. 952 (960-1) = 13 C.L.R. 62 = 4 Sar. 439.**

———*Sons—Absolute bequest to—Death of one of them without leaving son—Gift over to survivors in case of.*

The material passages in the will of a Hindu testator were the following:—

First paragraph:—My five sons, after my death, all continuing joint in food, being unanimous, will preserve and look after my real and personal property, etc., and business, trading business, etc.; whomsoever, whatever there are the same, they will carry on conformably to the directions hereinafter written, they will perform the daily usual acts, etc., should they disagree and wish to separate, then deducting my real and personal properties and business, etc., they shall be unable to make and take a partition and division and demarcation, on account of my regulated acts, ceremonies, etc.; and family expenses, and the profits and losses of the trading business, and after deducting the establishment charges, the surplus proceeds, the money that shall remain out of the same they will receive their respective shares.

Second paragraph:—From amongst my aforesaid sons should any die without sons, that is, die not leaving sons, and leaving daughters, and leaving a wife; then the said son's daughters, each of them, will receive Rs. 100; and

HINDU LAW—(*Contd.*)

Will—Gift over—(*Contd.*)

should his widow continue in the family then, whenever whatever *brito neom* acts, ceremonies proper, that she perform, the expenses for the same she shall receive from my estate; should she be disobedient, and not remain in my house, depart, or live elsewhere; or, should she not wish to continue in the family, then the said widow woman shall receive Rs. 2,000, on my real and personal properties, business, trading business, and properties, etc., she will be unable to make a claim or demand to her husband's suitable share ; and if, in like manner, the son's daughters have sons born, then the said sons, each person, will receive Rs. 200.

Ninth Paragraph:—From amongst my sons, whenever whatsoever shall be the elder, under his direction all the business shall be performed, I hereby appoint the above five sons the *Turney* of this my will."

After the testator's death his sons, without proving their father's will, lived together in the usual way as a joint Hindoo family, carrying on their father's business.

One of the sons married the plaintiff-respondent, and died soon afterwards intestate, leaving her his sole widow and heiress. He had no son, but left two daughters by a former marriage.

In a suit brought by the respondent for, *inter alia*, a declaration of her rights under the said will, *held*—

(1) that the five sons took an absolute estate in the property ;

(2) that the share which each son took, and which would have gone to his heirs according to the Hindoo Law was, in the case of any one of his sons leaving no son, directed to go to the other sons (60).

Their Lordships are of opinion that the effect of this will is to direct that the share which each son took, and which would have gone to his heirs according to the Hindu law, was, in the case of any one of his sons leaving no son, directed to go to the other sons, if not in express words, still by a necessary inference to be drawn from the expressions used by him (60). (*Lord Romilly.*) BISSONAUTH CHUNDER *v.* SREEMUTTY BAMASOONDERY DOSSEE.

(1867) 12 M. I. A. 41 = 9 W. R. P. C. 1 = 2 Suth. 90 = 2 Sar. 344.

———*Sons—Absolute bequest to—Death of one of them without leaving son—Gift over to survivors in event of—Intention as to, must be clearly expressed.*

According to the will, if one of the sons, to whom the testator had bequeathed his estate, had died, leaving a son, the share of the son so dying would have gone to his son, or, in other words, the grandson of the testator. It is only in the event of his son not leaving a son that the testator has directed that the share shall go to the survivors. This construction is not lightly to be inferred, but it is necessary that the testator should express distinctly what his intention is (60). (*Lord Romilly.*) BISSONAUTH CHUNDER *v.* SREEMUTTY BAMASOONDERY DOSSEE.

(1867) 12 M. I. A. 41 = 9 W.R. P.C. 1 = 2 Suth. 90 = 2 Sar. 344.

———*Sons—Bequest equally to—Gift over on death of one sonless, of all properties to survivors equally—Effect—Succession Act—S.* 111.

A, a Hindu, bequeathed his properties moveable and immoveable to his three sons, in the following words: "My three sons shall be entitled to enjoy all the moveable and immoveable properties left by me equally. Any one of the sons dying sonless, the surviving sons shall be entitled to all the properties equally." *A* died in 1882, and at that time one of his sons *J* had attained majority while the others were minor children. *J* was appointed sole executor with powers of management during the minority of his brothers, and on their attaining majority he was directed to "make over charge of the properties to them." *Held* that the properties bequeathed by *A* were "payable or distributable" among his sons, within the meaning of S. 111 of the Indian Succession Act, on the death of the testator.

Held further that, having regard to the Hindu Wills Act of 1870 and S. 111 of the Indian Succession Act of 1865, the original gift to the three sons vested in them on the testator's death and became indefeasible. (*Lord Macnaghten.*) NORENDRA NATH SIRCAR *v.* KAMALABASINI DASI.

(1896) 23 I. A. 18 = 23 C. 563 = 6 Sar. 667 = 6 M. L. J. 71.

———*Sons—Gift to two—Death of one without leaving male issue—Gift over in event of, of entire estate to survivor—Death of one after lifetime of testator—Gift over if takes effect in case of.*

A Hindu made a will by which after appointing his two sons "executors, heirs and owners" of the whole of his property (which was self-acquired) and directing them to divide and take equal shares in it with certain exceptions gave each of them a half share of his estate not specifically disposed of by the will. By clause 9 he made the following bequest, "I have divided between and given to my two sons the whole of my property as mentioned above. But should either of these two sons die without having had (leaving) any male issue the survivor of the said two sons is duly to take the whole of the property appertaining to the share of the deceased son who may have (leave) no male issue (behind him) after undertaking (to defray) the expenses in connection with the maintenance of his widow and marriage of his minor daughter. But under these circumstances the heirs of my deceased son, *S*, shall not get any right whatever."

The two sons survived the testator and divided the property between them. The elder son died subsequently without male issue, but leaving him surviving his widow, and a minor daughter.

The High Court held, on the construction of the will, that the period of distribution contemplated by the testator was the period of his death, and that at that time half of the testator's estate became vested in each of his sons absolutely. In other words the High Court held that clause 9 of the will should be read as if the survivorship there provided was limited to survivorship at the death of the testator.

Held, reversing the High Court, that the words of clause 9 were not limited to servivorship during the testator's life, but clearly pointed to survivorship whenever it should occur, and that in the events that happened the surviving son was as such survivor entitled to the estate conveyed by the said clause, subject to the obligation imposed upon him of maintaining his brother's widow and daughter (413-4). (*Lord Shaw.*) CHUNILAL PARVATISHANKAR *v.* BAI SAMARATH.

(1914) 38 B. 399 = 18 C.W.N. 844 = 19 C.L.J. 563 = 16 Bom. L. R. 366 = 12 A. L. J. 742 = 16 M. L. T. 59 = 1 L.W. 762 = (1914) M.W.N. 441 = 23 I. C. 645 = 26 M. L. J. 647.

———Surviving sons—Gift over in favour of—Issue of surviving sons if entitled to benefit of. *See* HINDU LAW—WILL—SONS—VESTED INTERESTS TO. ETC.

(1929) A.C. 462 = 27 A.L.J. 1075 = A.I.R. 1930 P.C. 7.

———Validity of—Uncertain event—Happening of—Bequest on—No time fixed for happening of event—Succession Act—S. 111. *See* HINDU LAW—WILL—SON—BEQUEST TO.

(1914) 42 I. A. 71 (78) = 39 B. 296.

———Wife—Bequest to—Gift over to children of such property as was not required by wife or gift over of property if it was not required by wife—Validity of. *See* HINDU LAW WILL—WIFE—BEQUEST TO—GIFT OVER TO CHILDREN, ETC.

(1882) 9 I. A. 70 (80) = 4 A. 500 (510).

HINDU LAW—(*Contd.*)

Will—Gift over—(*Contd.*)

———Wife—Gift to—Re-marriage by her—Gift over in event of—Death of wife without remarrying—Gift over if takes effect in case of. *See* HINDU LAW—WILL—WIFE BEQUEST TO—RE-MARRIAGE.

(1922) 33 M. L. T. 212 P. C. (213).

Will—Granddaughters by pre-deceased son.

———*Bequest to—Joint tenants—Tenants in common—Bequest to them as—Test.*

The will of a Hindu, after stating that *D*, the widow of his pre-deceased son, had no other heirs except her two daughters, and after giving a life interest in his properties to *D*, proceeded as follows: "Furthermore to the said *D*, too, these very two daughters named above, together with their children, are and shall be heir and malik."

On a question being raised whether the daughters of *D*, took as joint tenants or tenants in common, the High Court were of opinion that they would take as joint tenants.

Their Lordships found it unnecessary to decide that question (15). (*Sir Robert P. Collier.*) MAHOMED SHUMSOOL *v.* SHEWUKRAM.

(1874) 2 I. A. 7 = 14 B. L. R. 226 = 22 W.R. 409 = 3 Sar. 405 = 3 Suth. 43.

Will—Heirs—Class of—Leading member of—Enumeration of.

———All members of class if included. *See* DEED—CONSTRUCTION OF—HEIRS. **(1875) 2 I. A. 263 (272).**

Will—Heirs of testator at death of widow in—Meaning of.

———*Persons who would be testator's heirs at her death or right heirs of testator.*

Where the testator directed that 2/3 of his estate should be taken by his brother and that out of the remaining 1/3 certain minor bequests including certain poojah expenses and some monthly allowances were to be paid and that the residue should be used in the purchase of Government paper and that the interest thereof should be paid to his widow for her life and after her death the residue was to be given to *such persons as should be testator's heirs.*

Held (1) that if the term 'heirs' was taken to mean persons who would be the testator's heirs at the widow's death the gift was void and there was an intestacy as to the residue and the widow would be entitled under the law for a widow's estate; and (2) that if the term "heir" was taken to mean the testator's right heir, and that was the right construction, the right heir would be the widow and the latter would be entitled to the residue for a widow's estate under the will. (*Lord Davey.*) BENODE BEHARI BOSE *v.* SRIMATI NISTARINI DASSI.

(1905) 32 I.A. 193 (201, 202) = 33 C. 180 (192) = 2 C. L. J. 189 = 9 C. W. N. 961 = 7 Bom. L. R. 887 = 15 M. L. J. 331.

Will—Heir-at-law.

———Invalidity of will—Declaration of—Suit for—Maintainability—Nuncupative will—Will in writing. *See* SPECIFIC RELIEF ACT, S. 42—CASES UNDER—WILL.

(1878) 5 I. A. 87 (112-3) = 1 A. 687 (706-7.)

———Invalidity of will—Suit on foot of—Profits of estate in case of—Decree for—Form of. *See* DECEASED—HEIR-AT-LAW—WILL OF DECEASED—INVALIDITY, ETC.

(1885) 12 I. A. 103 (111) = 11 C. 684 (693-4).

———Trustee under will—Account from—Right to. *See* ACCOUNTS—HEIR-AT-LAW—WILL OF DECEASED.

(1872) Sup. I. A. 47 (83).

———Trustees under will—Suit against—Trusts under will—Performance by trustees of—Allegations inconsistent with—What amount to. *See* DECEASED—HEIR-AT-LAW—WILL OF DECEASED—TRUSTEES UNDER.

(1872) Sup. I. A. 47 (83).

HINDU LAW—(*Contd.*)

Will—Hindu Law—Joint family—Father.

———Will by. *See* UNDER HINDU LAW—JOINT FAMILY—FATHER.

Will—Illegal purposes—Bequest of fund for purposes some of which are.

———*Validity—No provision for separation of those purposes from others which are valid or for apportionment.*

Their Lordships do not in any way question the principle that a provision made in a will or contract can stand if under it a fund is given for purposes some of which are illegal, with no provision for separating these from other purposes which are valid, or for apportionment. (*Viscount Haldane.*) UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION *v.* MORTER. **(1928) A. I. R. 1928 P. C. 119 (121).**

Will—Income.

———Bequest of—When amounts to bequest of corpus. *See* HINDU LAW—WILL—CORPUS OF ESTATE.

———Commission on—Gross income or net income. *See* HINDU LAW—WILL—CONSTRUCTION—MANAGER UNDER WILL.

(1880) 7 I.A. 196 (207.8) = 3 A. 91 (103-4).

———Enjoyment of—Bequest only of, and not of corpus of estate—What amounts to. *See* HINDU LAW—WILL—ALIENATION—RESTRAINT UPON—CONDITION OF—INTENTION NOT TO PASS ESTATE.

(1885) 12 I. A. 103 (110) = 11 C. 684 (692).

Will—Income of devised estate.

———Bequest if covers. *See* CHARITY—CORPUS ONLY.

(1920) 24 C. W. N. 1026 (1030).

———Direction that it should follow capital and should also go over—Validity of—Income belonging absolutely to devisee. *See* HINDU LAW—WILL—GIFT OVER—ACCRETION TO DEVISED ESTATE BELONGING, ETC.

(1867) 12 M. I. A. 41 (63).

———Devolution of—If follows capital or devolves according to law. *See* HINDU LAW—WILL—GIFT OVER—ACCRETION TO DEVISED ESTATE—DEVOLUTION OF.

(1867) 12 M.I.A. 41 (63).

———*Purchases with—Ownership of—Accretion to devised estate if—Income absolute property of devisee—Effect.*

A devised his property in equal shares to his five sons. Considerable surplus rents of the property so devised were not drawn by the five sons, but were allowed to accumulate and were laid out in the purchase of additional landed property. *B*, one of the five sons of *A*, by his will, after leaving all his share of the landed and other interests devised to him by the will of *A*, to his daughter *C*, and son *D*, in equal shares, devised to the said *D*, "the whole of the villages, landed property, etc., which have been purchased for the estate out of the accumulations of the surplus rents since the late Colonel Skinner's (his father *A's*) demise, and in which I have a fifth share." *Held*, that the separate acquisitions were not accretions to the originally devised estate of *A*, and that they passed absolutely to *D* alone, to the exclusion of *C*, under the devise contained in *B's* will.

It is contended that the new acquisitions must be regarded in law as accretions to the original devised estate, and as passing with them under the gifts made by *B's* will. But their Lordships find no ground for this conclusion, and they are of opinion that the purchased estate followed the ownership of the purchase money, which was the absolute property of the five sons in equal shares. BARLOW *v.* ORDE.

(1870) 13 M. I. A. 277 (314-5) = 13 W. R. P.C. 41 = 5 B. L. R. 1 = 2 Suth. 324 = 2 Sar. 540 = 6 M.P.C. (N.S.) 437 = Punjab (P.C.J.) 870.

HINDU LAW—(*Contd.*)

Will—Inheritance.

———Declaration of right of—Deed amounting merely to. *See* HINDU LAW—WILL—DEED AMOUNTING TO A—DEED DECLARING RIGHT OF INHERITANCE.

(1911) 38 I.A. 54 (63) = 38 C. 468 (472).

———Expression of opinion as to right of. *See* HINDU LAW—WILL—DEED AMOUNTING TO A—WAJIB-UL-ARZ—ENTRY IN. **(1905) 10 C.W.N. 249.**

———Legal course of—Bequest altering—Validity. *See* HINDU LAW—WILL—ESTATE UNKNOWN TO LAW AND HINDU LAW—INHERITANCE—LEGAL COURSE OF.

———*New rule of—Attempt to establish—Validity.*

The Tagore case decides that an attempt to establish a new rule of inheritance is invalid (39). (*Lord Hobhouse.*) SREEMUTTY KRISTOROMONEY DOSSEE *v.* MAHARAJAH NORENDRO KRISHNA BAHADOOR.

(1888) 16 I.A. 29 = 16 C. 383 (392) = 5 Sar. 285.

Will—Intention to confer estate—Absence in will of.

———Letter of even date by heir appointed to testator showing such intention—Effect. *See* HINDU LAW—WILL—WIDOW—INTEREST CONFERRED BY WILL ON.

(1922) 45 M.L.J. 249.

Will—Invalidity of instrument as a.

———*Authority to adopt valid if may be.*

A document which purported to be a will but is inoperative as such, may nevertheless constitute a valid authority to adopt (308-9). (*Lord Salvesen.*) KONDAPALLI VIJAYARATNAM *v.* MANDEPAKA SUDARSANA RAO.

(1925) 52 I. A. 305 = 48 M. 614 = 23 A. L. J. 799 = 42 C.L. J. 38 = (1925) M. W. N. 522 = 27 Bom. L.R. 1082 = 22 L. W. 435 = 6 L. R. P. C. 157 = 30 C. W. N. 193 = A. I. R. 1925 P. C. 196 = 89 I. C. 733 = 49 M. L. J. 247.

———*Effect of will for any other purposes if may have.*

That a document is called a will although it does not operate to any effect as such will not give it the effect of a will for any other purpose (308). (*Lord Salvesen.*) KONDAPALLI VIJAYARATNAM *v.* MANDAPAKA SUDARSANA RAO.

(1925) 52 I. A. 305 = 48 M. 614 = 23 A. L. J. 799 = 42 C. L. J. 38 = (1925) M. W. N. 522 = 27 Bom. L. R. 1082 = 22 L. W. 435 = 6 L. R. P. C. 157 = 30 C. W. N. 193 = A. I. R. 1925 P. C. 196 = 89 I. C. 733 = 49 M. L. J. 247.

Will—Issue in.

———*Have issue if means "leave issue."*

G, a deceased Hindu, had no male issue, but had two daughters, *P* aged seven years, and *S* aged three, born of his fourth wife Sivagangai. By his will, he gave away his estate, which he described, to his said two daughters. Then occured the following sentences in the said will :—

"The aforesaid two daughters after their marriage shall with their husbands remain in this family and enjoy as one family the income of the aforesaid properties without division and without alienating by sale, etc."

"If in so doing there should be disagreement between them the income thereof minus the joint expenses shall be enjoyed by them both in equal shares. If both the said daughters have issue, they shall divide the said properties equally. Those who have no issue shall as aforesaid enjoy the income for their lives and those who have issue shall enjoy the whole property. Till then the miras shall continue in my name. In case your mother and you disagree and live separately, you shall pay 21 Kalams of paddy and Rupees 7 a year for her maintenance.

G further provided that if he should recover and get a male child, the entire property should go to that child, He died,

HINDU LAW—(*Contd.*)

Will—Issue in—(*Contd.*)

however, a few days afterwards, and there was no male child born. *P* married and had issue, the appellants, and *S* also married, and died subsequently. Whether or no she had a child was matter of dispute. She had none living at the time of her death.

The High Court held, on the construction of the will, that on the birth of children to both the daughters the will gave them absolute interests in severalty. It was contended in appeal that the contingency on which the absolute gift was made must be taken to be not the birth of issue, but having issue who survived the parent.

Their Lordships over-ruled the contention and affirmed the High Court (127-8).

There can be no dispute as to the literal meaning of the words "have issue" in any of the three contexts in which they occur. In the first two the testator contemplates the continued existence of those who " have issue, " and in the second it is almost impossible to construe the words as "leave issue." There is absolutely nothing on the face of the will to suggest any secondary meaning (127-1). (*Lord Hobhouse.*) GURUSAMI PILLAI *v.* SIVAKAMI AMMAL.

(1895) 22 I. A. 119 = 18 M. 347 (357-8) = 5 M. L. J. 106 = 6 Sar. 610.

———*Legitimate issue—Meaning of—Issue legitimate according to law or religion of testator—Issue treated as legitimate by him.*

The question was whether the plaintiff came within the description of legitimate issue in the will of a Hindu of the Kshatriya a caste. *Held* that the answer to that question did not depend upon what was the strict rule of the Hindu religion, or the strict rule of the Kshatria caste, but upon what were the wishes and intentions of the testator as revealed by the language of the instrument the construction of which was in question, viewed through the light of the circumstances which surrounded him at the time he made it. (*Lord Atkinson.*) BHAIYA SHER BAHADUR *v.* BHAIYA GANGA BAKHSH SINGH. **(1913) 41 I. A. 1 = 36 A. 101 (115-6) = 18 C. W. N 401 = 15 M. L. T. 169 = (1914) M. W N. 184 = 19 C. L. J. 277 = 16 Bom. L. R. 306 = 17 O. C. 68 = 12 A. L. J. 188 = 22 I. C. 293 = 26 M. L. J. 291.**

Will—Joint family—Members living as a—Gift to.

———Death of one without leaving male issue—Gift over to survivor in event of—Corpus of share of deceased dying without issue—Right to, of surviving member and of widow of deceased. **(1862) 9 M. I. A. 123 (135-6).**

———*Death of one without leaving male issue—Gift over to survivor in event of—Income from share of deceased between testator's death and his own—Right of his widow to—Dayabhaga law.*

A testator by his will made an absolute gift of his real and personal estate to his five sons (an undivided Hindu family) in equal shares, and in a subsequent part of his will, in the event of any of his five sons dying without a son or son's son, there was a gift over to such of his sons or son's sons as should be alive. After the death of the testator the sons lived together, and no partition of the estate was made, the surplus income and the increment being kept with the common stock. Upon the death of one of the sons without leaving a son or son's son, his widow who was entitled to a life interest in her husband's estate, claimed her husband's share of the accumulation of income and the increment thereon. *Held*, upon a construction of the will, that in the absence of any direction of the testator that his sons should continue as a joint family, such an intention could not be imported into the will, and that the testator's intention was that his sons should enjoy during their lives the interest of their respective shares of the property ; and therefore, that,

HINDU LAW—(*Contd.*)

Will—Joint Family—Members living as a—Gift to—(*Contd.*)

although the deceased co-sharer's share went over to the survivors, the widow of the deceased was entitled to one-fifth of the surplus income which had accumulated since the testator's death, and during her husband's lifetime, and the increment arising out of such accumulations (551-2). (*Lord Justice Turner.*) SREEMUTTY SOORJEEMONEY DOSSEE *v.* DENOBUNDOO MULLICK. **(1857) 6 M. I. A. 526 = 4 W.R. 114 = 1 Suth. 291 = 1 I. J. N. S. 37 = 1 Boul. Rep. 228 = 1 Sar. 583.**

———*Death of one without leaving male issue—Gift over to survivor in event of—Income from share of deceased between testator's death and his own—Right of his widow to—Estate taken by her in.*

A Hindu testator bequeathed his properties to his five sons who were members of a joint Hindu family, with a provision that, in the event of the death of any of them without leaving male issue at the time of his death, his share was to go over to the surviving sons. It was held that, on the true construction of will, on the death of one of the sons without leaving male issue, the corpus of the share bequeathed to him by the will passed to his surviving brothers and not to his widow. The question was as to who was entitled (1) to the accumulations which arose from that share from the date of the death of the testator to the time of the death of that son and (2) to all such interest and accumulations as, since the death of that son, arose from such one-fifth share of those accumulations, the surviving sons or the widow of the deceased son.

Held (1) that the widow of the deceased son was entitled to a widow's estate in a fifth part of the accumulations which arose from the bequeathed properties from the date of the death of the testator to the time of the death of her husband; (2) that she was absolutely entitled to all such interest and accumulations as, after the death of her husband, arose from the one-fifth part of the accumulations referred to under heading No. 1 (138). (*Lord Justice Knight Bruce.*) SREEMUTTY SOORJEEMONEY DOSSEY *v.* DENOBUNDOO-MULLICK. **(1862) 9 M. I. A. 123 = 1 Suth. 291 = 1 Sar. 837.**

———Death of one without leaving male issue—Gift over to survivor in event of—Validity of. **(1862) 9 M. I. A. 123 (135-6).**

———*Obligation that legatees should continue joint in estate—Imposing of—Validity.*

Quaere whether a Hindu bequeathing property to his sons who were then joint in estate could, if he thought fit, attempt to impose upon them the obligation to continue joint in estate (554). (*Lord Justice Turner.*) SREEMUTTY SOORJEEMONEY DOSSEE *v.* DENOBUNDOO MULLICK. **(1857) 6 M.I.A. 526 = 4 W. R 114 = 1 Suth. 291 = 1 I. J. N. S. 37 = 1 Bur. Rep. 228 = 1 Sar. 583.**

Will—Joint legaties under—Survivorship between—Right of, conferred by will—Transfer of, before right accrues.

———Validity of—T. P. Act, S. 6 (*a*) Principle of—Applicability. *See* HINDU LAW — WILL — DAUGHTERS—BEQUEST TO—SURVIVORSHIP ON, ETC. **(1929) 57 M. L. J. 794 (799-800).**

Will—Joint tenants.

BEQUEST TO PERSONS AS—ENGLISH TECHNICAL RULE OF CONVEYANCING AS TO.

———*Inapplicability of, to Hindu wills.*

Courts are not justified in importing into the construction of a Hindu will an extremely tachinical rule of English conveyancing.

HINDU LAW—(*Contd.*)

Will—Joint tenants—(*Contd.*)

BEQUEST TO PERSONS AS—ENGLISH TECHNICAL RULE OF CONVEYANCING AS TO—(*Contd.*)

Held, therefore that the decision in I. L. R. 11 M. 258 to the effect that, under a bequest to two or more persons, the donees took as joint tenants and not as tenants in common was erroneous. (*Lord Watson.*) JOGESWAR NARAIN DEO *v.* RAM CHUND DUTT. **(1896) 23 I. A. 37 = 23 C. 670 (678-9) = 7 Sar. 13 = 6 M. L. J. 75.**

SURVIVORSHIP—BENEFIT OF—BEQUEST TO SONS AS JOINT TENANTS WITH.

———Death of one of sons—Claim by his widow to his share—Maintainability. *See* HINDU LAW—WILL—SONS. **(1876) 3 I. A. 253 (255).**

SURVIVORSHIP RIGHT OF ONE OF, IN EVENT OF OTHER PREDECEASING HIM—TRANSFER OF, BEFORE RIGHT ACCRUES.

———Validity of—T. P. Act, S. 6 (*a*)—Principle of—Applicability. *See* HINDU LAW—WILL—DAUGHTERS—BEQUEST TO—SURVIVORSHIP ON, ETC. **(1929) 57 M. L. J. 794 (799-800).**

TENANTS IN COMMON—BEQUEST TO PERSONS AS—TEST.

———Daughters— Bequest to. *See* HINDU LAW—WILL—DAUGHTERS.

———Daughter's children—Bequest to. *See* HINDU LAW—WILL—DAUGHTER'S CHILDREN. **(1895) 22 I. A. 119 (127) = 18 M. 347 (357).**

———Granddaughters by predeceased son— Bequest to. *See* HINDU LAW— WILL— GRANDDAUGHTERS BY PREDECEASED SON. **(1874) 2 I. A. 7 (15).**

———Sons—Bequest to. *See* HINDU LAW—WILL—SONS—BEQUEST TO. **(1867) 12 M. I. A. 41 (59).**

TENANTS IN COMMON WITH VESTED INTERESTS, THOUGH ENJOYMENT POSTPONED TILL AFTER DEATH OF WIDOW—BEQUEST TO PERSONS AS.

———Test—Nephews—Bequest to. *See* HINDU LAW—WILL—NEPHEWS. **(1847) 4 M. I. A. 137 (173-4, 177).**

Will—Legacy payable under.

———Extent of—Test of—Legatee's character and position if and to what extent a. *See* HINDU LAW—WILL—CONSTRUCTION OF—BEQUEST UNDER WILL. **(1857) 6 M. I. A. 526 (555).**

——— Heir of testator not in possession of any assets of deceased—Suit for payment by, when he might be in possession of assets with which legacy payable—Maintainability. *See* LIMIT. ACT OF 1908, ART. 123—LEGACY—HEIR OF TESTATOR NOT IN POSSESSION OF, ETC. **(1925) 52 I. A. 214 (226-7) = 48 M. 312.**

———*Particular fund—General assets—Legacy payable out of—Test.*

The will of a Mahomedan lady, after bequeathing the whole of her estate to *M.* her son, absolutely, proceeded as follows :—

"I desire *M*, under this will, to pay every month Rs. 644-1-7 (being one-third of Rs. 1,933-5-4, my monthly pay allowed by Government for Government promissory notes which are deposited) to my dependants and personal servants as detailed below ; and they will give their receipts for the same. It will also be the duty of *M* to defray the expenses of the imambara,.....Be it known that the expenses of imambara, etc., will be continued for ever, and also the pay of *G* and *A* will be defrayed for ever, *i. e.*,

HINDU LAW—(*Contd.*)

Will—Legacy payable under—(*Contd.*)

generation after generation. The rest of the servants will be paid for life only." At the end of the will there was a detail of expenses, the first of which was:—"Expenses of imambara, assemblies, koran readers, etc., to be continued for ever under the management of *D*, Rs. 214—7—1." Then there was: "*G*, my sister, to be paid" Rs. 20 per month; then came the plaintiff in the suit out of which the appeal arose, Rs. 100, and then came the rest of the servants.

Held that the legacies were payable out of the general estate of the testatrix, and that the payment thereof was not limited to the fund of Rs. 1933, the income of the Government promissory notes (122). (*Sir Robert P. Collier.*) PRINCE SULEMAN KADR *v.* DARAB ALI KHAN. **(1881) 8 I. A. 117 = 8 C. 1 (67) = 4 Sar. 267 = R. & J's. No. 64 (Oudh).**

———*M* was a lady of great wealth. Besides her landed property, she was in the enjoyment of wasika allowance of Rs. 450 a month, a pension of Rs. 4,500 a month which was stopped in 1873, and an income of 12 lakhs of rupees which were settled by treaty, and in which she had only a life-interest. At the time of her death her moveable property was admittedly worth about 9 lakhs and odd, including Government notes worth about 6 lakhs and odd rupees. The lady died in 1881, having executed a will in 1860, clause 5 of which will provided as follows:—

Rs. 981 of the Queen's coin, out of my allowance from wasika and notes, etc., shall be paid monthly from the Government treasury to my relations, dependants and servants as detailed below.....and the remainder of my allowance from wasika and notes, etc., and the whole of my landed property, *i.e.*, houses and groves, etc., and jagir villages, shall be divided among my grandsons and granddaughters, according to their lawful shares and be paid to the agent of each of them.

The provisions of the will showed an intention on the part of the testatrix to dispose of the whole of the property over which the lady had disposing power.

It was argued that, upon the true construction of the will, the annuities provided by clause 5 were directed to be paid solely and exclusively from the pension of the testatrix and that, as she had no power of disposition over it at the time of her death, the legacies failed.

Held that the annuities and stipends were payable out of the testatrix's moveable property, which she had power to dispose of by will (89).

Probably the testatrix was under the erroneous impression that she could deal with the wasika allowance, and her pension from Government, and the income of the fund settled by treaty. But their Lordships are of opinion that the words of the gift are large enough to charge the annuities or stipends in question upon the Government notes held by the testatrix, and also upon the rest of her moveable property (89).

Semble if the words of the will were to be taken in a more restricted sense, the gift of the annuities or stipends must be regarded as a demonstrative legacy, and in that view they would be payable out of the testatrix's general estate, in the event of the failure of the particular fund, pointed out for their payment (89-90). (*Lord Macnaghten.*) NAWAB SAHIB MIRZA *v.* MUSSAMMAT UMDA KHANAM. **(1892) 19 I. A. 83 = 19 C. 444 (451-2) = 6 Sar. 180.**

Will—Legatee under.

———(*See also* UNDER EXECUTOR.)

———Administration by executor—Right to question—Minority of legatee—Distribution made during, acted upon by legatee after attaining age—Redistribution made impossible—Effect. *See* EXECUTOR—ADMINISTRATION BY. **(1915) 19 C. W. N. 787 (790-1).**

———Character and position of—Test of extent of legacy if a. *See* HINDU LAW—WILL—CONSTRUCTION OF—BEQUEST UNDER WILL. **(1857) 6 M. I. A. 526 (555).**

——— Compromise between, and widow of testator conveying share bequeathed to one legatee to another legatee—Validity—Writing—Necessity—Estate conveyed by compromise—Compromise in 1869. *See* HINDU LAW—FAMILY ARRANGEMENT—CONSTRUCTION—ESTATE TAKEN. **(1898) 25 I. A. 84 = 21 M. 299.**

———*Disclaimer of benefit by some of—Benefit of—Other legatees if entitled to.*

Where a testator divided his estate equally among his eight sons but subsequently revoked the will disinheriting two of them, but some of the legatees chose to abide by the terms of the earlier will, *held*, that the plaintiffs, who were the other legatees, were not entitled to recover their shares also. (*Mr. Ameer Ali.*) PADMAN *v.* HANWANTA. **(1915) 18 M. L. T. 54 = 19 C. W. N. 929 = 13 A. L. J. 801 = 17 Bom. L. R. 609 = 2 L. W. 645 = (1915) M.W.N. 500 = 22 C. L. J. 172 = 110 P. W. R. 1915 = 93 P. R. 1915 = 11 P. L. R. 1916 = 29 I. C. 807 = 29 M. L. J. 307 (313).**

———Signature in will of—Attestation—Consent to dispositions—Signature in token of—Distinction—Test. *See* SUCCESSION ACT OF 1865, S. 54. **(1927) 55 I. A. 1 = 2 Luck. 640.**

———*Title of, to property bequeathed when arises.*

According to the Hindu Law a devisee becomes entitled to property left by the will immediately on the death of the testator (171). (*Sir Barnes Peacock.*) MYLAPORE *v.* YEO KAY. **(1887) 14 I. A. 168 = 14 C. 801 (807) = 5 Sar. 50.**

Will—Letters of Administration.

———*See* UNDER LETTERS OF ADMINISTRATION.

Will—Limited interests—Creation of.

———*Validity.*

There is no rule that the first recipient must take all the interest possessed by the testator, for limited interests are common enough (39). (*Lord Hobhouse.*) SREEMUTTY KRISTOROMONEY DOSSEE *v.* MAHARAJA NORENDRO KRISHNA BAHADOOR. **(1888) 16 I. A. 29 = 16 C. 383 (392) = 5 Sar. 285.**

Will—Maintenance—Bequest for.

———Alienation - Bequest with power of—Estate taken under. *See* HINDU LAW — WILL—WIFE—MAINTENANCE. **(1896) 23 I. A. 37 = 23 C. 670.**

———*Humble request for subsistence—Condition of—If condition precedent—Compliance with condition—What amounts to.*

S, the then Zemindar of Kuruppam, executed a will which, after referring to a suit then pending between him and *B*, his brother, and *N*, the son of another brother deceased, and to the attempts of *B*, & *N*, to oust him (*S*), from the sole and undivided possession of the Zemindari, provided as follows:—

"Under these circumstances, should this suit be disposed of against *B*, & *N*, and should they after the final court's decision humbly apply for subsistence, they should be given either from my self-acquired lands or jerayati lands fetching cist at Rs. 500, five hundred rupees per head per year from that time. Separate lands should be purchased for the amount, which is twenty times the said amount, and given. It is arranged that cash payments should continue to be paid until they are available, and that those landed proper-

HINDU LAW—(*Contd.*)

Will—Maintenance—Bequest for—(*Contd.*)

ties should be enjoyed as long as there are male heirs and then revert to the Zemin. If it should take place during the minority of my son, the managers and then my son should give effect to this."

Apart from bequest, neither *B*, nor the respondent, his son, nor *N*, had any legal claim for maintenance against *S*, or the appellant, his son and the succeeding Zemindar. It was so decided finally in the suit referred to in the will. The will itself referred to that fact and stated that the provision for maintenance made thereby was made out of mercy.

Held, that the defeated litigants humbly applying for subsistence was a condition precedent to their obtaining the maintenance bequeathed by the will (109).

The theory of the testator is (what the courts ultimately held) that the legal pretensions of the brother and nephew were unjust, and that anything that the testator would do for them was of mere grace. The bequest is made contingent on two events, (1) the court's decision being in favour of the testator, and (2) the defeated litigant's humbly applying for subsistence. The latter of these conditions cannot be said to be exacting or arrogant, or inappropriate to the situation. At the least, the words mean that the bequest is to go only to people who acknowledge that they have nothing to appeal to but the liberality of their successful adversary (108-9).

Held further, that exhibits *C*, & *D*, were not "humble request" for subsistence within the meaning of the will. *C*, was addressed to the Collector of the District, and not to *S*, who was then dead. It reasserted the Zemindar's duty to maintain the applicant (*B*); and the abstention from further appealing was ascribed to prudential reason. Finally, the application was not for what was given in the will, but for twelve times as much. Exhibit *D*, was written neither by *B*, or *N*, but by a son of *B*. It is, moreover, in substance a protest against the inadequacy of the bequest, and a demand for something "suitable to our dignity" (111). (*Lord Robertson.*) SRI VEERABHADRA RAJU BAHADUR GARU *v.* CHIRANJIVI RAJU GARU. **(1905) 32 I. A. 105 = 28 M. 173 = 8 Sar. 805 = 15 M. L. J. 111.**

———Son and wife—Bequest to—Estate taken by them under—Alienation—Power of, given to donees—Effect. *See* HINDU LAW—WILL—WIFE—MAINTENANCE.

(1896) 23 I. A. 37 = 23 C. 670.

———Sons and daughters—Residence and maintenance of—Provision for—Effect—Wives and families of sons—Husbands and families of daughters—Widows or families of deceased persons—Right if extends to. *See* HINDU LAW—WILL—RESIDENCE—SONS, ETC.

(1923) 45 M. L. J. 780 (787-8).

Will—Manager under.

———*Commission of* 10 *per cent. from income—Provision for—Gross income or net income divisible among co-sharers.*

The will of a testator, by which he bequeathed the income of his estates to his five sons to share alike, provided. "One of my sons, whichever is most fit or whoever I may name hereafter, is to manage the whole concern, for which trouble he is to get 10 per cent. from the whole income; and he is bound to shew a faithful account current yearly to his brothers".

The question arose whether the 10 per cent. commission to which the manager was entitled was to be calculated upon the gross collections, or upon the net income of the estate, being the fund which, subject to that commission, was divisible amongst the co-sharers.

Held, that the only way to make the whole will consistent was to hold that the commission was to be calculated upon the net fund divisible amongst the five sharers (208).

HINDU LAW—(*Contd.*)

Will—Manager under—(*Contd.*)

The word "income", as used in the clause of the will bequeathing the same, obviously means the divisible fund. It was a fund to arise from the net returns from the different estates, on some of which were indigo factories, which were in the nature of trading concerns. An increased profit on one estate might be met by a loss on another; but the profits and losses were all to enter into one account, the balance of which was to constitute the divisible income or fund (207).

There are no grounds for construing the word "income" in the portion of the clause of the will relating to the manager in a sense different from that in which it is used in the prior clause; and there is nothing to support the contention that the manager was entitled to charge commission upon each sum which came to his hands from each separate estate or source of income; still less to charge it upon the nominal rents payable by the tenants or cultivators, irrespective of the costs of collection (207-8). (*Sir James W. Colvile.*) ORDE *v.* SKINNER. **(1880) 7 I. A. 196 = 3 A. 91 (103-4) = 7 C. L. R. 295 = 4 Sar. 178 = 3 Suth. 788.**

———*Repair of house bequeathed to himself and other sharers—Charges of—Manager's right to—Occupation rent of house—His liability for.*

By his will a testator bequeathed the income of all his estates to his five sons, to share alike. One of his sons, whichever was most fit or whoever the testator might name thereafter, was to manage the whole concern, rendering a faithful account yearly to his brothers. In respect of one of the properties *viz.*, a house at Delhi, the will provided: "should my personal property not pay off all my debts, they" (the sons) "may sell my house at Delhi; but should the personal property pay the debt, the house to be rented, and the rent, after paying for the yearly repairs, to be divided amongst my five sons."

Up to the time of the mutiny the house was neither sold nor let, but. by the common consent of the co-sharers, was kept up more or less for their common benefit as a mansion at Delhi. After the mutiny, during which it had been looted and greatly injured, the estate received from the Government, by way of compensation in respect of it, a sum of Rs. 18,000. That sum the sons agreed, not to lay out upon the house, but to divide as part of the profits of the estate. The house was then put into some sort of tenantable repair, and was let for several years. Then the defendant, one of the surviving sons of the testator and the manager under the terms of the will, put an end to the lease, and laid out a very considerable sum of money upon the house in repairs, alterations and furnishing; and from that time he occupied it, whenever he was at Delhi, more as his own residence than as anything common to the family at large.

In a suit instituted by the sons of one of the deceased sons of the testator against the defendant for an account of his management of the joint estate and for payment to plaintiffs of their share of the rents and profits, the question arose whether the defendant was entitled to credit for the entire amount expended by him in repairing, altering, and furnishing the house at Delhi and whether he ought to be charged with an occupation rent of the house, for the period it was occupied by him exclusively, as if it had been let to him.

Held that the defendant was entitled to credit only for the amount expended by him upon necessary repairs of the house, that he was entitled to credit only for the expenses of the establishment which would necessarily be kept up in the house to protect and preserve it whilst unlet, and that he was liable to be charged with an occupation rent of the house (209).

HINDU LAW—(*Contd.*)

Will—Manager under—(*Contd.*)

There is nothing in the will which gives the manager the power of taking this house out of the general estate, in order to occupy it as his own exclusive residence (209). (*Sir James W. Colvile.*) ORDE *v.* SKINNER.
(1880) 7 I. A. 196 = 3 A. 91 (104-6) = 7 C. L. R. 295 = 4 Sar. 178 = 3 Suth. 788.

———Suit against, by co-sharer under will for recovery of his share—Interest on amount withheld by manager—Liability of manager for. *See* INTEREST—WILL.
(1880) 7 I. A. 196 (210) = 3 A. 91 (106).

Will—Marriage—Uncertain event of—Bequest in.

———What amounts to. *See* SUCCESSION ACT OF 1865. S. 111—MARRIAGE.
(1910) 38 I. A. 7 (10-1) = 38 C. 327 (332-3).

Will—Minor—Will by.

———*Deed in form a, if really such.*

A Hindu, who was admittedly only 19 years of age and was under guardianship, executed on his death-bed a document, which purported to be a disposition of his property and at the same time conferred a power of adoption on his widow.

Held, reversing the High Court, that the document was not a will (307-8).

If the form of the document only is considered no doubt it might be regarded as a will, but, having regard to the fact that it was executed by a person who was a minor and incapable of making a will, their Lordships are unable to agree with the decision of the High Court. The so-called will is not a "legal declaration of the intentions of the testator", for it had no legal effect and was not capable of disposing of any of the estates of the deceased. So far as it purported to deal with his property it was a nullity (308). (*Lord Salvesen.*) KONDAPALLI VIJAYARATNAM *v.* MANDAPAKA SUDARSANA RAO. (1925) 52 I.A. 305 = 48 M. 614 = 23 A. L. J. 799 = 42 C. L. J. 38 = (1925) M. W. N. 522 = 27 Bom. L. R. 1082 = 22 L. W. 435 = 6 L. R. P.C. 157 = 30 C. W. N. 193 = A. I. R. (1925) P.C. 196 = 89 I. C. 733 = 49 M.L. J. 247.

———*Validity of, as such.*

M, who was admittedly only 19 years of age and was under guardianship, executed on his death-bed a document, which purported to be a disposition of his property and at the same time conferred a power of adoption on his widow. That document was registered as a will at the instance of a legatee.

Held that the document which purported to be a will of *M* had no legal effect as such (308). (*Lord Salvesen.*) KONDAPALLI VIJAYARATNAM *v.* MANDAPAKA SUDARSANA RAO. (1925) 52 I. A. 305 = 48 M. 614 = 23 A. L. J. 799 = 22 L. W. 435 = 6 L. R. P. C. 157 = 30 C. W. N. 193 = A. I. R. (1925) P.C. 196 = 89 I. C. 733 = 49 M L. J. 247.

Will—Mutual wills—Revocation of either of—Agreement restraining.

———*What amounts to—Evidence of.*

The mere simultaneity of two wills made by a husband and a wife and the similarity of their terms do not of necessity imply an agreement on the part of either not to revoke or modify them without the assent of the other. The mere fact of making wills mutually is not, at least by the law of England, evidence of such an agreement having been come to. And without such a definite agreement there can no more be a trust in equity than a right to damages at law. (*Viscount Haldane.*) HELEN ARON GRAY *v.* PERPETUAL TRUSTEE COMPANY. (1928) 28 L. W. 747 = 26 A. L. J. 1239 = 111 I. C. 283 = A. I. R. 1928 P. C. 184.

HINDU LAW—(*Contd.*)

Will—Name given by parties—Effect.

———(*See also* DEED—NAME GIVEN BY PARTIES.)

———Calling a document a will does not make it so. (*Lord Moulton.*) TIRUGNANAPAL *v.* PONNAMMAI NADATHI.
(1920) 12 L. W. 660 = 28 M. L. T. 190 = (1920) M. W. N. 559 = 25 C. W. N. 511 = 58 I. C. 228.

Will—Nephews.

———*Bequest to—Joint tenants—Tenants in common with vested interests, though enjoyment postponed till after widow—Bequest as—Test.*

F, a Hindu, executed a deed, in the nature of a testamentary instrument, the material part of which was in the following terms :—

"After my decease, of the half-share of the mercantile establishments, belonging to me of right, my widow (*M*) shall be the mistress and disposer. If, during the lifetime of my widow, my brother, Beekharry aforesaid, or my nephews, to wit, Koonj Behary, and Mudun Mohun, and Goonee Lal, and Dial Das, shall lay any claim to the half-share of the mercantile establishments, mine by right, it shall be held false ; my widow is the mistress and disposer of the half-share belonging to me, the declarant . . . . After the decease of my said widow, whatsoever may remain of the property under her control, let it be disposed of as follows, to wit, Rs. 20,000 let the wife of Beekharry, my brother, take. In the event of her not surviving till then, let the sons of my said brother take the same. Rs. 20,000 for the expenses of 'sadaburt', shall be deposited in some creditable house of business. After the above-mentioned two items, whatever of houses, orchards, go-downs, cash, woollen and other goods, may remain after the use of my said widow, let my brother, Beekharry aforesaid, and, after the death of my said brother, his sons, take one half, and let Goonee Lal and Dial Das, who are the sons of Bhowanny, my deceased brother, take the remaining half."

Beekharry died during the lifetime of the widow, *M*.

Held that, on the right construction of the will, on the death of Beekharry the property given to him by the will became divisible into two parts, one moiety to his sons, and they took the same as tenants in common-in fact, they had each of them a vested interest in one-fourth share not to come into actual enjoyment till the death of the widow (173-4, 177). Here was no contingency. The only uncertainty was the period of enjoyment (174). (*Dr. Lushington.*) REWAN PERSAD *v.* MUSSUMMAT RADHA BEEBY.
(1847) 4 M. I. A. 137 = 7 W. R. 35 P.C. = 1 Suth. 172 = 1 Sar. 327.

———*Estate of inheritance to—Bequest of.*

The will of a Hindu testator, after providing for the devolution of his estate on his children and their descendants, stated that, in the event of no children of his or their descendants being born or being alive at the time of his death, his nephew, Lalit Mohun, should, on his death, become his stalabhishikta and should, becoming owner (malik) of all his estate and properties and obtaining the management of all his affairs, residing in his (testator's) ancestral abode and keeping the estate in tact, enjoy with son, grandson, and so on in succession, the proceeds of his estate. The will further stated that, in the event of the nephew dying sonless, his wife should receive a monthly allowance as long as she lived ; and that, in the event of his leaving female offspring, that daughter or those daughters should receive expenses and marriage expenses from his estate. In the absence of the said nephew's son, grandson, great-grandson and so on, the will provided that other nephews of the testator should take the estate. *Held* that Lalit Mohun took an absolute and heritable estate under the will.

HINDU LAW—(*Contd.*)

Will—Nephews—(*Contd.*)

Their Lordships repelled the two contentions against this conclusion :—(1) that there was a general intention expressed in the will to give only a succession of life estates to Lalit Mohun and his male issue without power of alienation; and (2) that the will contained such a sufficiently expressed intention to exclude females from the succession as would cut down the words of inheritance to heirs male and give Lalit Mohun only an estate to him and his heirs male which would be void beyond the life estate according to the well-settled principle of Hindu law. (*Lord Davey.*) LALIT MOHUN SINGH ROY *v.* CHUKKUN LAL ROY.

(1897) 24 I. A. 76 (90-2) = 24 C. 834 (849-51) = 1 C. W. N. 387 = 7 Sar. 155.

———Gift to, and to their male descendants—Gift over on death of "any of them" without leaving male issue—Death of any of nephews alone or of his male descendants also contemplated—Estate conveyed by original bequest—Effect of gift over. *See* HINDU LAW—WILL—GIFT OVER—NEPHEWS AND THEIR MALE DESCENDANTS.

(1883) 10 I A. 51 (59-60) = 9 C. 952 (959-60).

———*Mother and wife to whom life estate given—Death of—Nephews in existence and to be born to hold properties in possession and enjoyment in equal shares on—Vested and transmissible estate given to nephews on death of testator though enjoyment postponed—Nephews born after tistator's death if take under bequest.*

The will of a childless Hindu, after giving his mother and his wife possession of his property, moveable and immoveable, for their lives, provided as follows :—On the death of my mother and my wife, the sons of my sisters, that is to say, those sons who are now in existence, as also those who may be born hereafter, shall, in equal shares, hold the said properties in possession and enjoyment by right of inheritance."

Held, on the construction of the will, that the nephews were intended to take a vested and transmissible interest on the death of the testator, though their possession and enjoyment were postponed (63).

Quaere whether it was the intention of the testator that on the birth of nephews after his death interests vested should be divested so as to let in such after-born nephews (63-4). (*Lord Macnaghten.*) BAGHABATI BARMANYA *v.* KALICHARAN SINGH. **(1911) 38 I. A. 54 = 38 C. 468 (473) = 15 C.W.N. 393 = 9 M.L.T 411 = 13 C.L.J. 434 = 8 A. L. J 433 = 13 Bom. L. R. 375 = (1911) 2 M. W. N. 295 = 10 I. C. 641 = 21 M. L. J. 387.**

Will—Nephew's widow—Bequest to.

———*Estate conveyed—Life estate not absolute estate.*

A Hindu testator directed that after the death of his widow and son's widow, Brij Nath Kuar, widow of the testator's nephew, Raghuraj Singh, "will remain in possession and occupation of the entire property mentioned above," and then expressed that he executed his will in favour of Brij Nath Kuar "so that on my demise and the death of my wife the estate and name of my ancestors may continue to exist as they have been in past and in present, that she in place of Raghuraj Singh shall perform my funeral ceremonies and those of my wife . . . and then she shall have the power to nominate any one whom she thinks fit as heir so that the good name of the family and its reputation may continue to exist as it has been in past and in present."

Held, that on the true construction of the will, Brij Nath Kuar took not an absolute estate but only an estate for life.

In the first place, there is no estate at all given to the lady, in terms. The only direction is that she is to remain in possession and occupation of the property, and then she is invested with the power of appointing an heir either in

HINDU LAW—(*Contd.*)

Will—Nephew's widow—Bequest to.—(*Contd.*)

her lifetime or by will. It seems to their Lordships that the word "heir" in that clause means heir to the testator. (*Lord Macnaghton.*) BRIJ LAL *v.* SURAJ BIKRAM SINGH.

(1912) 39 I. A. 150 = 34 A. 405 = 16 C. L.J. 47 = 16 C. W. N. 745 = 9 A. L. J. 802 = (1912) M. W. N. 646 = 12 M. L. T. 1 = 14 Bom. L. R. 827 = 16 I. C. 92 = 23 M. L. J. 38.

Will—Nuncupative will.

———*Death-bed declaration if confirmation of previously concluded contract or—Validity of nuncupative will-*

A nuncupative will is valid in India (149).

A declaration made by a lady on her death-bed that she had purchased a village solely on account of the plaintiff and that she should take it after her death *held* to constitute a reaffirmation and confirmation of a previously concluded contract, whether or not it constituted a nuncupative will (149). (*Lord Shaw.*) MALRAJU LAKSHMI VENKAYAMMA *v.* VENKATA NARASIMHA APPA ROW.

(1916) 43 I. A. 138 = 39 M. 509 (526) = 24 C. L. J. 279 = 20 C. W. N. 1054 = 20 M.L.T. 137 = 4 L. W. 58 = 18 Bom. L.R. 651 = 14 A L.J. 797 = (1916) 2 M.W.N. 23 = 34 I. C. 921 = 31 M. L. J. 58.

———Heir-at-law's suit for declaration of invalidity of—Maintainability. *See* SPECIFIC RELIEF ACT, S. 42—CASES UNDER—WILL. **(1878) 5 I.A. 87 (112-3) = 1 A. 687 (706-7).**

———Proof of—Concurrent Findings as to—No reversal of, merely because judges below did not see and hear witnesses. (*Mr. Pembert on Leigh.*) NAWAB AMIN-OOD-DOWLAH *v.* SYED ROSHUN ALI KHAN.

(1859) 5 M. I. A. 199 (212) = 1 Suth. 229 = 1 Sar. 419.

———*Proof of—Quantum.*

If any party is bound to strictness of pleading, it is he who sets up a nuncupative will—he who rests his title on so uncertain a foundation as the spoken words of a man, since deceased, is bound to allege, as well as to prove, with the utmost precision, the words on which he relies, with every circumstance of time and place. (*Sir James W. Colvile.*) BABOO BEER PERTAB SAHEE *v.* MAHARAJA RAJENDER PERTAB SAHEE. **(1867) 12 M.I.A. 1 (28) = 9 W.R. 15 = 2 Suth. 114 = 2 Sar. 348.**

———Both Courts found that *R* did make on his death-bed an oral disposition of this property, under which his grandson *S*, then an infant of tender years, took a vested estate subject to the life interest of *B*. It was urged by the appellants that the evidence was insufficient to establish such a gift, and they insisted on the improbability of the testator passing over his own daughter in favour of her infant son, and contended that, even if the testator intended to benefit *S*, the gift was contingent on his surviving the tenant for life, which he did not do.

Their Lordships are, however, of opinion that the finding of the Lower Courts is fully justified by the evidence, and ought to be affirmed (43). (*Sir John Bouser.*) RAM ANUGRA NARAIN SINGH *v.* CHOWDHRY HANUMAN SAHAI. **(1902) 30 I. A. 41 = 30 C. 303 = 7 C. W. N. 225 = 5 Bom. L. R. 6 = 8 Sar. 409.**

———Validity of. *See* HINDU LAW—WILL—NUNCUPATIVE WILL—DEATH-BED DECLARATION, ETC.

(1916) 43 I. A. 138 (149) = 39 M. 509 (526).

Will—Oudh Talukdar.

———Adopted son—Deen in favour of—Will or gift *inter vivos*. *See* HINDU LAW—WILL—GIFT *inter vivos* OR—OUDH TALUKDAR.

———*Grandson—Bequest of talukdari estate to—Estate taken under—Heritable estate.*

HINDU LAW—(*Contd.*)

Will—**Oudh Talukdar**—(*Contd.*)

A was a Mahomedan gentleman who married two wives and had children by both of them. His will executed in 1873 took notice that a daughter had just been born to him by his second wife, and then proceeded :—

"I do execute this will, in modification of my will dated 19-9-1870, and got the same duly registered, so that after my demise the engagement in respect of the ilaka (estate) in its entirety and without division may be made in the name of Muhammad Saeed Khan, and that Sultan, and Mussumat Moti Bibi, and Mussumat Shaban Bibi may be as equal sharers (with him) entitled to appropriate profits, and that the profits of the said estate after deducting therefrom the Government revenue, talookdari, and Ahl-i-biradri (members of brotherhood) expenses may be divided equally among the four persons. Let no one act contrary to this. Should any one do so, his act shall be null and void both before the authorities for the time being and the members of the brotherhood. If in case Muhammad Saeed Khan fail to distribute the profits, or raise a dispute over the distribution, each sharer shall be competent to have with the help of the Government set apart for him lands yielding his share of profits ; but the estate shall coutinue in the name of Muhammad Saeed Khan entire and undivided.

Held, on the construction of the will, that Sultan Khan took a heritable interest under it in his grandfather's talookdari estate (83).

In order to shew that an unlimited gift of profits is less than a gift of the corpus, some evidence should be found in the context or in the circumstances affecting the property. The context, so far from favouring the restriction of the gift, bears the other way. The testator does not give the estate to Saeed, but directs that the engagement shall be made in his name. When he disposes of the surplus, after deducting revenue and expenses, he puts all four takers on the same footing—equal shares of profits are given to each. Finally comes the provision that in case of dispute each sharer shall have land set apart for him, only the estate is to continue in the name of Saeed (clearly as lumbardar) entire and undivided. (*Lord Hobhouse.*) FAIZ MUHAMMAD KHAN *v.* MUHAMMAD SAEED KHAN.
(1898) 25 I. A. 77 = 25 C. 816 (822-3) = 2 C. W. N. 385 = 7 Sar. 320.

———Succession to estate—Wishes as to—Inquiries by Government as to—Statement by talukdar in reply to—Will if a. *See* OUDH ESTATES ACT OF 1869, S. 2—WILL UNDER.

———*Wife of—Bequest of village to, for her life as proprietor and without liability to have it assessed to rent under S.* 107-*G of Oudh Rent Act of* 1886—*Person taking under will—Right to dispute condition imposed by it.*

By a will made in 1907, an Oudh taluqdar devised to his nephew all the moveable and immoveable properties owned and possessed by him at the time of his death, or to which he had a right of ownership, or possession of any kind, or to which he might acquire a right in future. The will provided that the appellant, the widow of the testator. should get Rs. 500 per mensem from the estate in cash, besides the ' Sir ' lands in her possession ; that she should be the owner, and take possession of all his personal goods, such as clothes, ornaments, etc. Before his death, the testator gave the appellant cultivated lands in eight villages and an entire village for her maintenance and put her in possession. In 1911 he petitioned the Revenue Authorities to enter the suit village in the name of his wife as "muafi" or rent-free land and the entry was accordingly made. At the first regular settlement the village had been entered as " Sir " in the possession of the wife of the then taluqdar for her maintenance, but owing to a change in the view of the revenue authorities as to what constituted " Sir ", it had afterwards been entered as " muafi." The testator died in 1912, and his uephew, the respondent, succeeded to the estate under his will.

In a suit brought by the respondent against the appellant to have the suit village assessed to rent under the Oudh Rent Act (XXII of 1886), S. 107-*G*, *held* that the words " Sirat-i-maqbuza " in the will did apply to and cover not only sir-lands which might be accurately described as "Sir," but also the suit village, and that the testator, in confirmation of his gift of 1911 to his wife of the suit village rent-free for her life, did by his will intend to bequeath, and did bequeath, to her the suit village for her life as a proprietor, and without any liability to have it assessed to rent.

Held further that the respondent, who took his interest in the taluqa under that will, and whose only title to any part of the taluqa was under that will, could not repudiate the condition of the will that the suit village should be held by the appellant for her life rent-free. (*Sir John Edge.*) RANI BIJAI RAJ RUNWAR *v.* JAI INDAR BAHADUR SINGH. **(1922) 49 I. A. 262 (274) = 44 A. 435 (447) = 25 O. C. 260 = 31 M. L. T. 69 (P. C.) = 9 O. L. J. 385 = 4 U. P. L. R. (P C.) 76 = (1922) P. C. 318 = 36 C. L. J. 511 = 21 A. L. J. 125 = 27 C. W. N. 221 = 68 I. C. 876 = 43 M. L. J. 682.**

———Wife—Will in favour of—Deed amounting to a. *See* HINDU LAW—WILL—DEED AMOUNTING TO A—OUDH TALUKDAR'S DEED, ETC. **(1884) 11 I.A. 197 (206) = 11 C. 186 (196).**

———*Will of—" Maharani Sahiba " in—Meaning of.*

Held that, on the true construction of the will of an Oudh taluqdar, who died leaving behind him two widows, the expression " Maharani Sahiba " therein applied to his senior widow alone and was not used as a collective term comprehending both his widows, except in portions of the will in which the expression was qualified by other words which left no doubt that the testator meant to refer to both his widows (146). (*Lord Macnaghten.*) MAHARANI INDAR KUNWAR *v.* MAHARANI JAIPAL KUNWAR.
(1888) 15 I. A. 127 = 15 C. 725 (747-8) = 5 Sar. 150 = R. & J's No. 102.

Will—Parsee—Will by.

———*See* UNDER PARSEES.

Will—Parties not before Court—Declaration as to rights of.

———Propriety. *See* HINDU LAW—WILL—FUTURE RIGHTS UNDER.

Will—Perpetuity—Intention to create.

———*Limiting for indefinite period of enjoyment of profits of estate—No gift of estate—Validity of bequest in case of.*

The material part of the will of a Hindu ran as follows:—" My estate shall remain intact, and from the profits thereof there shall be performed the worship, the periodical festivals and ceremonies, of my ancestral deities, idols and chakras according to my turn, as they have hitherto been performed. As regards the enjoyment of the profits, I do hereby provide that my houses, zemindaries, talooks, and other immovable properties, and my business of various descriptions, and the capital stock thereof, shall always remain intact as at present, and my heirs, sons, sons' sons, and great grandsons, and so on in succession, shall be entitled to enjoy the profits thereof. No one shall be competent to alienate by sale or gift the immoveable property, to close any business, to misappropriate the capital stock thereof, or to divide the same. If any one succeeds in doing so, or will do so, it shall be disallowed by the authorities."

HINDU LAW--(*Contd.*)

Will—Perpetuity—Intention to create—(*Contd.*)

Held, on a construction of the whole will, that the object of the testator was to create a perpetuity as regards the estate, and to limit, for an indefinite period, the enjoyment of the profits of it, which would not be allowed by Hindu law, and that there was no gift of the estate (109).

The testator says distinctly, " my estate shall remain intact," and then he proceeds to say, as regards the enjoyment of the property, the estate remaining intact, my heirs, sons, etc., " Shall be entitled to enjoy the profits thereof". These words appear to indicate that he was not going to give away the estate, but that all he intended was to give the enjoyment of the profits to the persons mentioned in the will. The case is not one where the bequest is of rents and profits, and it appears that it was the intention of the testator to pass the estate. In such a case, no doubt, those words would be sufficient to do it. Looking at the whole of the provisions of the will, their Lordships gather from those words that it was not his intention to pass the estate. The provision afterwards against alienation further confirms this (109-110).

The subsequent clauses of the will confirm this view of his intention. Having said that the profits are to be enjoyed, he, in the subsequent paragraphs, provides for what he considers and intends to be the mode of the enjoyment ; and it is very material to notice that in the 8th paragraph he assigns a 6 annas portion for the family worship of the idols, and also for the maintenance of the family whilst they continue joint, leaving a 10 annas share which, as long as the family remained joint, would not be, as he supposed, expended at all. What he does with that is to provide that it shall simply accumulate. He does not dispose of it in any way, but as long as the family remains joint it accumulates ; again confirming the view that his intention was that the estate itself should not be disposed of (110).

Then he goes on to provide for the way in which the profits shall be enjoyed in the event of disagreement among the members of the family and their separating ; but the whole of these provisions appear to their Lordships to be consistent with and to support the view that the intention was that the estate itself should not be disposed of, and that there was no gift of the estate, but simply a gift with reference to the enjoyment of the profits (110). (*Sir Richard Couch.*) SOOKKHMOY CHUNDER DASS *v.* SRIMATI MONOHURI DASI. **(1885) 12 I. A. 103 = 11 C. 684 = 4 Sar. 639.**

Will—Person taking under—Condition imposed by will.

———Right to dispute. *See* HINDU LAW—WILL—OUDH TALUKDAR—WIFE OF. **(1922) 49 I. A. 262 (274) = 44 A. 435 (447).**

Will—Persona designata.

———Bequest to a. *See* HINDU LAW—(1) ADOPTION—ADOPTED SON—GIFT TO PERSON DESCRIBED AS AN (2) GIFT—AURASA SON AND (3) GIFT—WIFE—GIFT TO—LAWFUL WIFE.

Will—Personalty not settled with realty but to be made into a distinct fund after disposing of legacies and annuities—Persons entitled to.

———*Persons entitled to rents of real estate if.*

The will the construction of which was in question purported to give all the testator's property to four trustees, of whom J. T. was one, "their heirs, executors, administrators, representatives, and assigns," upon trust ;—

As to the personalty (except jewels, etc., in the personal use of members of his family, and such jewels, etc., as "the person or persons for the time being beneficially interested in the real estate or the income, or surplus income thereof, shall wish to retain for his and their own use "), to pay

HINDU LAW—(*Contd.*)

Will—Personalty not settled with realty but to be made into a distinct fund after disposing of legacies and annuities—Persons entitled to—(*Contd.*)

funeral expenses, debts, and ordinary legacies within a year after his death, and to convert the rest into money and securities, and invest the proceeds in the name of the trustees, with power to change the securities.

To pay annuities afterwards given (except Rs. 1,000 a-month afterwards given for worship) and legacies payable after the investment ; and : " After payment of such annuities and legacies do and shall pay the surplus unexpended of the said interest, dividends, and annual proceeds unto the person or persons who for the time being shall under the limitations and directions hereinafter contained and expressed, be entitled to the beneficial enjoyment of my real property, or of the rents and profits or surplus rents and profits thereof ; and so soon as all of the said annuities and legacies shall have fallen in and been fully paid and satisfied, do and shall stand possessed of and interested in the said trust moneys and securities, and the interest, dividends, and annual proceeds thereof, in trust absolutely for the person or persons entitled under the limitations and directions hereinafter contained and expressed, to the beneficial or absolute enjoyment of my said real property."

The question was how far the personalty not settled with the realty but to be made into a distinct fund by the will after the legacies and annuities had been disposed of, ought to be dealt with ; whether the bequest of the corpus was void, or whether the interest was to be enjoyed by the tenant for life so long as he could enjoy the realty.

Held, on the right construction of the will, that after the legacies and annuities fell in and were satisfied. the intention was to establish a trust of a fund, consisting of money and securities, the interest of which should be paid to the person or persons for the tlme being successively entitled to the rents of the real estate, the corpus remaining otherwise undisposed of (80-2). (*Mr. Justice Willes.*) JUTEENDRAMOHUN TAGORE *v.* GANENDROMOHUN TAGORE.

(1872) Sup. I.A. 47 = 9 B.L.R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.

Will—Power of appointment of heir— Gift with—Validity of power.

———*Limits of—English rules—Applicability.*

Where by the will of a Hindu the whole of his immoveable estate was given on certain trusts, which were to stand valid during the lifetime of his daughter and her children but were to become void if there were no children subject to the condition that in the former case the estate was to be divisible amongst the heirs of the children on the expiration of the trusts while in the latter it was "to be delivered to such persons as my daughter may direct it to be delivered by making her will," *held* that, in the contingency of the daughter having no children, the gift of the absolute estate was not to her but only to such persons as she should appoint by will ; that such power of appointment was not contrary to any principle of Hindu Law ; and that the appointment would be valid if made in favour of persons who were actually or in contemplation of law in existence at the death of the testator.

The result of the decisions is that according to settled law, if the testator here had himself designated the person who was to take the property in the event of his daughter dying childless, the bequest would be good. The remaining question is, whether his substituting his daughter and giving her power to designate the person by her will is contrary to any principle of Hindu law. The reasons which have led to a testamentary power becoming part of the Hindu law are applicable to this power, and it is the duty of the court

HINDU LAW—(*Contd.*)

Will—Power of appointment of heir—Gift with—Validity of power—(*Contd.*)

to hold it to be valid. The English law of powers is, however, not to be applied generally to Hindu wills (105). (*Sir Richard Couch*). BAI MOTIVAHOO *v.* BAI MAMUBAI.

(1897) 24 I. A. 93 = 21 B. 709 (721 2) = 7 Sar. 140 = 1 C. W. N. 366.

Will—Precatory trust.

———Gift in nature of. *See* HINDU LAW—WILL—TRUST—PRECATORY TRUST.

Will—Probate of.

———*See under* PROBATE.

Will—Property disposed of by.

———*Intention to make it subject of testator's further disposition—Language required for.*

The will of a testator must, *prima facie* at least, be taken to refer to that which is the subject of his disposition ; the property which he has himself to give ; and if he has evinced his intention to give that property, very strong and clear language must be required to countervail that intention and subject the property which he has once given to his further disposition (552). (*Lord Justice Turner.*) SREEMUTTY SOORJEEMONEY DOSSEE *v.* DENOBUNDOO MULLICK.

(1857) 6 M.I.A. 526 = 4 W.R. 114 = 1 Suth 291 = 1 I.J.N.S. 37 = 1 Bour. Rep. 228 = 1 Sar. 583.

———*Partition and separate possession of—Suit for, on one construction of will—Maintenance out of that property—Decree for, on right construction of will—Grant of.*

In a case in which the junior widow of an Oudh talukdar sued the senior widow for partition and for possession of her share of his estate, founding her claim upon a particular construction of his will, their Lordships, while holding that plaintiff's claim was not well-founded, granted her a decree for maintenance bequeathed to her by the will, though, in her plaint, she did not pray for the same (148). (*Lord Macnaghten.*) MAHARANI INDAR KUNWAR *v.* MAHARANI JAIPAL KUNWAR. (1888) **15 I.A. 127 = 15 C. 725 (750) = 5 Sar. 150 = R. & J.'s No. 102.**

Will—Provisions of—Reasonableness or otherwise of.

———Court's concern with—Presumption in favour of or against execution of will from. *See* HINDU LAW—WILL (1) DIPOSITIONS OF—REASONABLENESS OR OTHERWISE OF AND (2) EXECUTION OF—PRESUMPTION AS TO—PROVISIONS OF WILL.

Will—Publication of.

———*See* HINDU LAW—WILL—EXECUTION OF—PRESUMPTION AS TO—PUBLICATION OF WILL.

Will—Registration of.

———*See* HINDU LAW—WILL—EXECUTION OF—PRESUMPTION AS TO—REGISTRATION OF WILL.

Will—Religious Endowment.

———Idol—Will dedicating property to—Absolute dedication to idol subject to charge in favour of heirs — Gift to heirs subject to charge in favour of idol—Test. *See* HINDU LAW—RELIGIOUS ENDOWMENT—DEDICATION OF PROPERTY TO—ABSOLUTE DEDICATION TO IDOL, ETC.

———Mutt—Mohunt of—Will by, appointing *A* his successor with request to appoint *B* his (*A*'s) successor when he found himself incapable and if he found *B* then capable—Gift to *B* in nature of precatory trust. *See* HINDU LAW—RELIGIOUS ENDOWMENT—MUTT — MOHUNT OF — OFFICE OF—RIGHT TO—WILL CONFERRING.

(1867) 11 M. I. A. 405 (427-8).

HINDU LAW—(*Contd.*)

Will—Religious Endowment—(*Contd.*)

———Mutt with minor asthals—Office of mohunt of, held by usage by one man—Division of, between chelas—Wills of reigning mohunt effecting—What amount to—Validity of. *See* HINDU LAW—RELIGIOUS ENDOWMENT—MUTT—MOHUNT OF—OFFICE OF — MUTT WITH MINOR ASTHALS. **(1928) 56 I.A 104 (110-1) = 56 M. L. J. 636.**

———*Shebaitship of—Absolute gift of, to a person on his attaining his majority—What amounts to.*

A Hindu, after declaring by his will the properties to be *debutter* for the maintenance of the family idol, stated in it that "my present begotten son" (appellant's father) should be shebait for performance of the ceremonies. The testator then made provision for his own death during the minority of his son, in which case his widow was to be the shebait as his son's guardian, and continued that his son on attaining majority should personally conduct the work of the sheba. In the event of the death of his son during the testator's lifetime or after his death, the will provided that the testator's widow should be the shebait, and that after her his daughters by her (the respondents) should be shebaits.

Held that, on the true construction of the will, there was an absolute gift of the shebaitship to the appellant's father on his attaining his majority, and it was not cut down by anything that followed.

There were provisions in case of his death as a minor, but no cutting down of the absolute gift to him. (*Lord Macnaghten*). TRIPURARI PAL *v.* JAGAT TARINI DASI.

(1912) 40 I.A. 37 = 40 C. 274 = 13 M.L.T. 1 = (1913) M.W.N. 34 = 17 C.L.J. 159 = 17 C.W.N. 145 = 15 Bom. L.R. 72 = 17 I.C. 696.

———*Shebaitship of—Bequest of—Estate taken under—Bequest to wife, and, after her death, to son, and, after his death, to daughter and her husband and their male children successively.*

N, a Hindu governed by the Dayabhaga school of Hindu law, made a will in English, which dealt with the suit property in the following words :—

"I give and bequeath Company's Rs. 20,000 for the religious worship at my house, a lower-roomed house in which the pagoda is established, and another house situated to the north of the pagoda consisting of about five cottahs of ground two upper rooms and two lower rooms, and also a flower garden situated to the east of the pagoda and two lower brick-built sheds." And then later on in the will the testator directed as follows:—"The superintendence of the pagoda I entrust to my wife, and after her death to hold it by my son *G*, after his death by my daughter and her husband Nundo Doolal Bose, and their male children successively."

N, when he died, left (1) his widow, (2) *G*, his son, (3) *K*, his daughter married to Nundo Doolal Bose, (4) Sham Chand Bose, and two others, grandsons, sons of *K*, (5) *P*, grandson by a predeceased son of *N*, and (6) *M*, grandson, adopted son of *G*. The shebaitship was assumed in turn by (1) the widow of *N*, (2) *G*, his son, and (3) Shama Chand Bose, whose father Nundo Doolal Bose and his mother *K* had died before *G*. Shama Chand survived his two brothers, and died. On his death his son and his nephew took possession of the trust estate. Thereupon the plaintiff a great-grandson and the eldest heir in the male line of *N*, brought the suit out of which the appeal arose claiming to be entitled as the heir of the founder of the endowment to the shebaitship thereof. His case was that the line of shebaits appointed by the testator failed on the death of Sham Chand Bose. The contention of the defendants, the son of Shama Chand and his nephew, was that the intention of the testator was to confer a perpetual she-

HINDU LAW—(*Contd.*)

Will—Religious Endowment—(*Contd.*)

baitship upon his daughter or her husband, or their male children, and that therefore they were entitled to the shebaitship and not the plaintiff.

The High Court held that, on the true construction of the will, the daughter, her husband and their male children were intended to take the shebaitship one after another for their respective lives, and in that sons "successively"; and that the words "male children" must be read as words of purchase and not of limitation.

Held, affirming the High Court, that it gave a perfectly correct interpretation of the will, and that no other interpretation was possible. (*Lord Macnaghten.*) GOPAL CHUNDER BOSE *v.* KARTICK CHUNDER DEY.

(1902) 29 C. 716.

———Will dedicating property to—Charge on property for worship of Thakoor—Surplus income left after performance of worship—Widows of testator entitled to widow's estate in. *See* HINDU LAW—RELIGIOUS ENDOWMENT—DEDICATION OF PROPERTY TO — ABSOLUTE DEDICATION—CHARGE ON PROPERTY—SURPLUS LEFT IN CASE OF.

(1872) 19 I.A. 108 (127-8)=19 C. 513 (531-2).

Will—Residence.

———*Condition of—Boitakanah house of testator—Residence in — Condition as to — Compliance with—What amounts to.*

The will of a Hindu testator contained a clause for the cesser and determination of the life interest of the respondent in case he ceased to use as his residence the testator's Boitakanah house.

The question for decision was whether the respondent had done acts which, having regard to the nature of a Boitakanah house and to HIndu usages, would amount to the use of it as a residence.

It appeared that the respondent, who adhered more strictly than the testator to Hindu usages, had continued to take his meals and sleep in the family house, where the other members of his family lived; but that after the respondent entered upon possession the Boitakanah house had been constantly kept open, new furniture had been added to the old, the library taken care of, and not only durwans but menial servants had lived in the house. The respondent himself frequently, if not daily, went to the house, and usually spent several hours there. It appeared, also, that he transacted all affairs of business there, and on some occasions received visitors in rooms properly furnished for their reception.

Held that those acts did, having regard to the nature of a Boitakanah house and to Hindu usages, amount to the use of it as a residence (399-40).

With regard to entertainments given by the respondents, *held* that he was not obliged to give them in the Boitakanah house, although, in case he thought fit to do so, he would best comply with the testator's will by using the Boitakanah house on some, at least, of those occasions (400). (*Sir Montague E. Smith*). GANENDRO MOHUN TAGORE *v.* RAJAH JUTTENDRO MOHUN TAGORE.

(1874) 1 I.A. 387=14 B.L.R. 60=22 W.R. 377=3 Sar. 395=3 Suth. 47.

———*Condition of—Boitakanah house of testator—Residence in—Condition as to—Effect of—Compliance with—Use as dwelling-house if necessary for.*

The questions in the appeal arose upon a clause in the will of a Hindu, making provision for the cesser of the estate of the persons entitled under the limitations of the will in the event of non-residence in his Boitskanah house

The clause in question was as follows:—"Provided always, and I hereby declare that if any devisee or tenant

HINDU LAW—(*Contd.*)

Will—Residence—(*Contd.*)

for life, or entail, or otherwise, or any person entitled to take as heir by descent, or adoption, or otherwise, or in any manner under the limitations hereinbefore contained, shall permit or suffer the said property so devised and limited, as aforesaid, or any portion thereof, to be sold for arrears of Government revenue, or shall, after attaining his majority, cease to keep up in a due state of repair, and to use as his residence in Calcutta, the said Boitkanah houses and premises where I now reside, and make use and enjoy my library, horses, carriages, farm-yard, furniture in the said house, and jewels, gold and silver plates, etc., in my use and possession, then and immediately thereupon the devise and limitations in this my will contained and declared shall wholly cease and determine as to him, and the person next in succession to him under the limitations aforesaid shall at once succeed as if the said person so permitting or suffering the said property, or any portion thereof, to be sold for arrears of Government revenue, or so ceasing to keep up in a state of repairs, and to use as his residence my said Boitakanah house had then died."

The opinion of the High Court on the nature of the residence imposed by the condition was thus expressed:—

"We think it is to be gathered from the will that the testator never intended the Boitakanah to be occupied as a dwelling-honse in the ordinary sense of a Hindu dwelling-house. We are of opinion that the residence intended by him was an occupation for the purposes of transacting business and of receiving male friends and visitors, and if the occupant of the house for the time being so desired (but not otherwise), for entertaining male friends with hospitality; and we are further of opinion that such an occupation does not require that either the occupant or the ladies of his family should sleep in the house."

Held that, in the main, the High Court had properly construed the clause (396 7). (*Sir Montague E. Smith*). GANENDRO MOHUN TAGORE *v.* RAJAH JUTTENDRO MOHUN TAGORE. **(1874) 1 I.A. 387=14 B.L.R. 60=22 W.R. 377=3 Sar. 395=3 Suth. 47.**

———*Condition of—Bequest subject to, generally—Validity of condition—Fulfilment of condition—What amounts to.*

Several English decisions were cited as to the meaning of the word "residence." The principle, if any can be said to result from them, seems to be that, where in a condition of residence, no manner or period of residence is prescribed, but residence simply and without definition, exclusive residence is not supposed to be meant; and that in such cases the occasional use of the house, and keeping an establishment in it, with the intention of again using it as residence, is a sufficient compliance with the condition. In one case Lord Eldon seemed to think a condition imposing residence generally, was so vague that it was doubtful whether it could be enforced; and he held that, at all events, slight and rare instances of actual residence by the donee were, when the house was kept open by servants living in it, sufficient to satisfy so general a dlrection. In a case. Rex *v.* Sargent, where residence was a necessary qualification for the office of bailiff of a borough, Lord Kenyon said :—"It never can be contended that in order to constitute a residence in any place, it is necessary to reside any given number of days, or even any great part of the year. It happens perpetually that persons have different places of abode, in some of which they reside more or less as suits their convenience" (397). (*Sir Montague E. Smith.*) GANENDRO MOHUN TAGORE *v.* JUTTENDRO MOHUN TAGORE. **(1874) 1 I.A. 387=14 B.L.R. 60=22 W.R. 377=3 Sar. 395=3 Suth. 47.**

HINDU LAW—(*Contd.*)

Will—Residence—(*Contd.*)

———*Condition of—Compliance with—Reasonable time to be allowed for—Breach of condition—Delay in commencing to reside when not a.*

In a case in which the will of a Hindu testator contained a clause for the cesser and determination of the life interest of the respondent in case he ceased to use as his residence the testator's Boitakanah house, *held* that a reasonable time must be allowed to the donee after the testator's death for the commencement of the residence, before it could be imputed to him that he had ceased to reside (397).

In this case the testator died on 28-8-1868, and the respondent did not use the Boitakanah in any sense as a residence, until some large repairs were completed in October, 1872. During that interval of time he visited the house, and transacted the business there as one of the trustees, and durwans paid by the trustees were kept in it. The delay in his using the house as a residence was found to be due to (1) the house being in need of repairs, (2) the pendency of a litigation in which the title of the respondent to, and his right to possession of, the house were questioned, and (3) the respondent's inability to get possession of the entire house from the trustees.

Held, affirming the High Court, that there had been no unreasonable delay on the part of the respondent in commencing to reside, and that no breach of the condition had then occurred (397-9). (*Sir Montague E. Smith.*) GANENDRO MOHUN TAGORE *v.* RAJAH JUTTENDRO MOHUN TAGORE. (1874) **1 I. A. 387 = 14 B. L. R. 60 = 22 W. R. 377 = 3 Sar. 395 = 3 Suth. 47.**

———*Sons and daughters—Residence and maintenance of—Provision for—Benefit of—Persons entitled to—Wives and families of sons and husbands and families of daughters if—Nature of their right—Widows or families of deceased persons—Right of—Succ. Act, Ss. 99-101—Effect.*

By his will a Parsi testator, after declaring certain charitable trusts of a house in Bombay, disposed by cl. 9 of other houses in Bombay described as the Mahalaxmi Bungalow and 56, Honjee Street, along with certain furniture and other effects:—

"Upon trust to permit my daughter during her life and until her death or marriage whichever event shall first happen, and also all my sons and also their respective families during as well as after the respective lifetime of such respective sons, including the widows of my male lineal descendants, to occupy the said premises and make use of the said furniture and effects free of rent during their respective lifetime and until the youngest of my grandsons living at the death of the last survivor of my sons shall attain the age of 18 years and from and after such youngest of my grandsons as aforesaid shall attain the age of 18 years to sell, realise and convert the same into money and divide the sale proceeds after deducting all expenses among such persons as shall be entitled to the proceeds of my other Bombay properties under the directions in that behalf contained in cls. 11, 12 and 13 hereof, provided always and I hereby direct that the right of residence hereby granted to every member of the family as aforesaid is strictly personal and will entitle such member personally to right of residence and use of the furniture and effects but that such rights shall not entitle any member entitled thereto to transfer or alienate the same."

There then followed provisos that on any attempted alienation or transfer the right should cease, and also provisions directing that in case of any son marrying a daughter or son's daughter of a certain person or ceasing to profess the Zoroastrian faith or marrying a person who did not profess that faith or was not born of Parsi parents professing that faith, "then and in any such case the trust in favour of such person and his family for the right of residence and use of furniture herein certained shall forthwith cease and determine and become void."

By cl. 10 the immoveable properties in Bombay, including the bungalow and the Homjee street houses, subject to the trusts affecting them already mentioned, were devised on trust to expend the net income for the maintenance and upkeep of all such of the testator's children and their respective families entititled to the right of residence under cl. 9 as should reside in the premises there reserved for their residence, until the expiration of ten years from his death or until the death of his last surviving son, whichever should first happen.

The question for decision was whether the rights of residence and maintenance under the said clauses of the will extended to any one excepting the sons and daughter of the testator.

Held that, on the true construction of the words, the little conferred on the sons of the testator to occupy extended to occupation along with their wives and families.

Semble the daughter of the testator could not properly claim a right to bring in husband and family if she had them.

Held further that the same principles applied as to the persons entitled to the maintenance allowance provided by cl. 10.

Quære as to the title to reside of the widows or families of deceased persons. Ss. 99, 100 and 101 of the Succession Act may give rise to difficulty in the claim of a widow and family who have survived a son. It is not clear that the whole of the testator's interest in the thing bequeathed was comprised in the bequest in such a case in their favour. (*Viscount Haldane.*) PUTLIBAI *v.* SORABJI NAOROJI GAMADIA. (1923) **P.C. 122 = (1923) M. W. N. 628 = 25 Bom. L. R. 1099 = 33 M. L. T. 401 (P. C.) = 28 C. W. N. 737 = 76 I. C. 996 = 45 M. L J. 780 (787-8).**

———Wife—Residence in house for life—Exclusive right of—Bequest of—What amounts to. *See* HINDU LAW—WILL—WIFE—RESIDENCE IN HOUSE FOR LIFE.
(1926) **53 I. A. 201 = 53 C. 948.**

Will—Residuary bequest.

———*Bequest amounting to a—"If anything remains."*

A testator made specific gifts of portions of his real estate and then a complete residuary devise of the balance in favour of one of his sons. He also gave certain legacies and allowances to named legatees; he provided for the disposition of moveable property, such as houses, carriages, and furniture, and he then continued in cl. 12 in these words. "Out of the Government promissory notes and cash left by me, the cost of taking out probate shall be paid" and certain sum of rupees "shall be spent for the performance of Sradh and the following legacies shall be paid." After specifying such legacies, the clause continued in these words: "If anything remains after meeting the above-mentioned expenses and paying the legacies and debts (if any), the same shall be equally divided between my said two sons, *S*, & *R*." Finally in clause 14, the testator provided in special terms for the payment of the costs of probate and his debts in this way, that if the cash and promissory notes were exhausted before his death, or if he left behind him debts which were in excess of the cash and promissory notes, the costs of taking out the probate, the expenses of the sradh and the legacies were to be paid in equal shares by his two sons who were named as the ultimate legatees of the residue of the cash and promissory notes and were to be a charge on the properties which had

HINDU LAW—(*Contd.*)

Will—Residuary bequest—(*Contd.*)

been specifically given to them. He limited a debt contracted for the acquisition of property in such a manner as to charge it only on that property, but if it was impossible to recover it, or if, by any other means, a debt remained unpaid, he expressly provided that that debt was to be paid by the two sons, *S.* & *R.*

Held, that the final words "if anything remains" in cl. 12 of the will were, in truth, in the circumstances of the will, a valid and effectual residuary gift (1031).

"If anything remains after meeting the expenses and paying the legacies and debts (if any)" means that if any balance remains after the legacies and the debts have been paid out of the moneys and out of the properties, which, in due course of administration, are liable for their payment, that balance is to go to the two sons, *S*, & *R*, (1031). (*Lord Buckmaster.*) GNANENDRA NATH DAS *v.* SURENDRA NATH DAS. **(1920) 24 C. W. N. 1026 = (1921) M. W. N. 550 = 61 I.C. 323 = 28 M. L. T. 453.**

———*Daughter for life, and, after her death, to brothers and their heirs male respectively in equal shares, and on failure thereof to the sons of the daughter—Bequest to—Construction and effect.*

A Hindu testator disposed of the residue of his estate in the following terms:—

"I give devise and bequeath the residue of my real and personal estate both joint and self-acquired unto my executors, in trust to pay the rents issues profits and income thereof unto my said daughter during her lifetime, and after her death in trust to pay, assign and convey the residue of my estate real and personal to my half-brothers Nrependro and Norendro in equal moieties and to the heir or heirs male of their or either of their body, in failure of which in trust to give the same to the son or sons of my said daughter."

The will was dated the 25th of March, 1851. The testator died in 1852. His daughter, who was his only child, was the plaintiff and appellant in the suit out of which the appeal arose. She had 6 sons, all born after the testator's death. His brothers both surrived him. One of them, Nrependro, had died, leaving only two sons, both born after the testator's death. The other, Norendro, was living. He had three sons born in the lifetime of the testator, of whom one was dead and two were living, and four other sons born after the testator's death. The defendants and respondents in the suit were Norendro, his six surviving sons, and the representative of the one who had died; the two sons of Nrependro, who were also his executors; and the six sons of the plaintiff.

The plaintiff contended that the residuary gift was invalid, except so far as it conferred life interests on herself and her uncles, and that on the death of Nrependro the moiety of the estate designed for him or his heirs male became vested in her as her father's sole heir. The adverse contention was that the gift was made absolute to each of the testator's brothers, defeasible only in events which had not happened, *viz.*, in each case, the death of the brother without leaving male heirs of his body them living.

The High Court adopted the latter view of the case, and dismissed the suit. They considered that the true intention of the testator was, "that in the event of his two half-brothers having at the time of their death male descendants, they, if alive, or their families as representing them if dead, should take the fee of his property; but that in the event of their having no such descendants at the time of their death, the estate should be divested and go over to the son or sons of his daughter."

Held, varying the decree below, that, according to the true construction of the will, the gift of the residue, so far as it purported to confer an estate of inheritance on the testator's half-brothers and the heirs male of their bodies, was contrary to law and was void; that in the events which had happened the gift to the sons of the plaintiff, the testator's daughter, was incapable of taking effect; that each of the testator's half-brothers took an estate for his life in one moiety of the residue in remainder expectant on the death of the plaintiff; and that, on the death of Nrependro, the inheritance of his moiety devolved on the plaintiff as her father's heir in remainder immediately expectant on her own life estate under the will, and she therefore became entitled in possession to one moiety of the residue (42-3). (*Lord Hobhouse.*) SREEMUTTY KRISTOROMONEY DOSSEE *v.* MAHARAJAH NORENDRO KRISHNA BAHADOOR. **(1888) 16 I. A. 29 = 16 C. 383 (395-6) = 5 Sar. 285.**

———*Operation of—Failure of portion of gift—Falling of that portion into residue for charitable purposes.*

A will stated (among other things) the testator's intention to creat a mundir and suitable buildings for the residence of members of his family and for the reception of poor and homeless persons at Brindabun. By clause 17 of the will, the testator directed that out of the income of his estate "a sum of Rs. 650 be remitted monthly and every month by my executors or trustees to the managers for the time being of the mundir of Brindabun to be erected as aforesaid, out of which sum Rs. 100 shall be paid to" certain persons in succession; and then the clause continued, "and the residue or surplus shall be appropriated towards the expenses of performing pujas at or otherwise maintaining the said mundir and of the daily feeding of the poor there". Clause 23 directed that "after paying the monthly sums and the monthly expenses hereinbefore directed to be paid or incurred and also after providing for the payment of taxes, Government revenue and assessments and repairs of my immoveable property, the surplus of the rents, income and profits of property and estate shall be monthly and every month remitted to Brindabun and applied in manner respecting the said monthly sum of Rs. 650, or so much thereof as is not required for the support of my family there, towards the performance of pujas and other religious ceremonies, and for the daily feeding of the poor at my mundir there".

Held, on a construction of the will, that, assuming that the trusts of the sum of Rs. 100 per month, which had failed, did not fall into that particular residue of which the trusts were declared by cl. 17 of the will, the Rs. 100 a month fell into the general residue which was disposed of by cl. 23.

Cl. 23 is a general residuary clause, sweeping up all that is not disposed of by the previous clauses; and, accordingly, by virtue of the ordinary rule, the monthly sum of Rs. 100 fell into the residue of which trusts are declared by cl. 23.

Held further that clause 23 in substance directed that the residue should be applied for the religious and charitable purposes referred to in cl. 17, being the purposes applicable under that clause to the residue of the Rs. 650 per month after deducting the Rs. 100 per month, and that the result was that no sum was left undisposed of by the will. (*Lord Chancellor.*) PURSUTTAMDAS AGARWALLA *v.* GOBIND. P. AGARWALLA. **(1926) 24 A. L. J. 655 = A. I. R. (1926) P.C. 52 = 28 Bom. L. R. 917 = 43 C. L. J. 465 = 51 M. L. J. 6.**

Will—Residue of property bequeathed by—Life interest in—Attachment and sale of.

———Validity—Residue unascertained and not easily ascertainable. *See* C. P. C. OF 1908, S 60 (1) (M)—WILL. **(1856) 6 M. I. A. 510 (522-3).**

HINDU LAW—(*Contd.*)

Will—Revocation of.

DEPENDENT RELATIVE REVOCATION—DOCTRINE OF.

———Applicability of. *See* DEED—REVOCATION OF—ALTERNATIVE INCONSISTENT, ETC.

(1915) 43 I. A. 20 (25) = 39 M. 107.

———*Applicability of—Later wills containing no revoking clause and really effecting nothing.*

Where the latter wills contain no revoking clause and they effect nothing, so that there is no inconsistency between them and the earlier will, the latter must stand. It would not be necessary to invoke the doctrine of dependent, relative revocation to such a case (110). (*Lord Phillimore.*) RAM CHARAN RAMANUJ DAS *v.* GOBIND RAMANUJ DAS.

(1928) 56 I. A. 104 = 49 C. L. J. 321 = 29 L. W. 428 = 27 A. L. J. 414 = 114 I. C. 571 = 31 Bom. L. R. 715 = 33 C. W. N. 346 = A. I. R. 1929 P.C. 65 = 56 M. L. J. 636.

———*Basis of—Illustrations of.*

The doctrine of dependent relative revocation is really a question of intention. If by his will a testator gives property to *A*, and by a codicil gives the same property to *B*, and if in the event it turns out that *B* cannot take, it has to be ascertained from the language of the testator as found in his testamentary documents whether he intended that the gift to *A* should be displaced altogether or that it should be displaced only in favour of *B* and (if *B* cannot take) the gift to *A* should remain. If, as in *Tupper* v. *Tupper*, the testator's language is that (1) he revokes the gift to *A* and (2) in lieu thereof he gives to *B*, it may well be that there is a revocation for all purposes. If, as in *Quinn* v. *Butler*, the donee of a power to charge does by his will charge with £4,000 to be paid to *A*, and £3,000 to be paid to *B*, *C*, and *D* equally, and then by codicil revokes the aggregate charge of £7,000 made by his will and charges with £7,000 for *A*, the charge in the will is no doubt gone for all purposes. If, as in *Baker* v. *Story*, *A* takes absolutely under the will, but under the codicil takes for life only with a gift over which fails, and there is an ultimate effectual residuary gift, it is difficult to find any room for a contention that the gift by will is not gone altogether. *Alexander* v. *Kirkpatrick* lays down the principle that an alternative inconsistent disposition which is not valid or effectual in itself does not revoke an earlier disposition of the same property (24 5). (*Lord Wrenbury.*) VENKATANARAYANA PILLAI *v.* SUBBAMMAL.

(1915) 43 I. A. 20 = 39 M. 107 (113-4) = 18 Rom. L. R. 372 = 20 C.. W. N. 234 = 3 L W. 177 = (1916) 1 M. W. N. 97 = 19 M. L. T. 147 = 12 A. L. J. 178 = 32 I. C. 373 = 23 C. L. J. 366 = 29 M. L. J. 851.

———*Dispositions of property inconsistent—Wills, earlier and later, making—Revocation of former by latter—Inference of—Propriety—Later will invalid and inoperative.*

A Hindu, who was the sole surviving member of a Hindu family, made a will disposing of ancestral family property in a certain way. He then adopted a boy, and, though, by reason of such adoption, he became incompetent to dispose of the ancestral property by a will, he executed another will by which he disposed of the property disposed of by the earlier will in an entirely different way from that in which he had disposed of it by the earlier will. It was contended that, though the testator could not give his properties as he purported to do by his second will, yet from the fact that he purported so to give them there ought to be inferred an intention that, if he could not give them as he purported to do by his second will, his disposition by the earlier will should nevertheless be revoked.

Held, that the dispositions of property by the earlier will were not revoked by the dispositions attempted to be made by the later will (25).

HINDU LAW—(*Contd.*)

Will—Revocation of—(*Contd.*)

DEPENDENT RELATIVE REVOCATION—DOCTRINE OF—(*Contd.*)

Whether the contention is well founded turns upon the application of the doctrine of defendant relative revocation. This is really a question of intention. Alexander *v.* Kirkpatrick, although a case upon two dispositions of which the former contained a power of revocation, and not upon two wills, contains a principle applicable to the present case, namely, that an alternative inconsistent disposition which is not valid or effectual in itself does not revoke an earlier disposition of the same property (24-5). (*Lord Wrenbury.*) VENKATANARAYANA PILLAI *v.* SUBBAMMAL.

(1915) 43 I. A. 20 = 39 M. 107 = 18 Bom. L. R. 372 = 20 C. W. N. 234 = (1916) 1 M. W. N. 97 = 3 L. W. 177 = 19 M. L. T. 147 = 12 A. L. J. 178 = 32 I. C. 373 = 23 C. L J. 366 = 29 M. L. J. 851.

DESTRUCTION OF WILL—AUTHORITY OF TESTATOR FOR.

———Oral authority—Validity of. *See* HINDU LAW—WILL—REVOCATION OF—DESTRUCTION OF WILL—AUTHORITY OF TESTATOR FOR—SUFFICIENCY, ETC.

(1877) 4 I. A 228 (245) = 3 C. 626 (643).

———*Qualified authority—Sufficiency of—Destruction pursuant to—When operative as revocation.*

The authority to destroy his will given by a testator need not be absolute and may be qualified. He may, for instance, give authority to a person to destroy his will, if on examination he should find that it contained a certain disposition. In that case the destruction of the will would be justified if it does contain the disposition specified (245). (*Sir James W. Colvile.*) MAHARAJAH PERTAB NARAIN SINGH *v.* MAHARANEE SUBHAO KOOER. **(1877) 4 I. A 228 = 3 C. 626 (643) = 1 C. L. R. 113 = 3 Sar. 740 = 3 Suth. 458 = R & J's No. 46.**

———*Sufficiency as revocation of—Instrument not in fact destroyed.*

If definitive authority to destroy the will is given by the testator, that would be sufficient in law to constitute a revocation, although the instrument is not in fact destroyed. The authority to destroy may be given by words, or by a writing (245). (*Sir James W. Colvile.*) MAHARAJAH PERTAB NARAIN SINGH *v.* MAHARANEE SUBHAO KOOER. **(1877) 4 I. A 228 = 3 C. 626 (643) = 1 C. L. R. 113 = 3 Sar. 740 = 3 Suth. 458 = R. & J's. No. 46.**

INTENTION TO REVOKE SUFFICIENT.

———*Destruction actual or revocation formal unnecessary.*

V, a Hindu, made a will in 1866, when he was ill; it was put into an envelope and was deposited and registered in the office of the district registrar, where it remained until he died in 1869. *V*, however, recovered from his illness, and in 1867 he executed a power of attorney appointing a vakil to obtain the will out of the registry and to restore it to him. Owing to some blunder this was not done. *V's* intention to get his will back into his own possession, and not to leave it as it was, could not be doubted. There was some evidence to shew that he believed he had destroyed it. He certainly cancelled some grants of land recited in it. Persons existed whose interest it was to claim under it, but no one ever did so, although it was difficult to believe that none of them knew of it. For nearly 30 years no one ever thought of asserting any claim under it.

Held, on these facts, that the District Judge was right in coming to the conclusion that the will had been revoked.

The revocation of a Hindu will in the Mofussil does not depend on any English ordinance or code; and actual destruction or a formal revocation in writing is not essential to

HINDU LAW—(*Contd.*)

Will—Revocation of—(*Contd.*)

INTENTION TO REVOKE SUFFICIENT—(*Contd.*)

constitute revocation. (*Lord Lindley.*) RAJA CHELIKANI VENKAYAMMA GARU *v.* RAJA CHELIKANI VENKATARAMANAYYAMMA. **(1902) 29 I. A. 156 (163) = 7 C. W. N. 1 = 25 M. 678 (685) = 4 Bom. L. R. 657 = 8 Sar. 286 = 12 M. L. J. 299.**

MUTUAL WILLS—REVOCATION OF EITHER OF—AGREEMENT RESTRAINING.

———What amounts to—Evidence of. *See* HINDU LAW—WILL—MUTUAL WILLS. **(1928) 28 L. W. 747.**

PAROL REVOCATION.

———*Oudh talookdar—Will of—Parol revocation of—Declaration by him to officer of district having custody of will of his desire and intention that a person should succeed him in supersession of the will if sufficient.*

A declaration by an Oudh talookdar to the principal officer of the district in whose custody his will was, of his desire and intention that the appellant should succeed him by virtue of the newly-passed statute (Oudh Estates Act I of 1869), and in surpersession of the will, would in law be a sufficient parol revocation (245). (*Sir James W. Colvile.*) MAHARAJAH PURTAB NARAIN SINGH *v.* MARANEE SUBHAO KOOER. **(1877) 4 I. A. 228 = 3 C. 626 (643-4) = 1 C. L. R. 113 = 3 Sar. 740 = 3 Suth. 458 = R. & J's. No. 46.**

———*Validity—Proof.*

It cannot be doubted that the will of a Hindu may be revoked by parol (243).

Their Lordships are very sensible of the danger of acting upon such evidence as is ordinarily produced in the Courts in India in order to establish such a revocation, and they desire to say nothing which may induce those courts to apply the law in such cases otherwise than with extreme caution (245). (*Sir James W. Colvile.*) MAHARAJAH PERTAB NARAIN SINGH *v.* MAHARANEE SUBHAO KOOER. **(1877) 4 I. A. 228 = 3 C. 626 (643) = 1 C. L. R. 113 = 3 Sar. 740 = 3 Suth. 458 = R & J's. No. 46.**

PRESUMPTION OF—PROOF OF.

———*Will traced to possession of deceased and not forthcoming at his death—Presumption of revocation of English law in case of—Inapplicability in India.*

In Welck *v.* Phillips (1 Moo. P. C. 299.) Baron Parke expressed the view that when a will is traced to the possession of the deceased and is not forthcoming at his death the presumption is that he has destroyed it. In view of the habits and conditions of the people of India this rule of law, if it can be so-called, must be applied with considerable caution.

In the present case the deceased was a very old man and, towards the end of his life, almost imbecile. There is nothing definite to show that he had any motive to destroy the will or was mentally competent to do so. On the other hand the circumstances favour the view that the will was either mislaid or stolen. The learned Judges of the Court below were therefore perfectly competent to arrive at the finding that the will had not been revoked. (*Mr. Ameer Ali.*) PADMAN *v.* HANWANTA. **(1915) 18 M. L. T. 54 = 19 C. W. N. 929 = 13 A. L. J. 801 = 17 Bom. L. R. 609 = 2 L. W. 645 = (1915) M. W. N. 500 = 22 C. L. J. 172 = 110 P. W. R. 1915 = 93 P. R. 1915 = 11 P. L. R. 1916 = 29 I. C. 807 = 29 M. L. J. 307 (312).**

REPUGNANCY WITH LATER WILL—REVOCATION ON GROUND OF.

———*Construction of two wills.*

F, the talookdar of *J*, held a sanad for the estate of *J* and his name was entered in list No. 2, prepared according to Act I of 1869. On the 6th of April, 1869, he made a

HINDU LAW—(*Contd.*)

Will—Revocation of—(*Contd.*)

REPUGNANCY WITH LATER WILL—REVOCATION ON GROUND OF—(*Contd.*)

statement in reply to inquiries by the Government under circular orders regarding the succession of talookdars. The statement was as follows :—"I am talukdar of *J*. Whereas the Government has been pleaded to confer upon me the proprietary rights in this estate, to be enjoyed from generation to generation, I do hereby request that after my death my estate may be maintained intact and without partition according to Raj Gaddi custom, and that, owing to my not having a male issue, *Z*, my daughter, shall be considered entitled to succession and inheritance. But as I have taken *T* from my brother *M*, and have commenced to bring him up and educate him as my son if he finishes his education during my lifetime and is marred to *Z*, he shall after me succeed to my estate as my adopted son".

The above document was held to be a will within the definition in S. 2 of Act I of 1869, and the question was whether it was revoked by a formal will of *F*, the talookdar, dated 19-8-1879. In that will *F* said that no document of any sort purporting to be a will or petition, the context whereof was wholly or partly repugnant to it, should be deemed to be admissible.

Held, that the will of April, 1860 was not repugnant with, and that it was not therefore revoked by, the will of 1879 (86).

In the will of 1860 the Rajah (*F*) says that, having adopted *T* as his son, he has appointed him his successor, and he is to be the owner of his entire property, estate and raj, as a rajah and talookdar, and as he is married to his daughter the estate shall successively "descend to devolve" on the descendants of the daughter (86-7). (*Sir Richard Couch.*) HAIDAR ALI *v.* TASSADUK RASUL KHAN. **(1890) 17 I. A. 82 = 18 C. 1 (7) = 5 Sar. 259 = R. & J's. No. 119.**

Will—Separable provisions of—Invalidity of one or some of—Effect of, on validity of other or others.

———*Two provisions one of which invalid—Case of.*

Where a will bequeathing property to the sons of the testator contained a provision that, on the death of a son, surviving sons should take his share proportionately to their own, and another provision that, if any of the sons taking should die leaving sons, such sons should receive their proportionate parts of the deceased son's share, *held* that the first provision was good and was not rendered invalid by the second provision which was invalid as a gift to an indefinite class. (*Sir Barnes Peacock.*) RAI KISHORI DASI *v.* DEBENDRANATH SIRCAR. **(1887) 15 I.A. 37 = 15 C. 409 = 5 Sar. 100.**

———*Valid disposition—Restriction invalid on—Case of.*

Where the will of a Hindu contains restrictions contrary to law and valid dispositions, and the two are separable, the valid dispositions will be held good. (*Sir Barnes Peacock.*) RAI KISHORE DASI *v.* DEBENDRANATH SIRCAR. **(1887) 15 I. A. 37 = 15 C. 409 = 5 Sar. 100.**

Will—Setting aside of—Suit for—Declaration that it does not affect plaintiff's rights—Grant of.

———*Power of Court—Consent of parties—Effect.*

The plaintiff, the adopted son of *C*, filed a suit against his father and against one *B*, and some other persons who had obtained property under deeds executed by his father, for cancellation of those deeds, for cancellation of the adoption of *B* by *C*, for cancellation of a will executed by *C*, dividing his real and personal estate between the plaintiff and *B*. An appeal from the decision in that suit came before the High Court after the death of *C*, and the High Court with the consent of the parties, made a simple declaration that

HINDU LAW—(*Contd.*)

Will—Setting aside of—Suit for—Declaration that it does not affect plaintiff's rights—Grant of—(*Contd.*)

the deeds of sale and gift sought to be set aside could not affect the ancestral property of *C*, and that the plaintiff was at liberty in any fresh suit to recover possession of all such ancestral property.

Held, that the Court had the power to substitute, with the consent of the parties, such a declaration for the relief specifically asked for, *viz.*, the cancellation of the will (218). (*Sir Robert P. Collier.*) SOORJOMONEE DAYEE *v.* SUDDANUND MOHAPATTER.

(1873) Sup. I.A. 212=12 B. L. R. 304=20 W.R. 377=3 Sar. 285=2 Suth. 899.

Will—Settlement deed or.

———*See* SETTLEMENT DEED.

Will—Sick man—Will by.

———*See* HINDU LAW—WILL—EXECUTION OF—CAPACITY (1) PARALYSIS AND (2) SICK MAN.

Will—Signature of testator.

BLANK SHEETS CONTAINING.

———Forgery of will on. *See* HINDU LAW—WILL—FORGERY OF—BLANK SHEET SIGNED BY TESTATOR.

COMPARISON BY APPELLATE COURT OF—REVERSAL OF TRIAL JUDGE'S DECISION BASED ON EVIDENCE ON STRENGTH OF—PROPRIETY.

———No point made about signature at trial *See* HINDU LAW—WILL—EXECUTION OF—TRIAL JUDGE'S DECISION AS TO—REVERSAL IN APPEAL OF—EVIDENCE.

PREFIX "BABU OR MR."—SIGNATURE WITH.

———*Presumption against execution from.*

"Babu" is a title and not a name. The alleged signature of the testator as "Babu Ram Narain" is equivalent to John Smith signing himself as "Mr. John Smith," a circumstance of the most extraordinary character in Indian social life. There is considerable force in the suggestion that some one who was putting the name of Ram Narain on the will inadvertently wrote "Babu Ram Narain", and as hurry was essential, in order to maintain uniformity put the other alleged signatures in the same way (683). (*Mr. Ameer Ali.*) BINDESHRI PRASAD *v.* BAISAKHA BIBI.

(1919) 24 C. W. N. 674=61 I. C. 431.

PRESENCE OF WITNESSES—SIGNATURE IN.

———*Acknowledgment of signing by testator if equivalent to—Statute of Frauds.*

The statute of frauds (29 Carl. II, c. 3, S. 5) requires the will to be signed by the testator, in the presence of the witnesses; nevertheless, the construction put upon that important provision has been, that an acknowledgment is equivalent to a signature. The greatest judges who have dealt with the subject have lamented the latitude given to the statutory provision by their predecessors, who first broke in upon its strictness (402). (*Lord Brougham.*) CASEMENT *v.* FOULTON.

(1845) 3 M. I. A. 395=5 Moo. P. C. 130=1 Sar. 293.

SHAKENESS OF—PLEA OF FORGERY OF WILL FOUNDED ON.

———*Weight of.*

In a case in which the question was whether the will set up was really executed by the alleged testator or was a forgery, it was said against the will that the signature of the deceased was in a shaky hand. It was not said that the signature was uncharacteristic, but merely that it was shaky.

Held, there was not much weight in the objection.

Indeed, so far it seems almost in favour of the will being genuine, because, if a man sets himself to commit a forgery

HINDU LAW—(*Contd.*)

Will—Signature of testator—(*Contd.*)

SHAKENESS OF—PLEA OF FORGERY OF WILL FOUNDED ON—(*Contd.*)

he would naturally try to make the signature as exactly like the genuine signature as he could, and certainly would not introduce shakiness into the signature. (*Lord Dunedin.*) PALCHUR SANKARAREDDI *v.* PALCHUR MAHALAKSHMAMA.

(1922) 17 L. W. 1 (4)=(1922) P.C. 315=31 M. L. T. 307 (P. C.)=27 C. W. N. 414=70 I.C. 949.

SICK MAN—STRENGTH OF SIGNATURE OF TESTATOR A.

———*Suspicion arising from.*

Where one of the grounds on which the High Court decided against the genuineness of a will set up by the defendants was that the handwriting of the testator seemed too firm for one suffering from sickness, their Lordships observed that, as two days and part of a third intervened between the execution of the will and the death of the testator, he, though weakened by illness, might have rallied his strength to the performance of that short act of signature (101-2). (*Sir James W. Colvile.*) SOORENDRONATH ROY *v.* MUSSUMAT HEERAMONEE BURMONEAH.

(1868) 12 M. I. A. 81=10 W. R. P. C. 35=1 B. L. R. P. C. 26=2 Suth. 147=2 Sar. 372.

WEAK MAN AT TIME OF ALLEGED EXECUTION—TESTATOR ADMITTEDLY A—STRENGTH OF SIGNATURE OF

———*Presumption against execution from—Propriety.*

It is impossible, from the mere inspection of a letter in a will, to predicate with any degree of certainty or accuracy, that the testator was too weak to make the impression with his pen which he is said to have made. It is impossible to say what momentary rally of strength might take place to do an act of such brevity as that (84). (*Sir James W. Colvile.*) RAJENDRO NATH HOLDAR *v.* JOGENDRO NATH BANERJEE. **(1871) 14 M.I.A. 67=15 W. R. P. C. 41=7 B. L. R. 216=2 Suth. 422=2 Sar. 666.**

———In the performance of so deliberate and solemn an act as signing his will, a testator would naturally make an effort such as might enable him, although in a weak state, to write his signatures with firmness (143). (*Mr. Shand.*) BAMA SOONDARI DEBI *v.* TARA SOONDARI DEBI.

(1891) 18 I. A. 132=19 C. 65 (77)=6 Sar. 66.

WITNESSES TO, AVAILABLE BUT NOT CALLED.

———*General evidence that signature in question resembled admitted signatures of testator—Value of.*

When witnesses are available to prove that a man actually made a signature, any evidence of a general nature to the effect that the signature appears to be genuine is of little worth in the absence of the maternal witnesses. (*Lord Buckmaster.*) RAM GOPAL LAL *v.* AIPNA KUNWAR.

(1922) 49 I. A. 413 (421)=44 A. 495 (503)=31 M. L. T. 277=A. I. R. (1922) P. C. 366=21 A. L. J. 402=27 C. W. N. 485=1 Pat. L. R. 273=69 I. C. 31.

———*Resemblance to admitted signatures—Decisions based on—Propriety of.*

In a case in which the question was whether a will propounded by the respondent as the last will and testament of her deceased husband was really executed by him or was a fabrication and a forgery, their Lordships, on the evidence in and the probabilities of the case, came to the conclusion that the will set up was a forgery. One fact, however, caused their Lordships some uneasiness, and that was that the learned Judges of the High Court, one of whom had a

HINDU LAW—(*Contd.*)

Will—Signature of testator—(*Contd.*)

WITNESSES TO, AVAILABLE BUT NOT CALLED—(*Contd.*)

knowledge of native writing, regarded the signature as good, having compared it with the undoubted specimens of the testator's writing.

Held, that the answer to that, however, was that no forgery was of the lease value unless it closely resembled the real signature ; and that when witnesses were available to prove that a man actually made a signature, any evidence of a general nature to the effect that the signature appeared to be genuine was of little worth in the absence of the material witnesses. (*Lord Buckmaster.*) RAM GOPAL LAL *v.* AIPNA KUNWAR. **(1922) 49 I. A. 413 (420-1) = 44 A. 495 (503) = 31 M.L.T. 277 = A. I. R. (1922) P. C. 366 = 21 A. L. J. 402 = 27 C. W. N. 485 = 1 Pat. L. R. 273 = 69 I. C. 31.**

Will—Simple and short will—Lengthy and complicated will.

———Distinction between cases of. *See* HINDU LAW—WILL—EXECUTION OF—CAPACITY—SICK MAN—CAPACITY OF—SIMPLE AND SHORT WILL.

Will—Son.

———*Bequest to—Estate taken under—Vesting of estate in him a* morte testatoris *or enjoyment for life or till majority of his own son—Executory bequest—Validity of—Uncertain event—Happening of—Bequest on—No time fixed for happening of event—Succ. Act, S.* 111.

The material portions of the will of a Parsi, who had two sons, *P* & *J*, were these : The said two sons are proprietors, half and half alike, and in equal (shares), of my whole estate. Both the heirs are to take care of the said estate and look after it, and both the heirs living together, are duly to enjoy the balance which may remain after payment of the Sarkar's assessment. In this my testamentary writing, I, the testator have appointed my two sons as (my) heirs.

The will then stated that *P*, the elder, was in a confused state of mind, and that *J* was accordingly entrusted with the management of the estate "by his true and pure integrity, and both the heirs are to equally enjoy half and half alike the whole estate with unanimity with *P* in such a way as not to injure *P's* rights."

"At present *P* has no male issue of his body. He has only a daughter. Therefore, if *P* gets a male issue, half of the estate is to be made over to him, on his attaining his full age."

The eleventh clause of the will ran thus : '*I*, the testator, have in the socond clause of this will appinted my two sons, *P* & *J* as my heirs. The wife of *P* has now gone to her father's house. On her return, if she, by instigating her husband, or by any (other way) cause to be mortgaged, sold, given in gift, charity, etc., or disposed of, whatsoever in any way to any one, any immoveable and moveable estate, etc. appertaining to the half share during the lifetime of *P* or, after his death, my son *P*, or his wife, or daughter, or any (other) person (shall) as stated in the third clause of this will have no authority, power and right to do so. If my son *P* does not get a son, *J* is to give away his son as *P's* palak (or his adopted son). All the clauses of this will are applicable to the said adopted (son). If a son be born of the body of *P* he (shall) on his attaining (his) full age be the owner of half share in the whole of the immoveable and moveable estate belonging to me. My heir and executor *J* or his heirs shall raise no objection to give him the share. It they raise any objection, the responsibility arising therefrom is on their hands. All the clauses written in this will are applicable to the said son of (his body)."

P & *J* survived the testator, and *J* entered upon the management of the whole estate, having obtained probate

HINDU LAW—(*Contd.*)

Will—Son—(*Contd.*)

of the will. This state of matters lasted for 30 years, when *P* died. He had no son, but was alleged to have adopted , as his palak, *B*, *J's* son.

A suit by the widow and other representatives of *P*, who were his heirs according to the Parsi Intestate Succession Act, 1865, for an account, for an ascertainment of the rights and interests of the parties in the estate, and for partition, was resisted by *J* and *B* on the grounds that, under the will, one-half of the estate did not vest in *P*, and that *B*, as palak of *P*, succeeded in terms of the settlement to the half of the estate which *P* had enjoyed.

Held, that under the terms of the will one half of the estate conveyed vested in *P a morte testatoris* and that the right of *P* was not restricted to that of enjoyment, either for life or until the majority of his own son (77-8).

Held also, agreeing with the High Court, that, even assuming that there was no executory bequest to *B* as palak, it would be void under S. 111 of the Indian Succession Act, because the bequest to *B* as palak was to take effect upon the happening of an uncertain event, namely, if no son was born to *P*, and no time was mentioned in the will for the occurrence of the event (78). (*Lord Shaw*). JEHANGIR DADABHOY *v.* KAIKUSHRU KAVASHA.

(1914) 42 I.A. 71 = 39 B. 296 = 17 Bom. L.R. 197 = 13 A.L.J. 217 = 19 C.W.N. 426 = 21 C.L.J. 210 = (1915) M.W.N. 633 = 17 M L.T. 203 = 2 L.W. 208 = 27 I.C. 53 = 28 M.L.J. 167.

———Maintenance—Bequest for—Estate taken under—Alienation — Power of, conferred—Effect. *See* HINDU LAW—WILL—WIFE—MAINTENANCE.

(1896) 23 I.A. 37 = 23 C. 670.

———*Majority—Attainment of—Direction to make over estate to son on—Effect of—Death of son—Provision in event of—Death during minority if meant by.*

The will of *M*, a Hindu, addressed to his brother *A*, after stating that he had a half-share in the joint property of himself and *A*, and giving directions for the payment of debts and the maintenance of his wife and son and daughter and the education of the son and other matters, said, "God forbid but if my minor son should die and my daughter should get married and a grandson be born, then on the said grandson's attaining majority you will give him half of my share whatever it may be and give half to your son.... you shall account for and make over whatever remains of the estate after payment of debts to my son when he comes of age....Further if my only son dies before he gets children my wife may with your consent adopt a son."

Held, on a construction of the will, that the direction to make over the estate to the son when he came of age had the effect of a gift to him to take effect at that time, and that the words "If my minor son dies" in order to be consistent with that must mean "dies during minority" (170). (*Sir Richard Couch*). TARACHURN CHATTERJI *v.* SURESH CHUNDER MOOKERJI.

(1889) 16 I.A. 166 = 17 C. 122 (127) = 5 Sar. 379.

Will—Sons.

———Absolute bequest to—Death of one of them without leaving son—Gift over to survivors in case of. *See* HINDU LAW—WILL—GIFT OVER—SONS—ABSOLUTE BEQUEST TO.

(1867) 12 M.I.A. 41 (60).

———Absolute bequest to—Death of one of them without leaving son—Gift over to survivors in event of—Intention as to, must be clearly expressed. *See* HINDU LAW—WILL—GIFT OVER—SONS—ABSOLUTE BEQUEST TO.

(1867) 12 M.I.A. 41 (60).

———Bequest equally to—Gift over on death of one son-less, of all properties to survivors equally—Effect—Succes-

HINDU LAW—(*Contd.*)
Will—Sons—(*Contd.*)

sion Act, S. 111. *See* HINDU LAW—WILL—GIFT OVER —SONS—BEQUEST EQUALLY TO.

(1896) 23 I.A. 18=23 C. 563.

———*Bequest to—Joint tenants—Tenants in common—Bequest to them as—Test.*

The material passages in the will of a Hindu testator were the following:—

First paragraph.—My five sons, after my death, all continuing joint in food being unanimous, will preserve and look after my real and personal properties, etc., and business, trading business, etc., whomsoever, whatever there are the same, they will carry on conformably to the directions hereinafter written, they will perform the daily usual acts, etc., should they disagree and wish to separate, then deducting my real and personal properties and business, trading business, etc., they shall be unable to make and take a partition and division and demarcation, on account of my regulated acts, ceremonies, etc., and family expenses, and the profits and losses of the trading business, and after deducting the establishment charges, the surplus proceeds, the money that shall remain out of the same they will receive their respective shares.

Held, on a construction of the will, that the interest given by the will to the testators was not accurately represented by the words "joint estate" in England, but that the interest was, as regards succession, more analogous to the tenancy in common which prevails in England (59).

The testator has directed his sons, using the words, "continuing joint in food," to take care of and look after his property, moveable and immoveable, and carry on his trading business. It is to be observed that this interest is not accurately represented by the words "joint estate" in England, for if he had given the property simply to the sons, with no further direction than that they should live jointly in respect of food, and one of the sons had died, his share, with all the accretions, would have gone to his heir, to the person who was entitled to inherit according to the Hindu law, so that in point of fact the interest was, as regards succession, more analogous to the tenancy in common which prevails in England (59). (*Lord Romilly*). BISSONAUTH CHUNDER *v.* SREEMUTTY BAMASOONDERY DOSSEE.

(1867) 12 M.I.A. 41= 9 W.R. P.C. 1=2 Suth. 90=2 Sar. 344.

———*Bequest to, as joint tenants with benefit of survivorship—Death of one of sons — Claim by his widow to his share—Maintainability.*

The will of a Hindu was to the effect that his three sons should take his property as joint tenants, and that upon one of them dying the residue should go to the survivors.

In a suit by the widow of one of the sons of the testator to set aside the will and to recover her husband's share of the property bequeathed under it, *semble* the defendants might have availed themselves of the will for the purpose of showing that the widow could not recover in right of her husband (255). (*Sir Robert P. Collier.*) NIDHOOMONI DEBYA *v.* SARODA PERSHAD MOOKERJEE.

(1876) 3 I. A. 253=26 W. R. P. C. 91=3 Sar. 652= 3 Suth. 338=Bald. 78.

———*Eldest son to be born—Bequest to—Estate conveyed—Vesting—Time of—Estate to remain in hands of executors until sons attain majority—Direction for—Effect.*

Clause 11 of the will of a Hindu provided that all his residuary estate "shall descend in equal shares to the eldest son to be born to each of the daughters of my late brother, who are now alive. The sons of those daughters shall, after their birth, remain under the control of the executor, until they attain majority at the expiry of 21 years and, whenever the eldest son of any of the ladies shall attain majority, the executor will make over his share to his satisfaction."

Cl. 15 declared that, "until the majority of whoever may be the eldest at the time amongst the sons of my brother's daughters, the estate shall remain in the hands of the executor absolutely and for all purposes."

At the death of the testator, in 1857, two daughters of his brother were living, of whom *C* was married and *F* unmarried. *C* had a son born in 1858, who lived to be 21 years of age, and to whom, on his attaining that age, a moiety of the estate was made over by the executor. *F* married *W* in 1878, the only issue of the marriage being a son born in 1883, who lived only a few hours.

Held that, a moiety of the estate vested in the sons of *C* and *F* on their birth. The vesting of the estate in the son was not suspended by the direction that the estate should remain in the hands of the executor, who should "make over the share" of each on his attaining 21 years; those words merely pointed to the possession and enjoyment of the shares which had already been vested. The words "the sons of those daughters" following the bequest referred to the sons to whom it was made, namely, the eldest son of each daughter. On the birth of *F's* son, therefore, a moiety of the estate vested in him, and on his death passed to his father as his heir. (*Sir Richard Couch.*) HARRIS *v.* BROWN.

(1901) 28 I. A. 159=28 C. 621=5 C. W. N. 729= 3 Bom. L. R. 808=8 Sar. 92.

———Gift to two—Death of one without leaving male issue —Gift over in event of, of entire estate to survivor—Death of one after the lifetime of testator — Gift over if takes effect in case of. *See* HINDU LAW—WILL—GIFT OVER —SONS—GIFT TO TWO. **(1914) 38 B. 399 (413-4).**

———*Offspring in male line as joint family—Bequest to sons, and their—Grandson dying without issue — Devolution of share of joint estate of—Family subject to Bengal law and joint as his death.*

By his will a Hindu governed by the Bengal law gave property to his four sons and their offspring in the male line, as a joint family. *K*, one of the sons, died, leaving three sons including *H*, and *H* died leaving no male offspring. The family continued joint up to the death of *H*.

Held that, upon the true construction of the will, upon the death of *H*, his share of the joint estate passed to his heir, his widow, so far as she was entitled to her widow's estate. (87.)

There are directions in the will that the property is to go in the male line to the sons and their descendants, but one of them dies leaving no issue in the male line, and the will is silent as to what the disposition of the property is to be in that event. It is a share of the property of the joint family, descendible, therefore, to the heir to whom that property would go in the absence of any provision made by the will. That heir is the widow of *H* (87). (*Lord Justice Turner.*) SONATUN BYSACK *v.* SREEMUTTY JUGGUTSOONDREE DOSSEE.

(1859) 8 M. I. A. 66= 2 Suth. 37=1 Sar. 721.

———*Partnership business--Bequest absolute of, with direction that, on death of any one of them without leaving son, his share was to go over to other sons—Company's paper in name of them—Indorsement in blank of, by him before his death without issue—Effect—Right of his widow to his share therein.*

By his will a Hindu bequeathed his property, including a trading business, to his sons absolutely with a direction that, in the event of the death of any of them without leaving a a son, his share was to go over to the other sons. The partnership assets consisted in part of Company's paper, which were taken in the name of *A*, one of the sons, or in

HINDU LAW—(*Contd.*)
Will—Sons—(*Contd.*)

his name jointly with the names of the other brothers. A died without leaving a son, and, before his death, he indorsed the Notes in blank, and gave them to his brothers. It was contended for the surviving brothers that inasmuch as the Company's paper had been indorsed and transferred to them in *A*'s, lifetime, in anticipation of his death, they were entitled to the same as against his widow. *Held*, overruling their contention, that the indorsement and handing over of the Notes was a mere ordinary partnership transaction for the purpose of enabling the partners to realise part of the assets of the partnership, which would not affect the right that each son had to his share of the profits, not giving to the son, who had died, the exclusive right to the Company's paper which he so even indorsed, though taken in his name alone, but only making it a part of the assets of the partnership, in which he would be entitled to his share after the expenses of partnership were duly discharged (64). (*Lord Romilly.*) BISSONAUTH CHUNDER *v.* SREEMUTTY BAMASOONDERY DOSSEE. **(1867) 12 M. I. A. 41 = 9 W. R. 1 = 2 Suth. 90 = 2 Sar. 344.**

———Residence and maintenance of — Provision for—Effect of—Wives and families of sons—Widows or families of deceased persons—Provision if extends to. *See* HINDU LAW—WILL—RESIDENCE—SONS AND DAUGHTERS.
(1923) 45 M. L. J. 780 (787-8).

———*Residuary estate—Bequest absolute of, in equal shares except in case of subsequent birth of son or daughter.*

Held, on a construction of clauses 13 & 18 of the will of a Hindu, that the will gave the residue to the testator's two sons in equal shares absolutely except in the case of the subsequent birth of a son or a daughter and that the two sons each took an absolute interest in a half-share of the residuary estate of the testator (136-7). (*Sir Richard Couch.*) DAMODERDAS TAPIDAS *v.* DAYABHAI TAPIDAS.
(1898) 25 I. A. 126 = 22 B. 833 (841-2) = 2 C. W. N. 417 = 7 Sar. 308.

———*Vested interests to, possession being postponed to* 21 *years after testator's death—Gift over, in event of death of a son within that period*, (1) *to issue of that son, if he should leave issue*, (2) *to surviving sons, if he should die without leaving issue—Share to which son of deceased son entitled—Original share of his father only or also share to which father would have been entitled by survivorship if he survived period of* 21 *years—"Surviving sons" if mean surviving by themselves or by their issue.*

By his will, after giving directions for the sale, conversion and investment of his real and personal estate and constituting thereout a residuary trust fund (therein called "the trust funds"), a testator directed that for a period of 21 years after his death certain shares or parts only of the income of the trust funds should be paid and applied as therein mentioned, and the residue of the income of the trust funds should be accumulated by investing the same and the resulting income thereof to the intent that such accumulations should be added to and form part of the corpus of the trust funds. And after certain immaterial directions the testator made a final direction and bequest in the terms following: "And I direct my trustees on the expiration of 21 years after the date of my death to divide my trust funds into five shares and to pay one of such shares to my said wife and such share shall be held to vest in her at the date of my death and to pay one other of such shares to each of my four sons and in the event of any such son of mine dying before the expiration of such period of 21 years leaving child or children him surviving such child or children and if more than one equally between them shall take the share to which such son of mine would have been entitled if he had survived such period of 21 years and in default of issue of any son the share of such son shall be payable to the surviving sons equally between them subject to such provision as my trustees shall think fit in their absolute discretion to make for the surviving widow of any son."

It was contended that the gift to the children of a deceased son was not of that son's original share only, but of the share to which he would have been entitled had he survived the period of 21 years; and that, in considering what the son would have been entitled to in that event, the court should have regard to the subsequent hypothetical enlargement of the son's share by possible survivorship.

Held, overruling the contention, that the child of a son who died before the expiration of the period was entitled only to the one-fifth share which his father would have taken, and was not entitled to participate in the share of a son who died before the expiration of the period without issue.

On the true construction of the will, the interest of each of the sons in his one-fifth, though postponed in possession for 21 years, is immediately, though not indefeasibly, vested and is liable to be divested and given over should he die before the expiration of the term of 21 years from the testator's death; and in that case two alternative and mutually exclusive events are considered and provided for in somewhat loose language. In the first event, namely, of his death, leaving a child or children him surviving—the share he would have been entitled to had he survived is given to such child or children. In the second event, namely, of his death without leaving issue—his share is given to the surviving sons. The contention urged appears to amount to an attempt to combine the result of the two mutually exclusive alternatives, and to take from a surviving son in favour of his nephews or nieces a part of the share of a deceased and childless brother which, under the second alternative gift, is given in its entirety to the surviving son. It seems impossible to do this without contradicting to this extent the second alternative gift, and the only way of avoiding such a construction, and yet arriving at the result advocated, would be to read the phrase "surviving sons" as meaning surviving by themselves or by their issue. Such a construction would be contrary to well-established principles. (*Sir Charles Sargant.*) GANAPATHY PILLAY *v.* ALAMELOO.
(1929) A. C. 462.

———*Wife—Houses bequeathed to, and after her death to sons—Estate taken by latter in—Absolute estate—Life estate as tenants in common.*

Clause 8 of the will of a Hindu was in these terms:—

"Along with all these (appurtenances) I have given (the houses) to my wife *N*, (for her) to enjoy the income thereof. Whatever rent may be received for those houses my wife *N*, herself, may take, may enjoy, may spend, and (she) may make donations for religious and charitable purposes (dharm). She cannot be questioned by my 'executors' and 'trustees' and heirs. A, 'trust deed' for these houses shall be made and delivered by my 'executors' and 'trustees' and heirs to my wife *N*. In the same the authority to take the whole of the income during her lifetime is hers, and these houses cannot be sold and cannot be mortgaged by any one. On the death of my wife, *N*, my sons, *B* & *D*, both (these) persons, deducting the expenses, may take in equal shares, half and half, the income thereof that may be received, and may enjoy, may expend, and may make donations for religious and charitable purposes (dharm), and the heirs also of both these, my sons, may always take the income from time to time, and may divide and take the income.

Both the courts below held on the construction of that clause in the will that *B* & *D* took a life interest only in the houses as tenants in common, and that the ulterior interests therein, not being validly disposed of fell into the residue.

HINDU LAW—(*Contd.*)

Will—Sons—(*Contd.*)

Their Lordships had some doubt whether in the 8th clause it sufficiently appeared that the sons were to take only an estate for life (135). (*Sir Richard Couch.*) DAMODERDAS TAPIDAS *v.* DAYABHAI TAPIDAS.

(1898) 25 I. A. 126 = 22 B. 833 = 2 C. W. N. 417 = 7 Sar. 308.

Will—Temple—Erection of—Direction to executors as to

———What amounts to. *See* HINDU LAW—WILL—CONSTRUCTION—TEMPLE.

(1829) 1 Knapp 245 (249-50).

Will—Tenants in Common.

———*See* HINDU LAW—WILL—JOINT TENANTS.

Will—Testamentary power

———*Ancient Hindu law.*

In the ancient Hindu law, as it was understood through the whole of Hindustan, testamentary instruments, in the sense affixed by English lawyers to that expression, were unknown ; and it is stated by a writer of authority (Sir Thomas Strange) that the Hindu language has no terms to express what we mean by a will. But it does not necessarily follow, that what, in effect, though not in form, are testamentary instruments, which are only to come into operation and affect property after the death of the maker of the instrument, were equally unknown. However this may be, the strictness of the ancient law has long since been relaxed (344). (*Mr. Pemberton Leigh.*) NAGALUTCHME UMMAL *v.* GOPOO NADARAJA CHETTY. **(1856) 6 M. I. A. 309 = 1 Sar. 543.**

———*Ancient Hindu law—Result of decisions.*

Whatever may have formerly been considered the state of the Hindu Law, as to the testamentary power of Hindus over their property that power has now been recognised, and must be considered as completely established (135). (*Lord Justice Kight Bruce.*) SREEMUTHY SOORJEEMONEY DOSSEY *v.* DENOBUNDHO MULLICK.

(1862) 9 M. I. A. 123 = 1 Suth. 291 = 1 Sar. 837.

———*Existence of, in India—Recognition of.*

As to gifts by way of will, whatever doubts may have once been entertained by learned persons as to the existence of the testamentary power, the doubts have been dispelled by a course of practice in itself enough, if necessary, to establish an approved usage, and by a series of judicial decisions both here and in India, proceeding upon the assumption that gifts by will are legally binding, and recognising the validity of that form of gift as part and parcel of the general law (67-8.) (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE.

(1872) Sup. I. A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.

———*Extent of—Law determining.*

With reference to the testamentary power of disposition by Hindus, the extent of the power must be regulated by the Hindu law (85.) (*Lord Justice Turner.*) SONATUN BYSACK *v.* SREEMATHY JUGGUTSOONDREE DOSSI.

(1859) 8 M. I. A. 66 = 2 Suth. 37 = 1 Sar. 721.

———*Feeling as to, in Cawnpore.*

In this District (Cawnpur) a strong feeling prevails amongst the Brahmins upon the subject of testamentary disposition, which is opposed to the ancient usages and feelings of the country (121.) (*Lord Kingsdown.*) NANA NURAIN RAO *v.* HUREE PUNTH BHAO. **(1862) 9 M.I.A. 96 = 1 Sar. 843 = Marsh. 436.**

———Gift *inter vivos*—Power of—Comparison with. *See* HINDU LAW—WILL—GIFT *inter vivos.*

HINDU LAW—(*Contd.*)

Will—Testamentary power—(*Contd.*)

———*Limits to—Onus of Proof of—General existence of such power admitted.*

It was argued for the appellant that it rested upon the respondents to prove the power of the testator to make the will in question, in order to establish their title under that will, but it being admitted that the testamentary power existed generally, it was clearly, upon the appellant to show that it did not extend to this particular case, and to allege and prove the limits of the power. (*Lord Justice Turner.*) MODEE KAIKHOOSCROW HORMUSJEE *v.* COOVERBAEE. **(1856) 6 M. I. A. 448 (458) = 4 W. R. 94 = 1 Suth. 268 = 1 Sar. 562.**

———*Nature and extent of—English law analogy—Applicability.*

There is no doubt that by the decisions of Courts of Justice, the testamentary power of disposition by Hindoos has been established within the Presidency of Bengal ; but it would be to apply a very false and mischievous principle if it were held that the nature aud extent of that power can be governed by any analogy to the law of England. Our system is one of the most artificial character, founded in a great degree on feudal rules, regulated by Acts of Parliament, and adjusted by a long course of judicial determinations to the wants of a state of society differing as far as possible from that which prevails amongst Hindus in India (308-9.) (*Lord Kingsdown.*) MUSUMAT BHOOBUN MOYEE DEBIA *v.* RAM KISHORE ACHARJ CHOWDHRY.

(1865) 10 M. I. A. 279 = 3 W,R.P.C 15 = 1 Suth. 574 = 2 Sar. 111.

———*New in India, especially in Oudh.*

Wills are comparatively new in any part of India, and are of more recent introduction in Oudh in respect to this class of property (Oudh taiuks) (142.) (*Sir Arthur Hobhouse.*) THAKUR ISHRI SINGH *v.* BALDEO SINGH.

(1884) 11 I. A. 135 = 10 C. 792 (802) = 13 C.L R. 418 = 4 Sar. 528 = R. & J's. No, 79 (Oudh.)

Will—Trust.

ESTATE FOR LIFE CREATED THROUGH MEDIUM OF.

———Validity. *See* HINDU LAW—WILL—ESTATE FOR LIFE—CREATION OF, ETC. **(1872) Sup. I.A. 47 (75-6).**

ESTATE OTHERWISE VALID NOT RENDERED INVALID BY.

If the trust is not to be read to make estates valid which otherwise would be void, so neither is it to be read to defeat interests which without the trust would be valid (75.) (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE. **(1872) Sup. I. A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.**

ESTATE UNKNOWN TO LAW CREATED THROUGH MEDIUM OF.

———*Validity.*

If the intended effect of the argument was to bring distinctly under the notice of their Lordships the contention that under the guise of an unnecessary trust of inheritance the testator could not indirectly create beneficiary estates of a character unauthorized by law, and which could not directly be given without the intervention of the trust, their Lordships adopt that argument upon the ground that a man cannot be allowed to do by indirect means what is forbidden to be done directly, and that the trusts can only be sustained to the extent and for the purpose of giving effect to those beneficiary interests which the law recognises, and that after the determination of those interests the beneficial interest in the residue of the property remains in the

HINDU LAW—(*Contd.*)
Will—Trust—(*Contd.*)
ESTATE UNKNOWN TO LAW CREATED THROUGH MEDIUM OF—(*Contd.*)

person who, but for the will, would lawfully be entitled thereto (72.) (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE.
(1872) **Sup. I. A. 47 = 9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.**

PRECATORY TRUST.

———*Doctrine of—Extension of—Permissibility.*

The current of decisions now prevalent for many years in the Court of Chancery shews that the doctrine of precatory trusts is not to be extended (79.) (*Sir Arthur Hobhouse.*) MUSSOORI BANK *v.* RAYNOR. (1882) **9 I.A 70 = 4 A. 500 (510) = 4 Sar. 346.**

———*Doctrine of—Rules with respect to.*

These rules are clear with respect to the doctrine of precatory trusts, that the words of gift used by the testator must be such that the court finds them to be imperative on the first taker of the property, and that the subject of the gift over must be well defined and certain:—If there is uncertainty as to the amount or nature of the property that is given over, two difficulties at once arise. There is not only difficulty in the execution of the trust, because the court does not know upon what property to lay its hands, but the uncertainty in the subject of the gift has a reflex action upon the previous words, and throws doubt upon the intention of the testator, and seems to shew that he could not possibly have intended his words of confidence, hope, or whatever they may be,—his appeal to the conscience of the first taker, —to be imperative words (79-80.) (*Sir Arthur Hobhouse.*) MUSSOOREE BANK *v.* RAYNOR. (1882) **9 I. A. 70 = 4 A. 500 (510) = 4 Sar. 346.**

———*Gift to a person coupled with the words "you will do virtuous actions, etc., from the profits" if of nature of a.*

Where an absolute gift of an estate to a person was coupled with the words "you will do virtuous actions, etc., from the profits," *held* that the words did not contain any specific direction or trust capable of being enforced (662).

The words are simply recommendatory of a moral duty, and do not qualify the absolute character, of the gift (662.) COLLECTOR OF MOORSHEDABAD *v.* RANEE SHEBESSURREE. (1872) **2 Suth. 661 = 18 W. R. 226.**

———Religious Endowment—Mutt– Mohunt of—Will by, appointing *A* his successor with request to appoint *B* his (*A*'s) successor when he found himself incapable and if he found *B* then capable—Gift to *B* in nature of precatory trust. *See* HINDU LAW—RELIGIOUS ENDOWMENT—MUTT—MOHUNT OF—OFFICE OF—RIGHT TO—WILL CONFERRING. (1867) **11 M I. A. 405 (427-8.)**

———Wife—Absolute bequest to — Direction that she should leave to daughters "whatever property there may remain after her death"—Trust enforceable in favour of daughters if created. *See* HINDU LAW—WILL—WIFE. (1921) **49 I. A. 1 (7-8) = 46 B. 153 (159-60.)**

———Wife—Absolute bequest to—Provision that whatever property there might remain after her death she should leave the said property to daughters in such manner as she might like—Effect. *See* HINDU LAW—WILL—WIFE. (1921) **49 I. A. 1 (6) = 46 B. 153 (161.)**

———Wife—Bequest to, "feeling confident that she will act justly to our children in dividing the same when no longer required by her"—Application of doctrine of precatory trusts to—Propriety. *See* HINDU LAW—WILL—WIFE—BEQUEST TO, FEELING CONFIDENT, ETC. (1882) **9 I. A. 70 (80) = 4 A. 500 (510-1.)**

HINDU LAW—(*Contd.*)
Will—Trust—(*Contd.*)
PRECATORY TRUST—(*Contd.*)

———Wife—Bequest to—Gift over to children of such property as was not required by wife or gift over of property if it was not required by wife — Validity of. *See* HINDU LAW—WILL—WIFE — BEQUEST TO — GIFT OVER TO CHILDREN, ETC. (1882) **9 I.A. 70 (80) = 4 A. 500 (510).**

VOID TRUSTS—ESTATES CREATED THROUGH MEDIUM OF.

———*Validity of.*

It was argued that the will is void by reason of its being founded upon the creation of an estate in trustees, absorbing the whole interest in the property, and out of which the interests of the beneficiaries are to be fed. It was maintained that an estate, to be held in trust, can have no existence by the Hindu law, and that, as the foundation of the will fails, the whole superstructure must fall. This argument gives the go-by to the consideration that if the trusts be void, they are not illegal, and that if they are struck out as void, the estates capable of being created by the will, and which the trusts were introduced to secure and maintain, would thereby become impressed directly upon the estate, subject to the charges for legacies and annuities which on all hands are admitted to be valid, as, for instance, upon a gift by a will to receive and pay *A* an annuity, and subject thereto in trust for *B*; if the trust be void, it should be simply struck out and *B* would have the property, subject to the annuity (71). (*Mr. Justice Willes.*) JUTTENDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE.
(1872) **Sup. I. A. 47 = 9 B. L.R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.**

WILL—TRUST ESTATE CREATED THROUGH MEDIUM OF.

———Validity. *See* HINDU LAW — TRUST — TRUST ESTATE. (1872) **Sup. I. A. 47 (71-2.).**

Will—Trustees under.

———(*See also* UNDER HINDU LAW—WILL—HEIR-AT LAW.)

———Account from—Heir-at-law's right to. *See* ACCOUNT—HEIR-AT-LAW. (1872) **Sup. I. A. 47 (83.)**

———Claim by next of kin against—Principle of Salter *v.* Cavanagh—Inapplicability of, to such claim. *See* STRAITS SETTLEMENTS LIMITATION ORDINANCE—S. 10—WILL. (1921) **49 I. A. 37 (42-3).**

———Performance of trust by—Allagations inconsistent with—What amount to—Heir-at-Law's suit against them. *See* DECEASED—HEIR-AT-LAW—WILL OF DECEASED —TRUSTEES UNDER—SUIT AGAINST—TRUST. (1872) **Sup. I. A. 47 (83).**

Will—Unborn persons—Bequest to—Validity of.
(*See also* HINDU LAW—GIFT—UNBORN PERSONS.)

———The Tagore decides that a devise to a person unborn is invalid (39). (*Lord Hobhouse*) SREEMUTTY KRISTOROMONEY DOSSEE *v.* MAHARAJAH NORENDRO KRISHNA BAHADOOR. (1888) **16 I. A. 29 = 16 C. 383 (392) = 5 Sar. 285.**

———*Rule—Exception in cases of provisions by way of contract or of conditional gift on marriage or other family provision.*

A person capable of taking under a will must be such a person as could take a gift *inter vivos*, and therefore must either in fact or in contemplation of law, be in existence at the death of the testator (70).

Their Lordships, adopting and acting upon the clear general principle of Hindu law that a donee must be in

HINDU LAW—(*Contd.*)

Will—Unborn persons—Bequest to—Validity of—(*Contd.*)

existence, desire not to express any opinion as to certain exceptional cases of provisions by way of contractor of conditional gift on marriage or other family provision, for which authority may be found in Hindu law or usage (70). (*Mr. Justice Willes.*) JUTTINDROMOHUN TAGORE *v.* GANENDROMOHUN TAGORE. **(1872) Sup. I.A. 47 = 9 B. L. R. 377 = 18 W.R. 359 = 3 Sar. 82 = 2 Suth. 692.**

Will—Validity of.

———*Decision against, based on general presumption of fraud—Propriety.*

With respect to the first question, when the case was originally opened to us, the factum of the wlll set up by the appellant appeared to have been proved in the cause, and not to have been disputed by any cross-examination of those witnesses who appeared on the part of the appellant, or otherwise. Under these circumstances it did appear to us to be somewhat singular that, merely, upon a general presumption of fraud, the question as to the validity of the will should have been decided against them (284.) (*Mr. Pemberton Leigh.*) RANY PUDMAVATI *v.* BABOO DOOLAR SING. **(1847) 4 M.I A. 259 = 7 W.R. 41 P. C. = 1 Suth. 178 = 1 Sar. 348**

———Separable provisions of will—Invalidity of one or some of—Effect of, on validity of other or others. *See* HINDU LAW—WILL—SEPARABLE PROVISIONS OF.

Will—Vernacular will.

———*Construction of, adopted by trial judge acquainted with language—Non-interference in appeal with—Rule as to—Inapplicability of, to case where decision rests on principles of construction common to English and Indian documents.*

The observation that very cogent reasons would be required to induce an appellate court to place a different construction on a clause in a Bengali will from that placed on it by the trial judge, who was a Bengali himself, is not of much force in a case in which the decision rests on principles of cunstruction common alike to English and Indian documents (167.) (*Sir Richard Couch.*) HARRIS *v.* BROWN. **(1901) 28 I. A. 159 = 28 C. 621 (636) = 5 C.W.N. 729 = 3 Bom. L. R. 808 = 8 Sar. 92.**

EXPRESSIONS IN—MEANING TO BE ATTACHED TO.

———Opinion of Indian Courts as to—Value attached by P. C. to. *See* VERNACULAR WORDS—MEANING OF. **(1921) 49 I.A. 54 (57-8) = 46 B. 481 (486).**

———*Plain ordinary meaning of expressions.*

It is within a comparatively recent period that Indian testatcrs have adopted English modes of creating interests in their estate. There is no line of precedents attaching to Bengali terms meanings which make them understood as terms of art by Bengali lawyers. It is not suggested in this case that the meaning affixed by the courts to the testator's language is a sense required by a course of practice known to vakils. The only safe course is to give to his words their plain ordinary meaning (165.) (*Sir Richard Couch.*) HARRIS *v.* BROWN. **(1901) 28 I.A. 159 = 28 C. 621 (634) = 5 C.W.N. 729 = 3 Bom. L.R. 808 = 8 Sar. 92.**

———Translation of, adopted by P. C. *See* DEED—CONSTRUCTION OF—VERNACULAR DEED—TRANSLATION OF.

Will—Widow.

———*Bequest to—Estate conveyed—Absolute estate—Malik—Effect.*

The material clauses of a will were in these terms:—

I give my wife permission to adopt five sons in succession. If my wife aforesaid should adopt a son in accordance with the authority given by me, the aforesaid adopted son and my wife aforesaid shall succeed to the ownership of the entire properties in equal shares, vested with the power of sale and gift; and no violation of such provisions shall be permitted. In the event of disagreement between my adopted son and my wife my estate shall be divided equally among my adopted son and my wife aforesaid, and after my death my wife aforesaid shall take out probate of this will, and when the adopted son attains to the age of twenty-one, my wife aforesaid shall make over his estate to him.

Para. 4 of the will provided as follows:—"If the aforesaid adopted son, or my wife aforesaid should find it necessary to sell any of the properties left by me, they shall be entitled to sell it to a stranger, if my heirs and co-sharers refuse to purchase it for an adequate consideration."

And the last paragraph ran thus:—" If no son is taken in adoption by my wife (which was the event which had occurred) she shall succeed to all the properties left by me after my death, with power of sale and gift, and my wife aforesaid shall be *malik*, and be in possession, and she shall have power of sale and gift in accordance with the provisions in paragraph 4."

Held that it was clear from every one of the provisions of the will that the tostator's intention was to give the absolute property to the wife—either in the whole of the property, or, if there was an adopted son, in one half of the property.

The provision in para. 4 of the will only means that before selling a portion to a stranger, which the widow has perfect right to do, she shall offer it—or give the opportunity of purchasing it at an adequate consideration—to the co-heirs. That by no means limits her power of sale in any degree. SUDAMANI DAS *v.* SURAT LAL DAS. **(1923) 18 L.W. 86 = (1923) P.C. 65 = L. R. 4 P. C. 115 = (1923) M.W.N. 601 = 38 C.L.J. 253 = 73 I. C. 530 = 45 M.L.J. 247.**

———*Bequest to—Estate conveyed—Absolute estate—Malikiyat—Effect.*

The will of a Hindu governed by the law of the Mithila School ran as follows:—" The ancestral and purchased properties are held and possessed by me, without participation or interference on the part of any person. I, the declarant, have no issue; I have, to obtain bliss in the next world, caused to be sunk several ponds, and have constructed a temple within the compound of my own house, at a considerable cost; I often remain ill, although at present I am well, still on account of having no child, and placing no certainty in life, I intend to go on pilgrimage to Kashi and other places. Therefore, *I*, the declarant, of my own accord and free will, in order to avoid future disputes and to perpetuate my name, gave all the mauzas in entirety or in part, both ancestral and purchased" thika properties, and all goods, and assets, articles of copper and silver, elephant, oxen, she-buffaloes, and all other properties, to both my first and second wives, Mussumat Subast and Mussumat Sasiman, who after my death will be heirs to all the moveable and immoveable properties. It is desired that the said Mussamats by holding possession and occupation of all the moveable and immoveable properties should pay the Government revenue thereof, and they should collect rent of, and keep watch over, the mauzas either in entirety or in part and scattered lands, oxen, and elephants, etc., and they should give alms and charities. The said Mussamats, after my death, shall have, in every way, full power and all proprietary rights over all the moveable and immoveable properties, and they should, under the deed executed by me, pay, annually Rs. 360 to the widow of my brother until her death for her maintenance, and by this deed the said Mussamats should get their names recorded in the Government Sherista

HINDU LAW—(*Contd.*)

Will—Widow—(*Contd.*)

in the columns of proprietors. To this *I*, the declarant, neither have nor shall have any objection."

Held, reversing the courts below, that on the right construction of the will the widows of the testator took in his properties full and complete rights as proprietors, including full rights of alienation.

The word "Malik" did not occur in the will, but the word "Malikiyat," which had been rendered in the official translation as "all proprietary rights" did. (*Sir John Edge.*) SASIMAN CHOWDHURAIN. *v.* SHIB NARAYAN CHOWDHURY. **(1921) 49 I. A. 25 (35-6)= 1 P. 305 (316)=15 L. W. 434=26 C. W. N. 425= 20 A. L. J. 362=35 C. L. J. 427=24 Bom. L. R. 576= (1922) M. W. N. 368=A. I. R. 1922 P. C. 63= 3 Pat. L. T. 133=30 M. L. T. 242=66 I. C. 193= 42 M. L. J. 492.**

———Bequest to—Estate conveyed—Earlier clause giving item of property absolutely to her—Later clause giving entire property in general terms to nephews—Effect. *See* HINDU LAW — WILL—CONSTRUCTION—CLAUSES IN WILL—EARLIER AND LATER CLAUSES—INCONSISTENCY BETWEEN. **(1919) 46 I. A. 285 (288-9)= 43 M. 244 (248-9).**

———*Bequest to—Estate conveyed—Widow's estate at the least.*

A will executed by an Oudh talookdar ran as follows:—"Whereas my intention as regards making any boy representative has not yet become fixed, I, therefore, for the present, declare the aforesaid Maharani" (his wife) "representative, and proprietor, of my estate, and property, moveable and immoveable; until she make some one representative, let her remain representative, like myself, without power to aliene; and as regards my property, moveable and immoveable, no sharer or partner has any claim. Therefore, having written these few words of the nature of a will, I have deposited with the Government, that it may remain a record, and be of use in time of need."

Held, on a construction of the will, that, until the Maharanee had appointed another to be owner and representative. her estate in the talook was sufficient to constitute her the full representative of it, that her estate was at least as large as that of a Hindu widow in her husband's property (207).

The words in the will declaring the Maharanee "representative and proprietor of my estate; until she make some one representative, let her remain representative, like myself, without power to aliene" in their natural meaning plainly disclose an intention to vest the whole estate in the Maharanee, until she should divest hereself of it "by making some one else representative," and the words are sufficient and aptwards to accomplish this intention (206).

As if to leave no doubt of his wish to make his widow proprietor of the talook, until by her own act she appointed another, the Maharajah adds that until she does so she is to remain representative "like myself;" the plain meaning of these words being that until such appointment she was to own and represent the estate as fully as he himself owned and represented it (207).

It is not necessary to consider whether the prohibition against alienation was or was not an effectual restraint; for, however that may be, it is clear that this provision would not prevent the vesting of the whole estate in the Maharanee (207).

Quœre as to in what manner the succession would have gone, under this will, if the Maharanee had died without appoiniing a representative to the estate (207). (*Sir Montague E. Smith.*) PARTAB NARAIN SINGH *v.* TRILOKIANATH SINGH. **(1884) 11 I. A. 197= 11 C. 186 (196-7)=4 Sar. 567=Bald 174= R. & J.'s No. 86.**

HINDU LAW—(*Contd.*)

Will—Widow—(*Contd.*)

———*Bequest to—Estate conveyed—Widow's estate only—Proprietress according to shastras enjoying profits of property during her life—Provision in will as to.*

Cl. 5 of the will of a Hindu was as follows:—"If no sons, grandsons, or great grandsons of mine should be living at the time of my death, then my wife shall be proprietress of the whole of my properties, according to the shastras, and shall enjoy the profits thereof during her lifetime."

Held that the clause described an ordinary Hindu widow's estate, which wonld take effect on the death of the testator by operation of law (60.) (*Sir Robert P. Colliar.*) RAM LAL MOOKERJEE *v.* SECRETARY OF STATE FOR INDIA. **(1881) 8 I. A. 46=7 C. 304 (313-4)=10 C.L.R. 349= 4 Sar. 225.**

———*Fund directed to be accumulated—Widow with widow's estate solely entitled to—Release of direction for accumulation—Power of.*

Where a widow having only a widow's estate is solely entitled to a fund directed to be accumulated she can release the direction for accumulation and enjoy the whole income (201-2.) (*Lord Davey.*) BBNODE BEHARI BOSE *v.* SRIMATI NISTARINI DASSI. **(1905) 32 I. A. 193= 33 C. 180 (192)=2 C. L. J. 189= 9 C. W. N. 961= 7 Bom.L.R. 887=15 M. L. J. 331.**

———*Interest conferred by will on—Widow's estate—Maintenance and residence—Right of, merely.*

The will of a Jain ran as follows:—"I alone am the owner of the immoveable and moveable properties. If a male issue be born to me, then he shall remain (shall be) the owner. Should perchance a son be not born to me, then (in that case) my heir is *C*. Should the heir (*i.e*) a son be born to *C*, then he shall be the heir in the future. Should perchance no son be born to *C* and should it be necessary to bring (a son) from (some) other place, then during the lifetime of my wife (a son) from our Gotra shall be brought (adopted) with the consent of my wife. Hereafter, in connection with the adoption of a son *C*'s wife shall have no authority. I appoint *C* (to be) my heir. He shall act under the orders of my wife."

On the same date that the will was executed *C*, the respondent, signed a writing addressed to the following effect:—

"Further, if you appoint me your heir, I shall conduct myself towards you and the worshipful and respected kakiji just as a child (conducts) himself towards (and) obeys the orders of his parents, I will not ever chauge in (such my) conduct (towards you). You may rest assured as to (such conduct on) my part.....you have made (your) testamentary writing. I will act agreeably to the same in all respects. If, by the Grace of God, any progeny (son) be born to you, he will be the owner of the Rustam (shop). There will not be any manner of objection (to the same) on my part. If a son be not born to you, and if you appoint me heir, I will, according to your orders, attend on you and on the respected kakiji. The son who may be born to me will be heir after me. If perchance a son be not born to me and if it be necessary to take (a boy) in adoption, I will take one in adoption during the lifetime of the worshipful and the respected Kakiji Sahib, according to the directions of the worshipful and respected Kakiji Saheb."

The testator died leaving no issue, and in a suit by his widow against *C* it was contended on behalf of the widow that under the terms of the will the testator did not dispose of his estate during her lifetime; that there was therefore an intestacy under which the plaintiff was entiIled to a Hindu widow's estate.

Held, affirming the court below that the widow took no interest under the will, and that her only right was a right of maintinance and residence.

HINDU LAW—(*Contd.*)

Will—Widow—(*Contd.*)

It was argued that the authority given to the wife in the letter procured from the respondent by the testator shows an intention on the part of the testator to leave his wife in a position of a Hindu widow, and that having regard to this provision in the will their Lordships ought to assume the testator's intention of desiring his wife to be in the same position as if he had died intestate. Such an intention cannot be implied in a case where the testator has made a will in which he has deliberately made no express provision with reference to the widow. (*Lord Carson.*) FOOLCOOVERBAI *v.* RAI SAHIB KESHRI SINGH RAJMAL.

(1922) 18 L W. 153 = (1923) P. C. 112 = 25 Bom. L.R. 621 = (1921) M.W.N. 578 = 33 M.L.T. 214 P. C. = L. R. 4 P. C. 151 = 9 O. & A. L. R. 797 = 73 I. C. 242 = 45 M. L. J. 249.

———*Minor son's estate—Alienation of—Power of, conferred by will—Extent of—Guardian of infant heir—Power only of.*

Where by his will a Hindu declared that his wife should have full powers, but that, during the lifetime of his minor son, she should not have power to transfer without any legal necessity any portion of his property; but that to pay off the Government revenue and to liquidate other debts payable by him, she should have power to mortgage the property, *held* that the will canferred on the widow no greater power of alienating her minor son's estate than she had under the Hindu Law as its manager on her minor son's behalf. (*Lorld Macnaghten.*) TIKA RAM *v.* DEPUTY COMMISSIONER OF BARA BANKI. **(1899) 26 I. A. 97 (98) = 26 C. 707 (710) = 3 C.W.N. 573 = 1 Bom. L. R. 692 = 7 Sar. 520.**

———Religious Endowment—Charge on property for purposes of—Surplus income left in case of—Widows of testator entitled to widow's estate in. *See* HINDU LAW—RELIGIOUS ENDOWMENT—DELICATION OF PROPERTY TO—ABSOLUTE DEDICATION—CHARGE ON PROPERTY—SURPLUS LEFT IN CASE OF. **(1892) 19 I.A. 108 (127-8) = 19 C. 513 (531-2).**

———*Son's death—Widow entitled to life estate on—Legacies provided for by, to be paid out of Government Promissory Notes—Income accrued before death of son—Income accrued after his death—Government Promissory Notes representing—Which intended to be disposed of by her.*

N, the last male owner of the Medur estate, died a minor and unmarried in August 1895. The Court of Wards had taken charge of the Medur estate during his minority and continued to be in charge of it until December, 1895, when a Receiver, appointed by a Civil Court having jurisdiction, took possession of it. The estate continued to be in charge of Receivers, duly appointed, until after 1902. Part of the estate consisted of Government Promissory notes which the Court of Wards had held in respect of moneys received from the Medur estate before August, 1895, the date of the death of *N*, and of moneys paid into the Bank by the Receivers and the Government Promissory Notes and other securities in which moneys derived from the Medur estate were invested under the control of the Civil Court for the benefit of those who might be entitled to the estate.

Shortly after *N*'s death, his natural mother, *V*, claimed to be entitled to the Medur estate, and the properties appertaining to it as such. Her claim was opposed by another lady who claimed to be entitled to succeed to *N* as his adoptive mother. *V* thereupon instituted a suit on 21—10—1895, for a declaration that the alleged adoption of *N* was invalid, and also claimed to be placed in possession of the Medur estate with all the savings, appurtenances, etc., of the estate, That suit was finally disposed of by the Privy Council in 1913

HINDU LAW—(*Contd.*)

Will—Widow—(*Contd.*)

in favour of *V*. While that suit was pending, *V*, in 1899, executed a will, clauses 5 and 6 of which were as follows :—

5. The Government Promissory Notes and cash relating to the Medur estate which have been in the custody of the court till this day, as well as the interest accruing thereon till payment of the amount, shall be divided into four shares, and out of them, one share shall be given to my elder brother *T*, and three shares to my younger brother *C*.

6. Out of the Government Promissory Notes and cash of the Medur estate which are remaining in deposit in court and the jewels, etc., the amounts specified hereunder shall be first expended and only out of the remaining amount, one share shall, as stated in paragraph 5, be paid to my elder brother, and three shares to my younger brother."

Cl. 6 set out the particulars of the expenses to be incurred, they being a number of legacies to be paid to named persons. *V* died a few months after the execution of the said will.

Held, that, on the true construction of the said clauses of the will, *V* only dealt therein with the promissory notes to which she was absolutely entitled as representing moneys which had been received after her son's death by the Court of Wards as the Receivers, and did not bequeath those promissory notes which represented moneys which had been received by the Court of Wards before the death of *N*, and that she was perfectly entitled to dispose of what she did (225). (*Sir John Edge.*) VENKATADRI APPA RAO *v.* PARTHASARATHI APPA RAO. **(1925) 52 I. A. 214 = 48 M. 312 = 23 A. L. J. 261 = 6 L. R. P. C 82 = 27 Bom. L. R. 823 = (1925) M. W. N. 441 = 3 Pat. L. R. 208 = 29 C. W. N. 989 = A. I. R. 1925 P. C. 105 = 87 I. C. 324 = 48 M. L. J. 627.**

———Will by—Declaration of invalidity as against reversionary interest of—Grant of—Rule as to—Discretion of court. *See* HINDU LAW—REVERSIONER—PRESUMPTIVE REVERSIONER—WIDOW—WILL BY.

(1904) 31 I. A. 67 = 26 A. 238 (242-3).

Will—Wife.

———*Absolute estate to—Bequest of—Alienation—Express power of—Necessity.*

If words are used in the will of a Hindu testator conferring absolute ownership upon his wife, the wife enjoys the rights of ownership without their being conferred by express and additional terms, unless the circumstances or the context are sufficient to show that such absolute ownership was not intended. (*Lord Buckmaster.*) BHAIDAS SHIVDAS *v.* BAI GULAB. **(1921) 49 I. A. 1 (7) = 46 B. 153 (159) = 26 C. W. N. 129 = 30 M. L. T 149 = A. I. R. 1923 P. C. 193 = 15 L W. 412 = 20 A. L. J. 289 = 35 C. L. J. 314 = 24 Bom. L. R. 551 = 65 I. C. 974 = 42 M. L. J. 385.**

———*Absolute estate to—Bequest of—Bequest of realty and personalty as to some of which use equivalent to consumption if equivalent to—Expression of confidence that she will act justly to children in dividing same when no longer required—Addition of—Effect.*

R died, having left a will which he expressed in the following terms :—"I give to my wife the whole of my property, both real and personal, including my Government promissory notes, Delhi Bank shares, my house at *F*, together with all my plate and plated ware, and whatever money, furniture, carriages, horses, etc., may be in my possession at the time of my decease, together with all moneys due or which may afterwards become due, feeling confident that she will act justly to our children in dividing the same when no longer required by her."

Held, upon the construction of the will, that the wife took an absolute interest (80).

HINDU LAW—(*Contd.*)

Will—Wife—(*Contd.*)

Considering the nature of the property, which includes a number of articles as to some of which the use is equivalent to the consumption; to the nature of the first gift, which, although not expressed in terms to be an absolute gift, is quite unlimited, and is legally an absolute gift; and to the fact that the first gift is only cut down by words which do not constitute a direct gift, but are to operate through an influence upon the conscience and feelings of the wife, their Lordships cannot come to any other conclusion than that the testator intended his wife to use the property according to her requirements. That is equivalent to an absolute gift to the wife (80). (*Sir Arthur Hobhouse.*) MUSSOORIE BANK *v.* RAYNOR. **(1882) 9 I. A. 70 = 4 A. 500 (510-1) = 4 Sar. 346.**

———*Absolute estate to—Bequest of—Direction that whatever property there might remain after her death she should leave the said property to daughters in such manner as she might like—Effect of—Expression of which merely or creation of obligation also.*

The will of a Hindu, after constituting his wife the absolute owner of all his properties, provided: "And as to whatever property there may remain after her death my wife shall leave the said property to my two daughters in such manner as she may like (either) by making a 'will' or by making (some) other instrument."

Quære whether, as held by one of the Judges in appeal, the words suggesting how the property should be left after the death of the testator's widow were in themselves inadequate to do anything more than to express a wish and did not create an obligation (8). (*Lord Buckmaster.*) BHAIDAS SHIVDAS *v.* BAI GULAB. **(1921) 49 I. A. 1 = 46 B. 153 (161) = 26 C. W. N. 129 = 30 M. L T. 149 = A. I. R. (1923) P. C. 193 = 15 L. W. 412 = 20 A. L. J. 289 = 35 C. L. J. 314 = 24 Bom L R. 551 = 65 I. C. 974 = 42 M L J. 385.**

———*Absolute estate to—Bequest of—Direction that she should leave to daughters "whatever property there may remain after her death"—Trust in favour of daughters if created by—Horwood* v. *West—Rule in—Applicability of.*

By clause 2 of his will a Guzarati Hindu appointed his wife as his sole executrix. In the next clause, after stating that as he had no son he appointed his wife to be his heir; and the clause continued in these words: "And I constitute her the owner. And as to whatever property there may remain after her death my wife shall leave the said property to my two daughters in such manner as she may like (either) by making a 'will' or by making (some) other instrument. Of my two daughters one named *J*, has now become a widow. To her and to (my) other daughter *D*, who has been married to *S*, (*i. e.*,) to both of them my wife shall give (my) property in such manner as (she) may like."

By later clauses of the will the testator referred to powers that he desired his wife to enjoy; for example, by clause 6 he expressly stated that he gave his wife authority to do what she thought right with the profits and the ready moneys of a shop where he carried on business, and further to continue in partnership with the partners if she so desired. By clause 18 he provided that after there had been defrayed out of the rents of certain specified immovable property the expenses in connection with a religious object, for which he had made provision, the wife should apply the surplus for her maintenance and use and for the maintenance and use of her daughters if they were living with her, and if the surplus were insufficient she should deal with the movable and immovable properties in such manner as she thought fit. By clause 20, again, he gave express power to his wife to mortgage, lease, sell and use the properties. Finally by clause 23 he provided that after the death of his wife his daughters should be named executrixes, and he gave them authority to deal with or manage the whole of his property and effects;

Held that the will conferred an absolute estate on the testator's wife, and that even assuming that it was intended to create a trust in favour of his daughters and the words were sufficient for that purpose the subject matter on which the trust was to operate was by the terms of the will too uncertain to enable the Court to give it administration (8).

The principle stated in Herwood *v.* West would be applicable to this will as it would to a will in England. The Vice-Chancellor says: It is essential to the execution of a trust that the subject should be certain; and if this testator intended that his wife should, at her pleasure, during her life, dispose of the property which he left to her, and that his recommendation should extend only to what, if anything, happened to remain of his property at her death undisposed of by her then there is no trust to be administered by this Court." (*Lord Buckmaster.*) BHAIDAS SHIVDAS *v.* BAI GULAB. **(1921) 49 I. A. 1 = 46 B. 153 (159-60) = 26 C.W.N. 129 = 30 M. L. T. 149 = A. I. R. 1923 P.C. 193 = 15 L. W. 412 = 20 A.L.J. 289 = 35 C. L. J. 314 = 24 Bom. L. R. 551 = 65 I.C. 974 = 42 M.L J. 385.**

———*Absolute estate to—Bequest of—"Malik"—Use of—Effect.*

By a deed of gift or testamentary instrument, a Hindu made a gift of properties to his two wives and to his daughter-in-law on the conditions that during his lifetime he should remain in possession of the said properties as theretofore, and that after his death they the donees should get their names recorded in the public records in respect of their respective properties given to them and remain in possession "as owners with proprietary powers." The words translated, "as owners with proprietary powers," were in the original "Malikwa Khud ishtiyar."

Held, on a construction of the deed, that the second wife acquired a right to alienate the property given to her by the deed.

There is nothing in the context or surrounding facts to displace the presumption of absolute ownership implied in the word "malik." On the other hand the context strengthens the presumption that the intention was that "Malik" should bear its proper technical meaning. The gift to the testator's daughter-in-law is made in precisely the same terms. In her case the gift is admittedly a full proprietary right. The phrase should be made to bear the same interpretation in the cases of the wives also. (*Lord Collins.*) SURAJMANI *v.* RABI NATH OJHA. **(1907) 35 I. A. 17 = 30 A. 84 (89-90) = 12 C. W. N. 231 = 7 C. L. J. 131 = 10 Bom. L.R. 59 = 3 M. L. T. 144 = 5 A. L. J. 567 = 18 M. L. J. 7.**

———The word "Malik" can be appropriately used to constitute the testator's wife absolute owner. And in the context of the present will their Lordships think the estate given to her was absolute (6). (*Lord Buckmaster.*) BHAIDAS SHIVDAS *v.* BAI GULAB. **(1921) 49 I. A. 1 = 46 B. 153 (159) = 26 C. W. N. 129 = 30 M. L. T. 149 = A. I. R. 1923 P. C. 193 = 15 L. W. 412 = 20 A. L. J. 289 = 35 C. L. J. 314 = 24 Bom. L. R. 551 = 65 I. C. 974 = 42 M. L. J. 385.**

———*Bequest to—Gift over to children of such property as was not required by wife or gift over of property if it was not required by wife—Validity of.*

If the testator had given to his children such property as was not required by his wife, or if he had given over his property if it was not required by his wife, the gift over would,

HINDU LAW—(*Contd.*)
Will—Wife—(*Contd.*)

according to a very well-known and well-established class of cases, have been void, because of the uncertainty. It would have been void, not merely because the words of gift over were precatory only, but it would have been void notwithstanding that the most direct and precise words of gift over might be used (80). (*Sir Arthur Hobhouse.*) MUSSOORIE BANK *v* RAYNOR. **(1882) 9 I. A. 70 = 4 A. 500 (510) = 4 Sar. 346.**

———*Bequest to—Re-marriage—Gift over in event of—Death of wife during lifetime of testator—Estate taken by her in case of—Gift over if takes effect in such case—Income only given to wife for some years and corpus given to her absolutely thereafter.*

After sundry specific bequests, a Chinese testator constituted a trust Fund the income of which was disposed of by clause 16 as follows :—

" My trustees shall divide the income derived from my trust fund among my said wife and my said three sons in equal shares (but should my wife marry again) I direct that her one-fourth share in the income aforesaid shall cease and be then equally divided among my said three sons "; and the corpus by clause 17 as follows :—

" My trustees shall, immediately on the expiration of 12 years after my death divide my trust fund among my wife and children aforesaid in equal shares provided that should my wife marry again before the period of distribution of my trust fund I direct that her share in my trust fund shall be given to my said sons in equal shares."

The will was in English, and it fell to be construed according to the English Law of wills, as laid down in English decisions. The testator's wife predeceased him. It was contended for the sons that, truly construed, the gift over to the sons took effect in the event which happened, and not merely in the event actually expressed. They contended that the gift over must be read as a gift to them " should my wife marry again or die." Relying upon the principle enunciated by Parker J, in *Seaton's case*, (1913) 2 Ch. 618, they urged that as the testator meant his wife's interest to be a life interest, he could not be supposed to have intended that if she did not intend to re-marry and thereby bring the very words of the gift into operation she might in that event take an interest absolute.

Held, that clause 17 of the will was decisive against the contention.

The provision in clause 17 negatives any presumed intention that the wife should never have more than a life interest for it excludes that general intention from which any extension of the gift over to cover the event of her death is to be implied. (*Lord Sumner.*) CHIA KHWEE ENG. *v.* CHIA PO-CHOON. **(1922) 33 M. L. T. 212.**

———*Bequest to, " feeling confident that she will act justly to our children in dividing the same when no longer required by her"—Application of doctrine of precatory trusts to—Estate taken by wife.*

By his will a testator gave the whole of his property, both real and personal, to his wife, " feeling confident that she will act justly to our children in dividing the same when so longer required by her."

Held that upon the true construction of the will the wife took an absolute interest, and that to apply the doctrine of precatory trusts to it would be a very large extension of that doctrine (80-1).

No case has been cited, and probably no case could be cited, in which the doctrine of precatory trusts has been held to prevail when the property said to be given over is only given when no longer required by the first taker (79). Their Lordships think that substantially the words " when no longer required by her " must in this will be taken to have the same meaning as if the testator had said, " I give

HINDU LAW—(*Contd.*)
Will—Wife—(*Contd.*)

to my children so much as is not required by her" (80). (*Sir Arthur Hobhouse.*) MUSSOORIE BANK *v.* RAYNOR. **(1882) 9 I. A. 70 = 4 A. 500 (510-1) = 4 Sar. 346.**

———*Estate bequeathed to—Life estate—Absolute estate—Testamentary power conferred on her—Nature of—General testamentary power or power according to oral directions of testator.*

A Parsi testator made a will by clause 3 whereof, after reciting that he had two sons, and a wife, he appointed his wife as his executrix with full powers of management. By clause 4, after referring to his immoveable and moveable property of all kinds, he proceeded : " Of all that I duly make my wife 'malik muktiyar' (absolute owner) during her life, just as I am the owner, and during her life none of my other heirs, representatives or relatives or kinsmen can question her in regard to any matter whatever."

Clause 7 was as follows : "7. Agreeably to what is written above, my wife shall, during her lifetime, duly carry on *vahivat* (*i. e.*, management) in respect of every kind of my property and effects and make expenses on auspicious and inauspicious occasions just as I (have been doing). And in her lifetime, keeping God and Meher Daver (the Dispenser of Justice) before her mind, my wife shall duly, as I have directed her orally, and according to the times, make her will, and all my heirs and the heirs of my heirs shall duly act agreeably to the same."

Clause 8 commenced with the following words " Should my wife, that is to say, executrix die without making her will, that is to say, testamentary writing, as mentioned in paragraph 7 above, then both my sons shall duly become malik " (i.e. owners) " in equal shares of all kinds of my property and effects, and both of them shall duly take certificate " (that is, obtain probate) " from the court."

Clause 10 contained certain dispositions which were to take effect if the testator's wife died without making a will and if any of his sons should die before his wife. The will concluded as follows : " I have made this will of my free will and pleasure and while in sound mind and consciousness. My wife and children, that is to say, heirs, all shall duly act agreeably to the same."

Held, that, on a true construction of the will, the testator's wife took a life interest only, and not an absolute interest, under it, and that under clause 7 thereof she took a general power of testamentary disposition, and not merely a power exercisable in manner specified in his oral directions (73-4).

It is plain from the direction to the testator's heirs to act agreeably to his wife's will, as well as from the gifts over, that the words in clause 7 were intended to give to the testator's wife some power of testamentary disposition over his estate. The question is, whether he meant that she should, in accordance with his oral directions, make her will disposing of the property as she should in her discretion think fit, or whether he intended that she should by her will dispose of the property in accordance with his oral directions. In their Lordship's opinion, the former is the true view (74). (*Viscount Cave.*) SHIRINBAI *v.* RATANBAI. **(1921) 48 I. A. 69 = 45 B. 711 (716) = 19 A. L. J. 215 = (1921) M. W. N. 165 = 29 M. L. T. 236 = 33 C. L. J. 271 = 23 Bom. L. R. 618 = 60 I.C. 222 = 40 M. L. J. 277.**

——— Lawful wife—Bequest to person described as a—Invalidity of marriage—Effect of, on validity of gift. *See* HINDU LAW—GIFT—WIFE—GIFT TO—LAWFUL WIFE. **(1885) 12 I.A. 72 (89) = 11 C. 463 (484).**

———*Maintenance—Bequest for—Estate taken under—Bequest to wife and son for maintenance—Alienation—Power of, given to donees.*

HINDU LAW—(*Contd.*)

Will—Wife—(*Contd.*)

A Hindu made a will by which he bequeathed some properties to his younger wife and her son in the following terms:—"The remaining four annas share I give to you Srimati Rani Doorga Kumari and the son born of your womb, Jogeswar Narain Deo, for your maintenance." His intention with regard to the interests which were to pass under that gift to the mother and son, was declared as follows: "Upon my death you and your son and grandson, etc., in due order of succession, shall hold possession of the zemindari, etc.,....And I give to you the power of making alienation by sale or gift." *Held* that the mother and son took equal interests under the will, each taking an estate of inheritance to the extent of two annas share in the zemindari and that the mother was entitled to alienate her two annas share at her discretion without any regard to anybody else.

The words "for your maintenance" are quite capable of signifying that the gift was made for the purpose of enabling them (the donees) to live in comfort, and do not merely mean that it was to be limited to a bare right of maintenance.

If there had been a gift to the Rani alone in these terms, there could hardly have been a doubt that it would have conferred upon her an estate of inheritance, with power of alienation; and their Lordships cannot understand why the same terms, when equally applied to her and her son, should be held to confer upon her any lesser interest. (*Lord Watson.*) JOGESHWAR NARAIN DEO *v.* RAM CHUND DUTT. (1896) **23 I.A. 37 = 23 C. 670 = 7 Sar. 13 = 6 M.L.J. 75**

———Oudh talukdar—Wife of. *See* UNDER HINDU LAW—WILL—OUDH TALUKDAR.

———*Residence in house for life—Exclusive right of—Bequest of—What amounts to—Residence of son with her in house—No adverse possession of son by reason of.*

The relevant words of the will of Hindu were:—" My elder wife shall have the right of residence for the term of her natural life in the three-storied portion of my house No. 35, Ram Kamal Mukerjee's Street."

At a partition between the appellant, the son of the elder wife, and the respondent, his half-brother, the three-storied portion of the house was allotted to the appellant, subject to the right of residence of his mother during her life. In 1899, the appellant's right, title and interest in that portion of the house was sold in execution of a decree. The execution purchaser resold to the respondent in 1917. The execution purchase was expressed to be subject to the right of residence of the elder widow. She resided exclusively in the portion throughout, and the appellant lived with her. After the sale to the respondent, the appellant instituted a suit for a declaration that ever since the execution sale he had been in possession of the house adversely to the execution purchaser and had thus acquired a complete title by adverse possession before the purchase by the respondent.

Held, affirming the High Court, that, under the will, the elder widow had the right of exlcusive residence in the house for her life, that neither the appellant nor the execution purchaser had any right to possession of the house during her life and that the possession of the appellant must be deemed to have been by her permission and was not adverse to the execution purchaser. (*Viscount Haldane.*) ANNADA PRASHAD DAS *v.* AMBICA PRASHAD DAS.

(1926) 53 I.A. 201 = 53 C. 948 = 44 C.L.J. 50 = (1926) M.W.N. 689 = 24 L.W. 448 = 28 Bom. L.R. 1399 = 31 C.W.N. 150 = A.I.R. 1926 P.C. 96 = 97 I.C. 761 = 51 M.L.J. 785.

———Testamentary power conferred by will upon—Nature of—General testamentary power or power according to oral

HINDU LAW—(*Contd.*)

Will—Wife—(*Contd.*)

directions of testator. *See* HINDU LAW—WILL—WIFE—ESTATE BEQUEATHED TO.

(1921) 48 I.A. 69 (73-4) = 45 B. 711 (716).

Will—Woman.

[*See also* HINDU LAW—WILL—
DAUGHTER.
DAUGHTERS.
DAUGHTER'S DAUGHTER.
DAUGHTER-IN-LAW.
GRANDDAUGHTER BY PREDECEASED SON.
NEPHEW'S WIDOW.
WIDOW.
WIFE.]

———*Absolute estate to—Bequest of—Malik-o-qabiz—Use of—Effect.*

The material part of the will of a Hindu widow was as follows:—"Under the will of my husband I am the sole owner in possession (malik-o-quabiz) of his entire estate and possess all proprietary powers...I bequeath the entire estate of my husband to *F* subject to the following conditions:—(1) So long as I live, I shall continue to be the owner in possession of the entire estate, the subject of the will, and possess all the powers, such as making sales, mortgages, gifts, etc.....(4) I have bequeathed Mauza *K*, with all the property, to *G*, the daughter of my priest (prohit). After my death she shall be the owner in possession of the entire property in Mouzah *K* aforesaid."

Held that, on the true construction of the will, *G* took an absolute estate in Mauza *K*.

The expressions "I shall continue to be the owner in possession of the entire estate, the subject of the will, and possess all the powers such as (those of) making sales, mortgages, gifts," etc., do not abate from the completeness of the ownership and possession conferred by condition 4 upon *G*, nor do they fortify it in any way whatever (186).

The words "malik-o-qabiz" translated "owner in possession" are truly "owner and possessor of." It is now settled that the words "malik-o-qabiz" signify a full ownership in property. Such an ownership in property was conveyed in the village in question to Mussumat *G*. (*Lord Shaw*) FATEH CHAND *v.* RUP CHAND. (1916) **43 I.A. 183 = 38 A. 446 (450-1) = 21 C.W.N. 102 = 18 Bom. L.R. 900 = 20 M.L.T. 481 = 4 L.W. 597 = (1916) 2 M.W.N. 567.**

———*Estate taken as a rule by—Hindu's knowledge of—Assumption of—Propriety.*

In construing the will of a Hindu it may be assumed that a Hindu knows that, as a general rule, at all events, women do not take absolute estates of inheritance which they are entitled to alienate (15). (*Sir Robert P. Collier.*) MAHOMED SHUMSOOL *v.* SHEWUKRAM. **(1874) 2 I.A. 7 = 14 B.L.R. 226 = 22 W.R. 409 = 3 Sar. 405 = 3 Suth. 43.**

———This is the will of a Hindu, and in construing it, it is not improper to take into consideration what are known to be the ordinary notions and wishes of Hindus with respect to the devolution of property. It may be assumed that a Hindu generally desires that an estate, especially an ancestral estate, shall be retained in his family; and it may be assumed that a Hindu knows that, as a general rule, at all events, women do not take absolute estates of inheritance which they are enabled to alienate.

Held, applying the above rule of construction, that daughters of the testator took under his will only what is generally known to be a woman's estate in his property, (*Sir Andrew Scoble*). RADHA PROSAD MULLICK *v.* RANIMONI DASSI. **(1908) 35 I.A. 118 (122-3-4).**

HINDU LAW—(*Contd.*)

Will—Woman—(*Contd.*)

35 C. 896 (902) = 4 M.L.T. 23 = 8 C.L.J. 48 = 12 C.W.N. 729 = 10 Bom. L.R. 604 = 5 A.L.J. 460 = 18 M.L.J. 281.

———*Life estate taken under will by—Sale of estate by—Necessity justifying—Discharge of testator's debts if—Income of estate ample—Effect.*

A Hindu lady, who took under the will of her father-in-law a life estate and who was held to be very much in the position of a Hindu widow, sold an estate of the testator to the defendant by a conveyance in which she purported to give him an absolute title, what in England would be called an estate in fee simple. The sale was made for the purpose of paying the testator's debts, and the question for decision was whether the sale could be held to have been made for the necessary purpose of paying the testator's debts, and was therefore valid and binding.

It appeared that the testator possessed an income of somewhere about a lakh of rupees, minus the Government revenue of Rs. 20,000, leaving him an income in round numbers of about £8,000 per annum. He was shewn to have owed a debt of Rs. 10,000 at the time of his death, that is £1,000. It was pretended that sixteen years afterwards a necessity arose for selling a considerable portion of his real estate, to pay that debt of £1,000, *plus* some £400 which had been subsequently contracted by the lady.

Held, affirming the Courts below, that the mere statement of facts altogether disposed of the contention that the estate could have been sold for the necessary purpose of paying the testator's debts (16-7). (*Sir Robert P. Collier.*) MAHOMED SHUMSOOL *v.* SHEWUKRAM.

(1874) 2 I. A. 7 = 14 B.L.R. 226 = 22 W.R. 409 = 3 Sar. 405 = 3 Suth. 43.

———*Life estate taken under will by—Sale of estate by—Necessity justifying—Proof of—Onus.*

In a case in which it was found that a Hindu lady took, under the will of her father-in-law, a life interest in his properties immedately succeeding him, without that interest being shared by any other person, *held* that the lady, who might be considered as very much in the position of a Hindu widow, might have sold the estate absolutely if it could have been shown—the burden of doing so being upon the purchaser—that to convey such an absolute estate was necessary in order to pay the debts of the testator, and was for the benefit of his estate generally (16). (*Sir Robert P. Collier.*) MAHOMED SHUMSOOL *v.* SHEWUKRAM.

(1874) 2 I. A. 7 = 14 B. L. R. 226 = 22 W. R. 409 = 3 Sar. 405 = 3 Suth. 43.

Will—Words in.

———(*See also* HINU LAW—WILL—CONSTRUCTION—LANGUAGE OF WILL.)

ADOPTION.
ALL LO BE TAKEN TOGETHER.
ALWAYS AND FOR EVER.
ALWAYS OR FOR EVER.
AULAD.
CHILDREN-
DAKILKAR-
DEATH OF PERSON—BEQUEST IN EVENT OF.
DEFECTS IN—DISREGARD OF.
DESCEND TO ELDEST SON—DEVOLVE OR GO TO ELDEST SON.
DEVOLVE OR GO TO ELDEST SON.
DISPOSITIVE WORDS CLEAR AND UNAMBIGUOUS.
EFFECTS.
ELDEST SON TO BE BORN.
GENERATION TO GENERATION.
[illegible]HEIRS.
[illegible]heir Lords[illegible]
[illegible]o longer required [illegible]
[illegible]ave the same meaning

HINDU LAW—(*Contd.*)

Will—Words in—(*Contd.*)

KHANDAN.
MAHARANI SAHIBA.
MALIK.
MALIKIYAT.
MALIK-O-QABIZ.
MEANING TO BE ATTACHED TO.
POUTRADI KRAME.
PROPRIETRESS ACCORDING TO SHASTERS IN REFERENCE TO WIDOW.
PUTRA POUTRADI KRAME.
PUTRA PUTRADIK.
REFERENCE TO, FOR ASCERTAINING INTENTION OF TESTATOR.
SANTANA.
SANTAN SRENI KRAMANE.
STRIKING OUT OR ALTERING OF.
SUCCESSORS.
SURVIVING SONS.
TECHNICAL WORDS.
VERNACULAR WORDS.

ADOPTION.

———Choice of male successor in property. *See* HINDU LAW—WILL—ADOPTION IN. (1900) **27 I.A. 128 (135) = 27 C. 996 (1003).**

ALL TO BE TAKEN TOGETHER.

— —(*See also* HINDU LAW—WILL—CONSTRUCTION OF—ENTIRE WILL).

———In construing a will, all the expressions of the will must be taken together without any one being insisted upon to the exclusion of others (15). (*Sir Robert P. Collier.*) MAHOMED SHUMSOOL *v.* SHEWUKRAM. **(1874) 2 I.A. 7 = 14 B.L.R. 226 = 22 W. R. 409 = 3 Sar. 405 = 3 Suth. 43.**

———The whole will, that is, the whole of the words employed by the testator must be looked at together so as to determine his whole intention (412-3). (*Lord Shaw.*) CHUNILAL PARVATISHANKAR *v.* BAI SAMARATH.

(1914) 38 B. 399 = 18 C. W. N. 844 = 19 C. L. J. 563 = 16 Bom. L. R. 366 = 12 A. L. J. 742 = 16 M. L. T. 59 = 1 L. W. 762 = (1914) M. W. N. 441 = 23 I. C. 645 = 26 M. L. J. 647.

———In construing a will all the expressions of the will should be taken together (32). (*Sir John Edge.*) SASIMAN CHOWDHURAIN *v.* SHIB NARAYAN CHOWDHURY.

(1921) 49 I. A. 25 = 1 P. 305 (312) = 15 L. W. 434 = 26 C. W. N. 425 = 20 A. L. J. 362 = 35 C. L. J. 427 = 24 Bom. L. R. 576 = (1922) M. W. N. 368 = A. I. R. 1922 P. C. 63 = 3 Pat. L. T. 133 = 30 M. L. T. 242 = 66 I. C. 193 = 42 M. L. J. 492.

ALWAYS AND FOR EVER.

———*Interest conveyed by*, per se.

The words "always and for ever," according to several decisions of this Board do not *per se* extend the interest beyond the life of the person who is named (163). (*Sir Richard Couch.*) MAULVI MUHAMMAD ABDUL MAJID *v.* MUSSUMAT FATIMA BIBI. **(1885) 12 I. A. 159 = 8 A. 39 (48-9) = 4 Sar. 670.**

ALWAYS OR FOR EVER.

———Estate conveyed by. *See* ARBITRATION—AWARD—ESTATE CONVEYED UNDER—WORDS—"ALWAYS OR FOR EVER". **(1901) 28 I. A. 65 (70) = 23 A. 324 (330).**

AULAD

———*Illegitimate issue if included.*

Prima facie the word "aulad" means legitimate issue. (*Lord Atkinson.*) BHAIYA SHER BAHADUR *v.* BHAIYA GANGA BAKSH SINGH. **(1913) 41 I. A. I = 36 A. 101 (121) = 18 C. W. N. 101 = 15 M. L. T. 169 =**

HINDU LAW—(*Contd.*)
Will—Words in—(*Contd.*)
AULAD—(*Contd.*)
(1914) M. W. N. 184 = 19 C. L. J. 277 = 16 Bom. L. R. 306 = 17 O. C. 68 = 12 A. L. J. 188 = 22 I. C. 293 = 26 M. L. J. 291.

———*Khandan—Illegitimate issue if and when included.*
In a case which in a succession of life interests from generation to generation was intended to be set up by the will of a Hindu, the successor or "proprietor" in each instance being vested with absolute control of the income, subject only to the duty of maintaining the issue (aulad) of the family (khandan) of the first proprietor, *held* that there was nothing on the face of the will to suggest that a meaning should be given to the word "aulad" different from its *prima facie* meaning of legitimate issue, and that the word "khandan" ought not to be made to include illegitimate offspring. (*Lord Atkinson.*) BHAIYA SHER BAHADUR *v.* BHAIYA GANGA BAKSH SINGH. **(1913) 41 I. A. 1 = 36 A. 101 (121-2) = 18 C. W. N. 401 = 15 M. L. T. 169 = (1914) M. W. N. 184 = 19 C. L. J. 277 = 16 Bom. L. R. 306 = 17 O. C. 68 = 12 A. L. J. 188 = 22 I. C. 293 = 26 M. L. J. 291.**

———The Maharajah of Balrampur, a Hindu of the Junwar Kshatriya caste, had an illegitimate son, *J. B.*, by a Mahomedan woman. The evidence in the case showed that the Maharajah treated *J. B.* as a Hindu in religion, desired that others should so treat him, procured his marriages with two ladies of the Kshatriya caste, treated those marriages as lawful marriages and the offspring of those unions as legitimate, and desired that others should so treat and regard them. The evidence further showed that in that frame of mind he made a codicil to his will which provided that Rs. 48,000 per annum should be paid to *J. B.* "and his issue (aulad) for generation after generation so long as the family (khandan) of *J. B.* and his issue (aulad) remain in existence," and that after the death of *J. B.* "from among his issue (aulad) one person, to whom the right may go, shall be considered the proprietor of this maintenance allowance, without division, as a rais'. The codicil allocated certain villages to meet those payments and provided that *J. B.* and his family descendants should hold possession of them in perpetuity. In a suit brought by the eldest of four illegitimate sons of *J. B.* by a Mahomaden mistress [illegible] being also the eldest born of *J. B.*'s sons, legitimate or otherwise, against the only son of *J. B.* by one of his Kshatriya wives, the other having only a daughter, to recover the property allocated by the codicil or alternatively the share to which he was entitled, it was contended that inasmuch as *J. B.* was by birth a Mahomedan his marriage with a Kshatriya lady was not lawful, and the first respondent, the offspring of that union was also illegitimate, and that plaintiff as the eldest born son of *J. B.* was entitled to the property under the terms of the codicil as against the first respondent.

Held that, having regard to all the evidence in the case and the provisions of the codicil itself, the intention of the testator plainly was to treat the marriages of *J. B.* with the two Kshatriya women mentioned above as valid marriages and the issue of those marriages as legitimate issue. (*Lord Atkinson.*) BHAIYA SHER BAHADUR *v.* BHAIYA GANGA BAKSH SINGH. **(1913) 41 I. A. 1 = 36 A. 101 (123) = 18 C. W. N. 401 = 15 M. L. T. 169 = (1914) M. W. N. 184 = 19 C. L. J. 277 = 16 Bom. L. R. 306 = 17 O. C. 68 = 12 A. L. J. 188 = 22 I. C. 293 = 26 M. L. J. 291.**

CHILDREN.

———Illegitimate children if included. *See* HINDU LAW—WILL—CHILDREN — BEQUEST TO [illegible] CHILDREN IF TAKE UNDER. **(1870) 13 M. I. [illegible].**

HINDU LAW—(*Contd.*)
Will—Words in—(*Contd.*)
"DAKILKAR."

———Meaning and Effect of—Absolute beneficial interest if conveyed by use of word. *See* DAKILKAR.
(1889) 16 I. A. 166 (172-3) = 17 C. 122 (129).

DEATH OF A PERSON—BEQUEST IN EVENT OF.

———*Equal to bequest on death of that person.*
The words "in the event of the death of a person" in a will creating bequests in such event mean "on the death of" that person. (*Lord Phillimore.*) CAPADIA *v.* CAPADIA. **(1918) 45 I.A. 257 (259) = 43 Bom. 88 (95) = 21 Bom. L. R. 133 = 23 C.W. N. 419 = 9 L. W. 485 = 51 I. C. 481.**

DEFECTS IN—DISREGARD OF.

———Intention of testator—Ascertainment of — Duty of Court. *See* HINDU LAW—WILL—CONSTRUCTION OF—INTENTION OF TESTATOR — ASCERTAINMENT OF — NECESSITY. **(1913) 41 I. A. 51 = 37 M. 199 (222-3).**

DESCEND TO ELDEST SON—DEVOLVE OR GO TO ELDEST SON.

———*Meaning of.*
The words "descend to the eldest son" mean to go down to him, to belong to him in succession to the testator, and refer to his birth. The expression "devolve or go" has the same meaning (163). (*Sir Richard Couch.*) HARRIS *v.* BROWN. **(1901) 28 I.A. 159 = 28 C. 621 (632-3) = 5 C.W.N. 729 = 3 Bom. L. R. 808 = 8 Sar. 92.**

DEVOLVE OR GO TO ELDEST SON.

———Meaning of. *See* HINDU LAW—WILL — WORDS IN—DESCEND TO ELDEST SON.
(1901) 28 I.A. 159 (163) = 28 C. 621 (632-3).

DISPOSITIVE WORDS CLEAR AND UNAMBIGUOUS.

———Control or qualification of, by general intention of testator. *See* HINDU LAW—WILL—CONSTRUCTION OF—DISPOSITIVE WORDS.
(1897) 24 I.A. 76 (85) = 24 C. 834 (846).

EFFECTS.

———Immovable property if included [illegible] HINDU LAW—WILL—EFFECTS.
(1927) 54 I. A. 276 (284-6) = 5 R. 427.

ELDEST SON TO BE BORN.

———*Meaning of.*
An eldest son to be born is not the same as an eldest son who shall live to attain the age of 21 years, and who may be a second, third, or fourth born son (163). (*Sir Richard Couch.*) HARRIS *v.* BROWN. **(1901) 28 I.A. 159 = 3 Bom. L. R. 808 = 28 C. 621 (632-3) = 5 C.W.N. 729 = 8 Sar. 92.**

GENERATION TO GENERATION.

——Effect of. *See* WORDS—MEANING OF—GENERATION TO GENERATION.

HEIRS.

———*English—Will written in—Meaning of word in.*
The will was written in English, and there is no doubt that in a will so written the word "heirs" would naturally include heirs as at the date of the testator's death, subject always to a contrary intention being declared in a particular will. (*Lord Parmoor.*) DINBAI *v.* NUSSERWANJI RUSTOMJI. **(1922) 49 I. A. 323 (328) = 49 C. 1005 (1011) = 27 C.W. N. 199 = 17 L. W. 174 = 37 C.L.J. 420 = 25 Bom. L. R. 625 = A. I. R. 1922 P. C. 311 = 31 M. L. T. 213 = (1922) M. W. N. 787 = 69 I. C. 323 = 45 M.L.J. 572.**

———Issue—If convertible terms.
(1889) 16 I.A. 175 (181-2) = 17 C. 234 (243-4).

HINDU LAW—(*Contd.*)

Will—Words in—(*Contd.*)

HEIRS—(*Contd.*)

———Malik—Effect of. *See* HINDU LAW—WILL—DAUGHTER-IN-LAW — BEQUEST TO — ESTATE CONVEYED. **(1874) 2 I. A. 7(15).**

———*Meaning of — Persons taking in succession to another.*

Held that in the will, the construction of which was in question, the testator used the word "heir" merely as signifying the person who was to take immediately in succession to another (15). (*Sir Robert P. Collier.*) MAHOMED SHUMSOOL *v.* SHEWUKRAM. **(1874) 2 I. A. 7 = 14 B. L. R. 226 = 22 W. R. 409 = 3 Sar. 405 = 3 Suth. 43.**

———*Successors—If mutually convertible.*

The question as to whether "successors" means "heirs" and "heirs" means "successors" throughout this will might raise in differing circumstances differing considerations. (*Lord Shaw.*) HAR NARAYAN *v.* SURJA KUNWARI. **(1921) 48 I. A. 143 (146) = 43 A. 291 (294) = 25 C. W. N. 961 = 63 I.C. 34 = 14 L.W. 633.**

———Widow of testator—Heirs at death of—Meaning of. *See* HINDU LAW—WILL—HEIRS OF TESTATOR, ETC. **(1905) 32 I.A. 193 (201, 202) = 33 C. 180 (192).**

ISSUE.

———(*See also* HINDU LAW—WILL—ISSUE).

———"*Have Issue*"—*Meaning—If and when mean* "*leave issue*".

The words "have issue" are often read as meaning "leave issue", but not without some reason derivable from the will (128). (*Lord Hobhouse.*) GURUSAMI PILLAI *v.* SIVAKAMI AMMAL. **(1895) 22 I. A. 119 = 18 M. 347 (358) = 6 Sar. 610 = 5 M. L J. 106.**

———Heirs—If convertible terms.

(1889) 16 I. A. 175 (181-2) = 17 C. 234 (243-4).

———Legitimate issue—Meaning of—Issue treated as legitimate or issue legitimate according to law or religion of testator. *See* HINDU LAW—WILL—ISSUE IN—LEGITIMATE ISSUE. **(1913) 41 I. A. 1 = 36 A. 101 (115-6).**

———Self-begotten male issue—Failure of—Meaning. *See* WORDS—MEANING OF—SELF-BEGOTTEN MALE ISSUE. **(1886) 13 I.A. 97 (99) = 9 M. 499 (505).**

KHANDAN.

———*See* UNDER HINDU LAW—WILL—WORDS IN—AULAD—KHANDAN.

MAHARANI SAHIBA.

———Meaning of, in will of Oudh talukdar. *See* HINDU LAW—WILL—OUDH TALUKDAR—WILL OF—MAHARANI SAHIBA IN. **(1888) 15 I. A. 127 (146) = 15 C. 725 (747-8).**

MALIK.

———Effect of. *See* HINDU LAW—WILL—DAUGHTER-IN-LAW—BEQUEST TO—ESTATE CONVEYED. **(1874) 2 I. A. 7 (15).**

———*See* HINDU LAW—WILL—ESTATE OF INHERITANCE—BEQUEST OF—WORDS. **(1897) 24 I. A. 76 (88) = 24 C. 834 (839).**

———The word "malik" in testamentary gifts implies "absolute ownership", and in order to cut down the full proprietary rights that the word imports something must be found in the context to qualify it. (*Lord Collins.*) SURAJMANI *v.* RABI NATH OJHA. **(1907) 35 I. A. 17 (21) = 30 A. 84 (89-90) = 12 C. W. N. 231 = 7 C. L. J. 131 = 10 Bom. L. R. 59 = 3 M. L. T 144 = 5 A. L. J. 567 = 18 M. L. J. 7.**

HINDU LAW—(*Contd.*)

Will—Words in—(*Contd.*)

MALIK—(*Contd.*)

———The word "malik" is not a "term of art", it does not necessarily define the quality of the estate taken but the ownership of whatever that estate may be (6). (*Lord Buckmaster.*) BHAIDAS SHIVDAS *v.* BAI GULAB. **(1921) 49 I. A. 1 = 46 B. 153 (159) = 26 C. W. N. 129 = 30 M. L. T. 149 = A. I. R. 1923 P. C. 193 = 15 L. W. 412 = 20 A. L. J. 289 = 35 C. L. J. 314 = 24 Bom. L. R. 551 = 65 I. C. 974 = 42 M. L. J. 385.**

———The term "malik", when used in a will or other document as descriptive of the position which a devisee or donee is intended to hold, has been held apt to describe an owner possessed of full proprietary rights, including a full right of alienation, unless there is something in the context or in the surrounding circumstances to indicate that such full proprietary rights were not intended to be conferred. (*Sir John Edge.*) SASIMAN CHOWDHURAIN *v.* SHIB NARAYAN CHOWDHURY. **(1921) 49 I. A. 25 (35) = 1 P. 305 (315) = 15 L. W. 434 = 26 C. W. N. 425 = 20 A. L. J. 362 = 35 C. L. J. 427 = 24 Bom. L. R. 576 = (1922) M. W. N. 368 = A. I. R. 1922 P. C. 63 = 3 Pat. L. T. 133 = 30 M. L. T. 242 = 66 I. C. 193 = 42 M. L. J. 492.**

———The word "malik" in itself has considerable force as indicating that the person in reference to whom it is used should take absolute interest in the properties conferred. (*Lord Atkinson.*) SUDAMANI DASI *v.* SURAT LAL DAS. **(1923) 18 L. W. 86 = A. I. R. 1923 P. C. 65 = L.R. 4 P.C. 115 = (1923) M.W.N. 601 = 38 C.L.J. 253 = 73 I. C. 530 = 45 M. L. J. 247 (248).**

———*Widow donee—Effect in case of.*

The fact that the donee is a woman and a widow is not sufficient to cut down the absolute ownership implied in the word "malik" (21). (*Lord Collins.*) SURAJMANI *v.* RABI NATH OJHA. **(1907) 35 I. A. 17 = 30 A. 84 (89) = 12 C. W. N. 231 = 7 C. L. J. 131 = 10 Bom. L. R. 59 = 3 M. L. T. 144 = 5 A. L. J. 567 = 18 M. L. J. 7.**

MALIKIYAT.

———Effect of. *See* HINDU LAW—WILL—WIDOW—BEQUEST TO—ESTATE CONVEYED. **(1921) 49 I. A. 25 (35-6) = 1 P. 305 (316).**

MALIK-O-QABIZ.

———Effect of. *See* HINDU LAW—WILL—WOMAN—ABSOLUTE ESTATE TO. **(1916) 43 I. A. 183 (186) = 39 A. 446 (450-1).**

MEANING TO BE ATTACHED TO.

———*Circumstances indicative of.*

The meaning of every word in an Indian will must always depend upon the setting in which it is placed, the subject to which it is related, and the locality of the testator from which it may receive its true shade of meaning. (*Sir John Edge.*) SASIMAN CHOWDHURAIN *v.* SHIB NARAYAN CHOWDHURY. **(1921) 49 I. A. 25 (35) = 1 P. 305 (315-6) = 15 L. W. 434 = 26 C. W. N. 425 = 20 A. L. J. 362 = 35 C. L. J. 427 = 24 Bom. L. R. 576 = (1922) M. W. N. 368 = A. I. R. 1922 P. C. 63 = 3 Pat. L. T. 133 = 30 M. L. T. 242 = 66 I. C. 193 = 42 M. L. J. 492.**

———*Decisions—Meaning assigned by—Modification or alteration of, according to intention of testator.*

Decisions which assign a particular meaning to any word in a will only assign that meaning in connection with the terms of the will, and the meaning is always capable of modification and alteration if it be seen that the limited

HINDU LAW—(*Contd.*)

Will—Words in—(*Contd.*)

MEANING TO BE ATTACHED TO—(*Contd.*)

aning was not intended (1031). (*Lord Buckmaster.*) NANENDRA NATH DAS *v.* SURENDRA NATH DAS.

(1920) 24 C. W. N. 1026 = (1921) M. W. N. 550 = 28 M. L. T 453 = 61 I. C. 323.

———General meaning—Words having—Subjecting of, to limitations which words do not necessarily imply—Propriety. *See* HINDU LAW—WILL—WORDS IN—MEANING TO BE ATTACHED TO—ORDINARY MEANING—GENERAL MEANING. **(1914) 38 B. 399 (412-3).**

———Interests of testator at the time—Regard for—Necessity. *See* DEED—CONSTRUCTION OF—WORDS IN DEED—MEANING OF—PARTIES USING WORDS.

(1854) 6 M.I.A. 1 (23).

———*Law of country under which will made—Meaning attached to words by—Testator's intention to convey—Assumption of.*

If the law of the country, under which thewill is made and its dispositions are to be carried out, has attached to particular words a particular meaning, or to a particular disposition a particular effect, it must be assumed that the testator, in the dispositions which he has made, had regard to that meaning or to that effect, unless the language of the will or the surrounding circumstances displace that assumption (550-1). (*Lord Justice Turner.*) SREEMUTTY SOORJEEMONEY DOSSEE *v.* DENOBUNDOO MULLICK. **(1857) 6 M. I. A. 526 = 4 W.R. 114 = 1 Suth. 291 = 1 I. J. N. S. 37 = 1 Boulr Rep. 228 = 1 Sar. 583.**

———*Ordinary meaning.*

It has been well established that, in the absence of anything to the contrary, the words of a will—In India—are to be taken as having their ordinary meaning. (*Lord Atkinson.*) SUDAMANI DASI *v.* SURAT LAL DAS.

(1923) 18 L.W. 86 = A. I. R. 1923 P. C. 65 = L.R. 4 P. C 115 = (1923) M.W.N. 601 = 38 C.L.J. 253 = 73 I. C. 530 = 45 M. L J. 247 (248).

———*Ordinary meaning—General meaning—Words having—Subjecting of, to limitations which words do not necessarily imply—Propriety.*

There is nothing specifically either English or Indian in the idea that the will of a testator must be construed on that principle which would enable courts of law most fully to give effect to the intention expressed by his words. It may be that if the words he employs are *voces signatae* they must be so accepted, whatever the suspicion may be as to the testator having had that particular view of his own language. But in ordinary circumstances ordinary words must bear their ordinary construction, and the whole will, that is, the whole of the words employed by the testator, must be looked at together so as to determine his whole intention. Furthermore, it is not on this principle legitimate to take words which have a general meaning and subject them to limitations which the words do not necessarily imply (412-3). (*Lord Shaw.*) CHUNILAL PARVATISHANKAR *v.* BAI SAMARATH. **(1914) 38 B. 399 = 18 C.W.N. 844 = 19 C.L.J. 563 = 16 Bom. L. R. 366 = 12 A.L.J. 742 = 16 M.L.T. 59 = 1 L.W. 762 = (1914) M.W.N. 441 = 23 I.C. 645 = 26 M.L J. 647.**

———Ordinary legal meaning. *See* HINDU LAW—WILL—CONSTRUCTION OF—LANGUAGE OF WILL—MEANING TO BE GIVEN TO. **(1896) 24 I. A 76 (89) = 24 C. 834 (850).**

———Revoked will. Reference to, for finding out—Propriety. *See* HINDU LAW—WILL—CONSTRUCTION OF—REVOKED WILLS. **(1898) 25 I.A. 77 (83) = 25 C. 81 (91).**

HINDU LAW—(*Contd.*)

Will—Words in—(*Contd.*)

MEANING TO BE ATTACHED TO—(*Contd.*)

———Same word used in different places—Meaning of, if necessarily same—Rule as to—Nature of and limits to. *See* DEED—CONSTRUCTION OF—WORD SAME USED ETC.

———Surrounding circumstances—Reference to, for finding out meaning. *See* HINDU LAW—WILL—CONSTRUCTION OF—INTENTION OF TESTATOR—ASCERTAINMENT OF—MODE OF—LANGUAGE OF WILL.

(1913) 41 I.A. 51 = 37 M. 199 (221-2).

———Surrounding circumstances—Reference to, for finding out meaning. *See* HINDU LAW—WILL—CONSTRUCTION OF—INTENTION OF TESTATOR—ASCERTAINMENT OF—MODE OF—WORDS USED BY HIM.

(1925) 52 I.A. 214 (228-9) = 48 M. 312.

———Surrounding circumstances if may affect. *See* HINDU LAW—WILL—CONSTRUCTION OF—SURROUNDING CIRCUMSTANCES—MEANING OF WORDS IF MAY BE ETC.

(1857) 6 M.I.A. 526 (550 1).

PAUTRADI KRAME.

———Effect of. *See* HINDU LAW—WILL—DAUGHTER'S DAUGHTER. **(1881) 8 I. A. 46 (62) = 7 C. 304 (315-6.)**

PROPRIETRESS ACCORDING TO SHASTERS IN REFERENCE TO WIDOW.

———Effect. *See* HINDU LAW—WILL—WIDOW—BEQUEST TO—ESTATE COYVEYED — WIDOW'S ESTATE ONLY. **(1881) 8 I.A. 46 (60) = 7 C. 304 (313-4).**

PUTRA POUTRADI KRAME.

The words "*putra poutradi krame*" are, in India, apt words for conferring an estate of inheritance (62).

It was not denied at the bar that these words, though undoubtedly importing the male sex in their primary signification would, in the case of a gift to a male, be read as words of general inheritance, and would include female as well as male heirs where, by the law, his estate would descend to females; their Lordships feel no greater difficulty in applying them to the female heirs of a female where by law the estate would descend to such heirs and [illegible] sufficient reason for narrowing the construction of words which have been often recognised in India and by this Board as apt for conferring an estate of inheritance (62). (*Sir Robert P. Collier.*) RAMLAL MOOKERJEE *v.* SECRETARY OF STATE FOR INDIA. **(1881) 8 I.A. 46 = 7 C. 304 (315) = 10 C.L.R. 349 = 4 Sar. 225.**

———*See* HINDU LAW—WILL—ESTATE OF INHERITANCE—BEQUEST OF—WORDS.

(1897) 24 I.A. 76 (88) = 24 C. 834 (849).

PUTRA PUTRADIK.

———*Effect of.*

The words "Putra Putradik" denote descent in the direct male line (149-50.) (*Mr. Ameer Ali.*) SRINATH RAI *v.* PRATAP UDAI NATH SAHI DEO.

(1923) 28 C.W.N. 145 = 33 M.L.T. 408 = (1923) M.W.N. 702 = A.I.R. 1923 P.C. 217.

REFERENCE TO, FOR ASCERTAINING INTENTION OF TESTATOR.

———*See* HINDU LAW—WILL—CONSTUCTION OF—INTENTION OF TESTATOR—ASCERTAINMENT OF—DATA FOR. **(1857) 6 M.I.A. 526 (550-1-)**

See HINDU LAW—WILL—CONSTRUCTION OF—INTENTION OF TESTATOR—ASCERTAINMENT OF—MODE OF—LANGUAGE OF WILL. **(1913) 41 I.A. 51 = 37 M. 199 (221-2.)**

HINDU LAW—(*Contd.*)
Will—**Words in**—(*Contd.*)
SANTANA.
———*Meaning of.*
The word "Santana" means race, lineage, or posterity, and is still used among Hindus to mean male progeny without limitation. Telang, J. construes it as meaning "continuation"; other learned sanskritists interpret it to signify "an uninterrupted series" (of progeny or heirs). Vijnaneswara used it in the sense of lineal male descendants (220). (*Mr Ameer Ali.*) BUDDHA SINGH *v.* LALTU SINGH.
(1915) 42 I. A. 208 = 37 A. 604 (616) = 20 C.W.N. 1 = 22 C.L.J. 481 = 13 A.L J. 1007 = 17 Bom.L.R. 1022 = (1915) M.W.N. 772 = 2 L.W. 897 = 18 M.L.T. 409 = 30 I. C. 529 = 29 M.L.J. 434.
SANTAN SRENI KRAMANE.
———*See* HINDU LAW—GIFT—WOMAN—GIFT TO—SANTAN SRENI KRAMANE. **(1878) 5 I.A. 138 (147-8) = 4 C. 23 (28).**
STRIKING OUT OR ALTERING OF.
———*Permissibility—Conditions.*
Courts ought not to strike out a portion of a clause in a will or to alter the words of a will, when the effect of doing so would be in effect to make a new will for the testator, and one which, so far from carrying his intentions into effect, would be in direct opposition to his intention, and indeed to his main object, expressed in other parts of his will (58-9). (*Sir Robert P. Collier.*) KUMAR TARAKESWAR ROY *v.* KUMAR SHOSHI SHIKHARESWAR. **(1883) 10 I.A. 51 = 9 C. 952 (958-9) = 13 C.L.R. 62 = 4 Sar. 439.**
SUCCESSORS.
———Heirs—If convertible. *See* HINDU LAW—WILL—WORDS IN—HEIRS—SUCCESSORS.
SURVIVING SONS.
———Surviving by themselves or by their issue if meant in gift over. *See* HINDU LAW—WILL—SONS—VESTED INTERESTS TO, ETC. **(1929) A.C. 462 = 27 A.L.J. 1075 = A.I.R. 1930 P.C. 7.**
TECHNICAL WORDS.
———*Effect of—Inconsistent words—Use of—Effect.*
One of the two cardinal principles in the construction of wills, deeds, and other documents, is that technical words or words of known legal import must have their legal effect, even though the testator uses inconsistent words, unless those inconsistent words are of such a nature as to make it perfectly clear that the testator did not mean to use the technical terms in their proper sense. (*Lord Davey.*) LALIT MOHUN SINGH ROY *v.* CHUKKUN LAL ROY. **(1897) 24 I.A. 76 (85) = 7 Sar. 155 = 1 C.W.N. 387 = 24 C. 834 (846).**
VERNACULAR WORDS.
———Meaning of. *See* HINDU LAW—WILL—VERNACULAR WILL—EXPRESSIONS IN.
Woman.
———*Appearance in public—Repugnance to.*
Appearance in a public Court, even under the protection of a Palanquin, is a thing repugnant to the feelings and habits of a Hindu woman of *C's* position. (*Sir James Colvile*). MUSSUMAT THAKOOR DEYHEE *v.* RAI BALUK RAM **(1866) 11 M. I. A. 139 (169) = 2 Sar. 231 = 10 W. R. P. C. 3 = 2 I. J. N.S. 106 = 2 Suth. 49.**
———Avaruddha—Avaruddha stri — Meaning of. *See* HINDU LAW—EXPRESSIONS IN—MEANING OF—AVARUDDHA. **(1926) 53 I.A. 153 (160) = 50 B. 604.**
———Chastity of – Issue as to—Unchastity found against —Conduct "suspicious"—Opinion as to—Propriety. *See* PRACTICE—ISSUE—FEMALE. **(1910) 37 I.A. 152 (158) = 32 A. 410 (412-3).**
———Letter written by—Construction of—Substance of transaction to be looked to. *See* DEED—CONSTRUCTION OF—HINDU LADY. **(1876) 4 I.A. 1 (11-2) = 1 M. 174 (188).**

HINDU LAW—(*Contd.*)
Woman—(*Contd.*)
———Life estate taken under will by— Sale of estate by—Necessity justifying—Discharge of debts of testator if—Income of estate ample—Onus of proof of necessity. *See* HINDU LAW—WILL—WOMAN—LIFE ESTATE TAKEN UNDER WILL BY. **(1874) 2 I.A. 7 (16-7).**
———*Mahomedan woman—Status, culture, rights and capacity for business—Comparison and contrast.*
It is no doubt true that the Mussalman woman, when married, retains dominion over her own property, and is free from the control of her husband in its disposition; but the Hindu law is equally indulgent in that respect to the Hindu wife. It may also be granted that, in other respects, the Mahomedan law is more favourable than the Hindu law to women and their rights, and does not insist so strongly on their necessary dependence on, and subjection to, the stronger sex. But it would be unsafe to draw from the letter of a law, which, with the religion on which it is founded, is spread over a large portion of the globe, any inference as to the capacity for business of a woman of a particular race or country. In India the Mussalman woman of rank, like the Hindu, is shut up in the zenana, and has no communication, except from behind the purdah, with any male persons save a few privileged relatives or dependants; the culture of the one is not, generally speaking, higher than that of the other, and they may be taken to be equally liable to the pressure and influence which a husband may be presumed to be likely to exercise over a wife living in such a state of seclusion (585-6). (*Sir James W. Colvile*). MOONSHEE BUZLOOR RUHEEM *v.* SHUMSOONNISSA BEGUM. **(1867) 11 M.I.A. 551 = 8 W.R.P C. 3 = 2 Suth. 59 = 2 Sar. 259.**

HINDU WILLS ACT, 1870.
———**S. 5**—*Reservation in—Effect of, upon powers of Administrator-General under S. 30 of Act XXIV of 1867 and under Act II of 1874.*
The respondent relied upon the terms of S. 5 of the Hindu Wills Act, 1870, which provides that "nothing contained in this Act shall affect the rights, duties, and privileges of the Administrator-General of Bengal, Madras and Bombay respectively." It is by no means clear that a reservation in these terms was meant to have the effect of precluding the Administrator-General from accepting, if he thought proper, the devolution upon him of the administration of a Hindu succession, under S. 30 of the Act XXIV of 1867. But it does not appear to their Lordships to admit of doubt that the reservation cannot control the powers given to the Administrator-General by the Act of 1874 (*117*). (*Lord Watson*). ADMINISTRATOR-GENERAL OF BENGAL *v.* PREM LAL MULLICK. **(1895) 22 I A. 107 = 22 C. 788 (798) = 6 Sar. 603.**

HONG-KONG ORDINANCE III OF 1873.
———**S. 31**—Witness—Contempt of Court—Perjury—Summary proceeding for—Opportunity to explain—Necessity. *See* CONTEMPT OF COURT—WITNESS—PERJURY. **(1909) 19 M. L. J. 324.**

HOUSE—MAN'S HOUSE IS HIS CASTLE.
———*Maxim of—Qualifications of.*
A man's house being his castle, the ordinary rule is, that the outer door cannot be broken to execute civil process. But if the man had been arrested, and had then expelled the Sheriff's officer from his house, the latter might break open the outer door to enter and retake him. The fact that after the Sheriff's officer had once been lawfully in the house, and the man knew the officer was lawfully about to arrest him, he caused the officer to be expelled for the

OUSE—MAN'S HOUSE IS HIS CASTLE—(*Contd.*)

rpose of preventing him from so doing, cannot place him an advantage. The officer in such a case has a righ to ace himself in the position which he occupied when the lawful act of expulsion began (171). (*Lord Campbell.*) GA KURBOOLIE MAHOMED *v.* THE QUEEN.
(1843) **3 M. I. A. 164=4 Moo. P. C. 239=1 Sar. 261.**

HOUSE OF COMMONS.

———Member of—Seat—Forfeiture of—Grounds. *See* STATUTES—22 GEO. III ; C. 45 (1782)—S. 1—HOUSE OF COMMONS. **(1913) 19 I. C. 765.**

HOUSE OF LORDS.

———*Hearing by—Non-appearance at, of appellant or plaintiff in error—Decision in case of.*

Where the appellant or the plaintiff in error does not appear in the House of Lords on his writ or appeal coming on for hearing, the judgment is to dismiss merely, and not to affirm, unless their Lordships have considered the merits of the case. In no other circumstances would it be safe to give a judgment of affirmance in the last resort, that judgment making a precedent binding on all other Courts in whatever points were raised in the cause, and that judgment also being conclusive for ever between the parties (221). (*Lord Brougham.*) RAJUNDER NARAIN RAE *v.* BIJAI GOVIND SING.
(1839) **2 M. I. A. 181=1 Moo. P. C. 117=1 Sar. 175.**

———*Hearing by—Non-appearance of party at—Decision on merits in case of—Propriety.*

The House of Lords may consider the merits of the cause whether the party appealing shall appear or not, for their Lordships may consider the cause upon the printed cases laid before the House, though one of the parties does not appear to argue the question, or even though neither party argue it; nay, though there be no printed cases delivered in, provided that the proceedings in the Court below, being before their Lordships, are by them taken into consideration, and that the matter in question appears in the proceedings, there seems to be nothing which should absolutely preclude them from giving judgment either against or for the absent party. But then there must have been a hearing of the case, and on both sides ; that is, either a hearing at the bar, or by the causes delivered, or by examination of the whole proceedings below, as well on the one side as on the other (221). (*Lord Brougham.*) RAJUNDER NARAIN RAE *v.* BIJAI GOVIND SING. **(1839) 2 M. I. A. 181 = 1 Moo. P. C. 117=1 Sar. 175.**

———*Judgments of—Binding nature of, on Colonial Courts.*

The House of Lords is the Supreme Tribunal to settle English law, and that being settled, the Colonial Court which is bound by English law is bound to follow it. (*Viscount Dunedin.*) WILLIAM ROBINS *v.* NATIONAL TRUST CO., LTD. **(1927) 101 I. C. 903 (905).**

———*Judgments of—Errors creeping in—Rectification of —Jurisdiction.*

HOUSE OF LORDS—(*Contd.*)

If by misprision in embodying the judgments, errors have been introduced, the House of Lords possesses, by common law, the same power which the Courts of Record and Statute have of rectifying the mistakes which have crept in (216). (*Lord Brougham.*) RAJUNDER NARAIN RAE *v.* BIJAI GOVIND SINGH. **(1839) 2 M. I. A. 181 = 1 Moo. P. C. 117 = 1 Sar. 175.**

———*Judgments of—Finality of—Alteration of, on re-hearing—Jurisdiction.*

In the case of the judgments of the House of Lords, that is, of the Court of Parliament, or of the King in Parliament as it is sometimes expressed, it is unquestionably the strict rule, and ought to be distinctly understood as such, that no cause can be re-heard. Whatever, therefore, has been really determined in that Court must stand, there being no power of re-hearing for the purpose of changing the judgment pronounced. There cannot be a re-hearing upon the whole cause, and an entire alteration of the judgment once pronounced (215-6). (*Lord Brougham.*) RAJUNDER NARAIN RAE *v.* BIJAI GOVIND SING.
(1839) **2 M. I. A. 181=1 Moo. P. C. 117=1 Sar. 175.**

HUQS.

———Nature of—Origin of. *See* ABWABS—HUQ.
(1921) 48 I. A. 446 (460-1)=48 C. 997 (1013).

———Toda giras huqs. *See* TODA GIRAS HUQS.

HUSBAND AND WIFE.

———(For Hindu Law cases relating to husband and wife, *see* UNDER HINDU LAW.)

———Restitution of conjugal rights. *See* RESTITUTION OF CONJUGAL RIGHTS.

———Separation on ground of adultery—Thing as of right. (*Viscount Haldane.*) MAURICE DAY BALDWIN *v.* MARY BALDWIN. **(1922) 31 M. L. T. 302.**

———*Separation on ground of ill-usage or grievous insult —Discretion of court below as to—Privy Council's interference with—Privy Council appeal from decision—Right of, given by statute.*

Under Art. 189 of the Civil Code of Quebec, a husband and wife may respectively demand a separation on the ground of outrage, ill-usage or grievous insult, and by Art. 190 :—

" The grievous nature and sufficiency of such outrage, ill-usage and insult are left to the discretion of the court, which, in appreciating them, must take into consideration the rank, condition and other circumstances of the parties."

The Code gave a right of appeal to the King in Council against the decision of the court below.

Held, that, notwithstanding that the statute gave a right of appeal to the King in Council, their Lordships would not entertain an appeal unless they thought injustice had been done. (*Viscount Haldane.*) MAURICE DAY BALDWIN *v.* MARY BALDWIN. **(1922) 31 M. L. T. 302 P. C.**

HYPOTHECATION.

———*See* UNDER MORTGAGE.

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